



# The Act of Synod and Theological Seriousness<sup>1</sup>

by Dr Judith Maltby

*Introduction to the Revd Dr Judith Maltby's essay in Act of Synod – Act of Folly? edited by Monica Furlong, SCM Canterbury Press 1998.*

## One Lord, One Faith, One Baptism, but Two Integrities?

On 11th November 1992, after many years of debate and discussion at all levels in the Church, the General Synod voted to make it lawful for women to be ordained as priests. Almost exactly one year later, with only two debates a day apart, the General Synod passed the Episcopal Ministry Act of Synod, creating provision for three separate 'flying bishops' to minister to those opposed to women's ordained ministries.

Five years after the Act of Synod was passed, the late Monica Furlong edited a collection of essays entitled Act of Synod – Act of Folly? Canon Dr Judith Maltby, Fellow of Christ Church College, Oxford, has given WATCH her permission to use her contribution to Monica's book. We are grateful to Judith for her essay, which traces the theological and ecclesiological flaws inherent in the Act and the damaging precedent it has set, not only for the Church of England but for the entire Anglican Communion. 16 years on, the Act is still in place, although only 2% of parishes in the Church of England have signed Resolution C, the resolution calling for the extended Episcopal oversight created by the Act.

As the Church prepares to open the Episcopate to women, WATCH continues to work for the rescinding of the Act of Synod and for the simplest and most straightforward legislation for women bishops.

## I. Introduction

In about 1980 or 1981, I attended a Central Council meeting of Movement for the Ordination of Women. One of the tasks set the meeting was to break into the inevitable small groups, armed with magic markers and newsprint, and 'buzz' about the reasons we thought that the Church of England should admit women to the priesthood. Bluetack in hand we then reported back to plenary. The vast majority of the reasons given, it is fair to say, had a great deal to do with the feelings of the people there: the deaconesses present felt frustrated that their gifts were not being fully employed; the male priests felt guilty that the same vocation they saw in themselves was being denied to their female colleagues; the women, both lay and the would-be ordained, felt that comparisons of the ordination of members of one half of the human race to the ordination of a monkey or a pork pie was, truth to tell, deeply insulting and unchristian. After a while, a senior bishop present stood up and told us all, in short, to stop whinging. He said that the leadership of the church was not really interested in the *feelings* of women: we had to make an intellectually rigorous, *theological* case for why the Church of England should reform itself in this regard. I am to this day deeply grateful for

the painful honesty of that bishop. The Movement for the Ordination of Women responded to the challenge and produced literature of a high theological content. Authors who published on the pro-side included Janet Morely, John Austin Baker, Rowan Williams, Monica Furlong, and Elaine Storkey to name just a few. In an article published in 1984, Rowan Williams eloquently argued 'the case for theological seriousness', criticizing the lack of theological rigour in the ordination of women debate.

*The theology of Christian ministry is an area in which we are too readily tempted to avoid discussion of first principles. It is too complicated, too generally unsettling and too distracting when we are hard-pressed by practical urgencies .... There are quite a few who would say that, at the moment, a theology of (ordained) ministry is neither possible or desirable: we have inherited a jumble of rather irrational structures and practices which we are slowly – and **pragmatically** – learning to adjust and rationalize or even modernize; and in this sort of situation we are inevitably going to treat all theological perspectives on the ministry as provisional.<sup>2</sup>*

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1 An earlier version of this essays was given to the students and staff at Ripon College Cuddesdon (January 1997); the General Theological Seminary, New York (April 1997); the Oxford Diocesan Chapter of the Society of Catholic Priests (October 1997); the National Conference of Advisors in Women's Ministry (April, 1998); and a study group of lay and ordained women in the Diocese of Worcester (April, 1998). I am grateful to those present at those meetings for their criticism and reflection.

2 Rowan Williams, 'Women and the Ministry: a case for theological seriousness', *Feminine in the Church*, ed. Monica Furlong (London, 1984), p. 11.

