

# Consistent with Canon A4

## *A contribution from the Legal Working Party of Forward in Faith*

### **The immediate background:**

1. Canon A4 reads as follows:

**‘Of the Form and Manner of Making, Ordaining, and Consecrating of Bishops, Priests, and Deacons**

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.’

2. On Monday 10<sup>th</sup> July 2006 the General Synod approved a motion seeking the early appointment of a legislative drafting group, charged with preparing a draft measure to remove the legal obstacles to the consecration of women to the office of bishop, and also ‘a draft of possible additional provision consistent with Canon A4 to establish arrangements that would seek to maintain the highest possible degree of communion with those conscientiously unable to receive the ministry of women bishops.’ The words ‘consistent with Canon A4’ were the result of an amendment, voted on by houses, and only narrowly securing a bare majority in the laity.
3. It appears to us that some confusion exists as to the significance and meaning of Canon A4. For example, Bishop Richard Harries, writing in *The Tablet* immediately following the July meeting of the General Synod, maintains

‘An amendment was passed to incorporate in any subsequent legislation a canon of the Church of England which says that those validly ordained are priests. In short, there will be no question in the future of opponents arguing that priests ordained by a woman bishop, for example, are not really priests.’<sup>1</sup>

But is this really what ‘consistent with Canon A4’ means? This understanding of the canon is, in our view, a profoundly mistaken one. But this misunderstanding is not simply confined to the former Bishop of Oxford.

4. A shift of emphasis – and a degree of amnesia – has, we believe, crept into the way in which the reservations or doubts of those opposed to the ordination of women as priests are described. It is useful to go back to legislative and quasi-legislative arrangements – the Priests (Ordination of Women) Measure 1993 and the Episcopal Ministry Act of Synod 1993 – which, together, enabled women to be ordained to the priesthood.

### **The understanding behind the 1993 Measure and the Act of Synod:**

5. When the 1993 Measure, in draft form, was referred to the diocesan synods, the principal document associated with it, to assist discussion, was the Second Report of the House of

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<sup>1</sup> *The Tablet*, 15<sup>th</sup> July 2006, feature article, *The female mitre*.

Bishops.<sup>2</sup> It is, we believe, instructive to be reminded that that Report commended what was to be the proposed legislation on the basis of ‘an open process of reception’ – a process in which ‘there is always the possibility that what is being tested will wither and die.’<sup>3</sup> It went on to recognise that there was ‘a very particular problem when what is being tested is... a doctrine embodied in persons’<sup>4</sup> and that, in dioceses and parishes, the experience would be likely to be acutely painful. The Report noted, especially, that this process of reception would ‘put particular strains on those women who are ordained to the priesthood *and whose ministry appears in question* in a way that does not apply to men.’<sup>5</sup>

6. Underpinned by this doctrine of reception, and carrying therefore a degree of provisionality, the draft Measure completed its passage to the Statute Book, but not before Parliament’s Ecclesiastical Committee had been given assurances that greater protection would be provided for those of Her Majesty’s subjects unconvinced by the rightness of this change. It is sometimes forgotten, it seems to us, that those assurances were expressed in juridical language in the Episcopal Ministry Act of Synod, a piece of subsidiary legislation without which the main Measure would not have become law. The thinking behind the Act of Synod was set out in the statements issued by the House of Bishops in January and June 1993. The second of those statements, issued under the title *Bonds of Peace*, said:

‘those who... *cannot conscientiously accept that women may be ordained as priests* will continue to hold a legitimate and recognised position within the Church of England....’<sup>6</sup>

Similar language is found in Resolution III.2 of the Lambeth Conference, which formed the subject of another amendment to the July 2006 General Synod motion on legislative arrangements. This Resolution includes the assertion that ‘those who dissent from... the ordination of women to the priesthood and episcopate are... loyal Anglicans.’

7. In sum, we maintain that the understanding upon which the 1993 Measure and the Act of Synod were both passed, and finding clear expression in the Lambeth Resolution, is that there are some who simply, or who in varying degrees, are unable in faith to *accept* women’s priestly ordination. In other words, that although such ordinations may be regular in form and canonically permitted, ultimately their validity may, by some, be questioned and doubted. Unsatisfactory and anomalous though this possibility has been, it is our view that this understanding has enabled hundreds of priests and thousands of lay people to remain, since 1993, in the Church of England.