The ordination of women as priests has been subjected, very rightly, to intense rigour in terms of its theological *content* as well as wide consultation across international, national and the most local levels of church government in terms of the *process* by which it was approved. My intention here is to apply some theological and intellectual rigour to the 1993 Act of Synod, and principally the notion of extended episcopal oversight it embodies, as well as the process by which it came into being. In short, this essay sets out to ask some ‘first principle’ questions of the Act of Synod. It is not unjust to say that the Act has not undergone the searching testing which the ordination of women priests underwent. Nor, truth to tell, in the early years

of the Act’s existence did the cultural climate of the Church encourage open criticism or dissent. For a growing number of Anglicans and other Christians, the Act and the novelty of Provincial Episcopal Visitors it created, not the ordination of women, represents the *real* departure from a catholic understanding of orders and sacraments made by the Church of England in the late twentieth century. Some ‘theological seriousness’ on the Act is overdue and surely no one can object to the same rigour being applied: what is sauce for the goose is sauce for the gander. If ‘theological seriousness’ was good enough for the ordination of women, it is surely good enough, and overdue, for the Act of Synod.

## II. Content

This essay originally came into existence as a result of speaking with a group of bright, young, able ordinands, who simply had *no idea* about the conditions laid down in the 1992 Measure actually lays down for the ordination of women to the priesthood or had even heard of the Act of Synod.<sup>3</sup> Alarmingly, there is a wide spread perception in the Church of England, even among those with senior responsibility, that women are admitted to the ordained priesthood under the same conditions as men (a deeply inaccurate perception) and that the provisions made for the opponents of the ordination of women in the Act, which are additional to already extensive provisions made in the Measure, are one and the same. The 1992 Measure was debated at national and local levels of Church life and stands on its own; the 1993 Act came into existence *after* the Measure was approved by the final vote by General Synod and is completely distinct from it. Given the level of ignorance surrounding both the Measure and the Act, it is worth going over precisely what each contains before considering the sharply contrasting processes by which each came into being.

### A. The Provisions of the 1992 Measure

The main provisions of the Measure are as follows:

1. The ordination of women as priests but not on the same basis of male candidates.
2. Exemption of women clergy from any protection in law provided by the 1975 Sex Discrimination Act.
3. Parochial Church Councils may ban a woman priest from celebrating the Eucharist or pronouncing the absolution in a parish boundaries. PCCs are also given the right to prohibit the appointment of a duly ordained priest of the Church of England from even applying for the post of incumbent, curate or non-stipendiary minister, on the basis

of her sex. These are known as Resolutions A and B. It is worth noting that PCCs were not given the right positively to request a woman over a man; there is no positive discrimination here only ‘negative discrimination’. Also one PCC in a united benefice can stop the appointment of a woman priest to minister anywhere else in the benefice, even if all the other parishes support her appointment. Further, there is no provision for the protection of the consciences of those in favour of women priests in a parish if Resolutions A and B are passed.

4. Financial provision was made for clergy who left as a consequence of the vote. No provision was made for the repayment of the sum of up to £30,000 if any, as a few have, return.
5. The Measure explicitly excludes the ordination of women as bishops. The ordination of women to the episcopate will require an entirely distinct synodical measure and act of Parliament.
6. The Measure provides protection for bishops opposed to the ordination of women as priests by ensuring that no bishop could be ‘forced’ to ordain a woman to the priesthood.<sup>4</sup>

It is worth going over these points because one might reasonably conclude that the 1992 Measure contained a good deal of compromise and generous provision for those opposed. That was my view as I spoke for the Measure in deanery and other debates in 1990-91, sometimes not against opponents of women’s ordination but against those who thought we had compromised too much.

### B. The Provisions of the Act of Synod

The Act of Synod is, of course, a completely separate synodi-

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3 In this article, the 1992 Measure, or simply the Measure, shall be taken to mean The Ordination of Women to the Priesthood: Reference of Draft Legislation to the Diocesan Synods 1990, Memorandum by the Standing Committee and Background Papers (GS Misc 336, 1990). The 1993 Act of Synod, or simply the Act of Synod, or Act, shall be taken to mean Ordination of Women to the Priesthood: Pastoral Arrangements a report by the House of Bishops which contains the document Bonds of Peace and Draft Episcopal Ministry Act of Synod 1993 (GS 1074). The Act was slightly amended and approved by the November 1993 session of General Synod as the Episcopal Ministry Act of Synod 1993. Important background thinking for the Act is to be found in the document Being in Communion (GS Misc 418, 1993).

4 GS Misc 336, 1990.

cal act from the 1992 Measure. A measure is something that eventually is turned into a law – so the Measure had to be passed by Parliament and was in November 1993 by large majorities. An Act of Synod simply has the authority of Synod and does not need to be referred to Parliament. An ‘act’ does not have the status of law in the same way and what Synod has made, Synod can unmake. The ordination of women, however, would have to be repealed by Parliament, as well as by General Synod.

What are the main points of the 1993 Act of Synod?

1. The Act provides even greater ‘protection’ for those opposed to the ordination of women than the already extensive provision in the 1992 Measure outlined above.
2. The Act makes provision for neighbouring bishops of differing views on the ordination of women as priests to ‘assist’ each other. A bishop opposed is encouraged by the Act to call in a suffragan or neighbouring bishop to conduct the ordinations of women priests in his diocese. A bishop who supports women priests is encouraged to call for the assistance of an opposed neighbour to ordain men opposed and even to minister to congregations who feel they cannot accept their own bishop because of his support for the ordination of women.
3. The most significant aspect of the Act, however, is the creation of PEVs (Provincial Episcopal Visitors), or Flying Bishops as they were quickly dubbed by the press. PEVs appear to have largely, but not entirely, replaced the more co-operative model originally favoured in the Act as outlined in no. 2. This is ‘Resolution C’.

As to the first point, *Bonds of Peace*, the supporting document to the Act, says this:

*Those who for a variety of reasons cannot conscientiously accept that women may be ordained priests will continue to hold a legitimate and recognised position within the Church of England. There should be no marginalisation of anyone on the basis of their attitude towards the ordination of women to the priesthood. Nor should those who cannot accept the ordination of women seek to marginalise themselves by withdrawing from the life and government of the Church except in those matters where conscientious convictions are directly at stake.*<sup>5</sup>

There are real questions as to whether either of these goals has been helped by the Act of Synod, especially the injunction for opponents not to withdraw ‘from the life and government of the Church’. The freewheeling nature of remarks like ‘except in those matters where conscientious convictions are directly at stake’ and the elevation of conscience over a catholic understanding of orders, is leading to some very dangerous consequences to which I will return later.

As for the second and third points, the provision of a ‘safe

pair of hands’, this is what the House of Bishops had to say:

*The bishops, corporately and individually, are pledged to maintain the integrity of both positions. Both are represented in the House of Bishops. The House now indicates how in practice the dioceses and the local churches can live with this diversity. It will be a sign of the continuing communion of bishops and a mark of collegiality when a diocesan bishop, who does not himself accept the ordination of women to the priesthood, but does not make any of the declarations in clause 2 of the Measure, thereby does not prevent a woman being ordained and licensed by another bishop to minister as [a] priest in his diocese. Similarly, it will be a mark of continuing communion when a diocesan bishop in favour of the ordination of women to the priesthood invites a bishop who does not accept it to minister to priests and congregations in his diocese who themselves do not accept it. In both cases oversight remains ultimately with the diocesan bishop, who remains the focus of unity in his diocese even when he chooses to extend his oversight through another bishop. Such extension should be seen as an expression of the collegiality of a House of Bishops which accepts the legitimacy of both positions.*<sup>6</sup>