### **A new interpretation of history:**

8. Yet this understanding appears to us now to be the subject of challenge. In the Report to the House of Bishops from the Bishops of Guildford and Gloucester<sup>7</sup>, the two bishops admit that

‘perhaps many of those... opposed to women priests have interpreted the provision of both the Measure and the subsequent Act of Synod in terms of belonging to a part of the church which does not recognise women priest in absolute terms.’<sup>8</sup>

<sup>2</sup> *The Ordination of Women to the Priesthood: A Second Report by the House of Bishops* (GS 829).

<sup>3</sup> Paragraph 173.

<sup>4</sup> Paragraph 175.

<sup>5</sup> Paragraph 175, our emphasis.

<sup>6</sup> cited by Colin Podmore, *Aspects of Anglican Identity*, 2005 (Church House Publishing) p.131, our emphasis

<sup>7</sup> GS Misc. 826.

<sup>8</sup> Paragraph 6.6.

This interpretation they challenge. Guildford and Gloucester assert that ‘reciprocal recognition of ministry is an essential characteristic of being a member of the same Church’.<sup>9</sup> Ecclesiologically we would agree, but when a fundamental change to that Church’s Orders of Ministry is imported, then ‘being same Church’ – to adapt slightly one of today’s catch-phrases - is made very difficult, and the many alternative Eucharists of Chrism celebrated each year bear witness to the hundreds of priests who have been rendered unable to make that reciprocal and mutual recognition, as they gather in presbyteral collegiality around their respective Provincial Episcopal Visitor or other ‘traditionalist’ bishop.

9. There is a conundrum here, which takes us back to the doctrine of reception and the degree of provisionality in the decision to ordain women as priests. Guildford and Gloucester would have to rely on a fine distinction being made between the provisionality of the decision or development – to admit women to the priesthood – and the non-provisionality of the orders of those forming the subject of the decision. This was something recognised by the Second Report of the Eames Commission in 1990 which argued that the term ‘provisionality’ applied not to the orders of those ordained, but ‘that within an open process of reception there is inevitably a provisionality about the *development* itself.’<sup>10</sup> More recently, the Rochester Report<sup>11</sup> picked up this point, noting that ‘it may sound paradoxical, if not contradictory, to say that the decision to ordain women priests is open to question, but the orders of those women who have been ordained are not.’<sup>12</sup> But this ‘apparent paradox’, according to Rochester, can be explained by proposers of the change as ‘simply the result of the fact that the Church of England has to act on what it believes to be right at any given time, while at the same time remaining open to the possibility that its decision might in the end be judged unacceptable by the universal Church.’<sup>13</sup> Rochester describes that exactly the same approach could be taken in relation to women bishops.<sup>14</sup>

10. We would disagree with this having-your-cake-and-eating-it understanding, being based in our view on too artificial and technical a distinction, and indeed a distinction highlighted by the Roman Catholic bishops’ response to the Rochester Report. This response stated:

‘If there are doubts about whether women can be ordained bishops, and whether the decision to do so was right, then there are inevitable consequences for doubts about the validity of the orders and ministrations of those bishops. It cannot be held, as suggested in 3.6.36... that if the decision is found to be wrong to ordain women bishops, the orders of those women bishops would not be in doubt.’<sup>15</sup>

The same applies to women priests: if the decision carries an element of provisionality, then so must the orders. If the essential basis upon which the orders were conferred is found to be invalid then the orders conferred in consequence must of necessity also be invalid.

11. For Guildford and Gloucester, the provisions of the 1993 Measure are about ‘simply declining’<sup>16</sup> the ministry of women priests. They maintain that a ‘careful reading’ of the

<sup>9</sup> Paragraph 6.7.

<sup>10</sup> *Report of The Archbishop of Canterbury’s Commission on Communion and Women in the Episcopate: Part Two*. 1990 (Church House Publishing), paragraph 6.i, the Report’s own emphasis.

<sup>11</sup> *Women Bishops in the Church of England? A report of the House of Bishops’ Working Party on Women in the Episcopate*, 2004 (GS 1557).

<sup>12</sup> Paragraph 3.6.26

<sup>13</sup> *Ibid.*

<sup>14</sup> Paragraph 3.6.36

<sup>15</sup> *Women Bishops in the Church of England? A response to the ‘Rochester Report’ of the House of Bishops Working Party on Women in the Episcopate from the Department of Dialogue and Unity of the Catholic Bishops’ Conference of England and Wales*, October 2005, paragraph 30.

<sup>16</sup> GS Misc. 826, Paragraph 6.6.

Measure's provisions about passing Resolutions A and/or B 'shows that it does not necessarily imply absolute non-recognition of women's priestly ordination' and that these Resolutions simply enable 'a parish to *decline* the ministry of women as priests.'<sup>17</sup> While we would agree that the passing of these Resolutions does not, of course, *necessarily* mean 'absolute non-recognition' – but, rather, allows for a variety of stances and views – we do not, in our careful reading of the Measure, find anything in the text about 'declining'. The statutory form in which the Resolutions are cast speaks of 'would not accept' and, in our view, this language is considerably stronger. To decline suggests the exercise of a discretion, the expression of a preference, whereas 'would not accept' indicates an inability to receive. In a word, it seems to us that the Guildford and Gloucester Report is encouraging its readers in the view that the validity of women's priestly orders is not in doubt.

### So what does Canon A4 mean?

#### 12. For Guildford and Gloucester, Canon A4

'expresses in formal language the fundamental ecclesiological conviction that one of the traditional characteristics of belonging to the church is the necessity of recognizing all those duly ordained within the church.'<sup>18</sup>

But, again, as with the former Bishop of Oxford's gloss in *The Tablet*, is this what the Canon is actually saying? This Canon, based on the wording of Canon 8 in the 1603 Canons<sup>19</sup>, confirming Article 36 of The Articles of Religion of 1571<sup>20</sup>, is not about the recognition of the validity of orders. The Canon, as its heading makes clear, both in the present body of Canons and in its forebears<sup>21</sup>, is to do with *form*: '*formam ad ritum*'. Canon A4 is concerned with *the Ordinal*, and not with drawing from the faithful a response of assent to orders. It is concerned only with the Ordinal annexed to *The Book of Common Prayer* and has no relevance to any other rite of ordination.

#### 13. Further, even if Canon A4 could be held to concern the recognition of validity of orders, which we deny, the words 'and ought truly to be accounted both by themselves and others, to be truly bishops, priests, or deacons' cannot be made to bear undue weight. The language of this consequential wording is not prescriptive; it does not *require* recognition of particular persons as bishops, priests or deacons. That would be contrary to English canonical jurisprudence which does not seek to place obligations of assent upon the faithful at large. Moreover, the

<sup>17</sup> Paragraph 6.5, their emphasis.

<sup>18</sup> Paragraph 6.2.

<sup>19</sup> The wording of Canon 8 of the 1603 Canons makes it clear that is validity of *form*, not of orders, which is at issue:

*Impugners of the Form of consecrating and ordering Archbishops, Bishops, &c., in the Church of England, censured.*

Whoever shall hereafter affirm or teach, That the form and manner of making and consecrating Bishops, Priests, and Deacons, containeth anything in it that is repugnant to the Word of God, or that they who are made Bishops, Priests, or Deacons, in that form, are not lawfully made, nor ought to be accounted, either by themselves or others, to be truly either Bishops, Priests or Deacons, until they have some other calling to those divine offices; let him be excommunicated *ipso facto*, not to be restored until he repent, and public revoke such his wicked errors.

<sup>20</sup> *Of Consecration of Bishops and Ministers*

The Book of Consecration of Archbishops and Bishops and ordering of Priests and Deacons, lately set forth in the time of Edward the Sixth and confirmed at the same time by authority of Parliament, doth contain all things necessary to such consecration and ordering; neither hath it anything that of itself is superstitious or ungodly.

And therefore whosoever are consecrate or ordered according to the rites of that book, since the second year of King Edward unto this time, or hereafter shall be consecrated or ordered according to the same rites, we decree all such to be rightly, orderly, and lawfully consecrated or ordered.

<sup>21</sup> See also Canon 6.2 of The Canons of 1571.

wording is cast in the exhortatory language of ‘ought’ - not ‘shall’. The present canons cover a broad range of subjects and vary considerably in style. Some canons are indeed binding requirements upon the clergy – for example, the obligation upon a minister not to refuse or delay to baptise an infant in danger of death within his cure for whom baptism is sought (Canon B22.6), breach of which could, in our view, amount to an ecclesiastical offence. Other canons are cast in more of an aspirational style – such as the duty upon all the confirmed to receive Communion thrice yearly (B15.1) or the minister’s duty to choose chants, hymns, and anthems ‘as are appropriate’ (B20.3). One of the few canons using, like Canon A4, the term ‘ought’ is B6.3, encouraging the observance of Days of Fasting (‘whereof the 40 days of Lent, particularly Ash Wednesday and the Monday to Saturday before Easter, *ought* specially to be observed’). ‘Ought’ is exhortatory and aspirational: not mandatory.

14. In any event, Canon A4 cannot be construed in isolation from other canonical requirements. The Canon, it will be noted, has nothing to say about the status and quality of those who undergo a rite of ordination according to the Ordinal. Thus, before a person ordained according to the Ordinal ‘ought to be accounted... truly’ a bishop, priest or deacon, then certain other requirements must be required. There are requirements as to *age* (see Canons C2.3, C3.5 and C3.6), requirements as to *marital status* (Canon C4.3 & C4.3A – no former spouse still living unless he shall have a faculty from the archbishop, requirements as to *sex* (Canon C2.5 – the person must not be a woman if being consecrated as a bishop), and there are requirements as to the *number of consecrators* (C2.1 – three bishops in order to consecrate someone to the episcopate). We do not maintain that all these requirements are necessarily essential for the valid conferral of Orders. But the point is this: none of these canonical requirements appears in Canon A4, so that Canon cannot be held to require the universal acceptance of those ordained, whatever the intention of those taking part. A person may only be ‘accounted truly’ a bishop, priest, and deacon, if that person so ordained *otherwise satisfies the requirements of the law*. This being so, then if the canons are amended to enable women to be consecrated as bishops (and thus Canon C2.5 is revoked), it would be perfectly possible to have arrangements which limit the operation or recognition of the women so ordained (and of men ordained by them). We find it perfectly possible to contemplate, as our earlier work in *Consecrated Women?* suggested, that, so enabled by a measure, the canons of the Church of England could state that a woman bishop may not officiate in the province of X or the jurisdiction of Y, or that a man ordained by a woman bishop may not officiate in the province of X or the jurisdiction of Y. Canon A4, to the extent that it may concern recognition of validity of orders, would simply be qualified by these canons, as it already is by existing canons.

15. If, contrary to our understanding and the position we set out above, it is held that Canon A4 does indeed concern the recognition of the validity of orders then, in our view, it has been suspended by operation of statute law. By virtue of the Submission of the Clergy Act 1533, together with the Synodical Government Measure 1969, no canon may be promulgated which is ‘contrary or repugnant to the Royal prerogative or the customs, laws or statutes of the realm.’ Since the Priests (Ordination of Women) Measure 1993 – enabling parishes not to accept the priestly ministry of women – possesses the same authority as a parliamentary statute, then Canon A4, if indeed it touches the validity and recognition of orders – has, if not rendered invalid, at least been suspended. Guildford and Gloucester find this language too hard a pill to swallow, because it challenges their insistence on the necessary reciprocity of ministry and they ‘do not take the view that Canon A4 was suspended’ but that, rather, its ‘practical outworking’ has been ‘qualified’.<sup>22</sup> We are not convinced that this nuanced distinction adds greatly, nor are we willing to reduce this important issue to the level of semantics; whether the canon is regarded as ‘suspended’ or ‘qualified’ is not of much import. The legal and practical reality is that, to the extent that the Canon may concern recognition of valid orders, it is *not operational*.

<sup>22</sup> GS Misc.826, Paragraph 6.4.

For the reasons already rehearsed in paragraphs 5 to 7 above, the 1993 Measure, in its provisions for passing Resolutions A and B, is not simply affording the opportunity to ‘decline’ women’s valid priestly ministry, but in its text, and in its intention, it recognises and provides for the non-acceptance of a ministry which, for some, is impossible.

**Conclusion:**

16. It is our view that the words ‘consistent with Canon A4’, in the amended motion passed by the General Synod on preparing legislation, add nothing at all. What, however, does concern us, is the interpretation placed, or likely to be placed, on these words by others, the temptation to add a new gloss on the history of the present arrangements, and the possible attempt, on the basis of a mistaken understanding of these words, and of the meaning and significance of Canon A4, to present a case based on a false premise. In our view, it would be profoundly misguided to argue that the validity and recognition of the orders of women who have gone through the ceremony of ordination according to the Ordinal annexed to *The Book of Common Prayer* were not capable of refutation. The result of basing a case on this flawed premise could well be to drive out of the Church of England, those who have been perfectly entitled to hold in question, during this continuing open process of reception, whether those ordained as a result of a provisional decision, may indeed be truly accounted as such.

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