One of the overriding theological assumptions of the Act, illustrated very well by that passage, is the importance placed on the *collegiality* of the House of Bishops. One suspects that underlying this notion, at least at the intellectual level, are some borrowed clothes from the Roman Catholic Church where ‘conciliarism’ and the collegiality of the episcopal order represents the progressive and enlightened position compared to the monarchical papalism of the present pope. Conciliarism which is, of course, the progressive stance in a Christian denomination in which the laity are excluded from participating in any formal institutional way in the *magisterium* and *imperium* as they are in the Church of Rome. However, it represents a considerable retrograde step in a church, like the Church of England, which claims that it is ‘episcopally led and synodically governed’. In the Church of England, the representatives of the laity constitute a formal ‘house’ of General Synod. We must remember that for all the emphasis given in Vatican II to listening to the ‘sense of the faithful’, it was never followed up by structural reforms that would have actually given the laity any formal power. One does not need to be a disciple of Foucault to see ‘power issues’ as important – being a disciple of Jesus will do. (Equally, of course, it is unthinkable that when women are ordained in the Roman Catholic Church that anything remotely resembling PEVs will be invented.) In short, the Act of Synod needs to be seen as the English House of Bishops’ attempt to figure out just how they were all going to stay on reasonable terms with each other. Further, the elevation in the past few years of the rhetoric of ‘collegiality’ is a worrying sign in a church ‘episcopally led and synodically governed’. The vast majority of the rest of the Church of England (i.e. every Anglican who is not a member of the House of Bishops) needs to ask whether the bishops’ collegiality was bought at the expense of the *koinonia* of the rest of us.

<sup>5</sup> Bonds of Peace, #4.

<sup>6</sup> Bonds of Peace, #5.

### III. Process

In Christian moral reasoning, the end does not justify the means and how things come into being deserves as much scrutiny as the substance. The contrast between the *process* of the Measure and the process of the Act is striking and raises crucial moral (never too strong a word when talking about ‘power’) considerations about the relationship between the layers of Church government in which the laity and presbyterate participate and the growing oligarchical tendencies of the House of Bishops, which the Turnbull reforms will only enhance.

#### A. The 1992 Measure

Jean Mayland elsewhere in this collection discusses the legislative history of the 1992 Measure in detail. Suffice it to say here that the Measure which General Synod and Parliament gave its final approval to in November 1992 and November 1993 respectively, was the fruit of a long, exhaustive (if not exhausting) and highly consultative legislative process which involved the most local layers of Church government, begun in 1975.<sup>7</sup> It involved a series of drawn-out ‘revision stages’, as well as debate at deanery level. In 1990, 38 out of 44 diocesan synods passed the ordination of women. In November 1992, the Measure passed by a two-thirds majority in all three houses of General Synod. A year later it progressed through Parliament (the voting figures in the Lords were 7:1 and 10:1 in the Commons). From March into the summer months of 1994, nearly 1500 women deacons were ordained to the priesthood, many of whom had been in ordained or accredited ministry in the Church for decades. In 1988, Dr John Sentamu, now Bishop of Stepney, quoted his daughter Grace in a General Synod debate on the ordination of women, ‘Well, let me tell you Dad, the Church of England, as far as I can see, has the power and engine of a lawnmower but the brakes of a juggernaut’. It took twenty years to produce the 1992 Measure: let no one ever say that the ordination of women was a ‘rush job’!

#### B. The 1993 Act

The same cannot be said for the Act of Synod. Considering the legislative history related above, the contrast in the evolution of the Measure and of the Act could not be more striking or telling.

1. In January 1993, the bishops issued their Manchester Statement, the *Bonds of Peace*<sup>9</sup> and in April the Ecclesiastical Committee of Parliament started to meet to decide whether it was ‘expedient’ to send the Measure to Parliament. In June of the same year, the Bishops produced the Act of Synod which was not debated at the July meeting of Synod. The Act was aired for debate on the first day of the 1993 November Synod, sent back for revision, and voted on the *last day* of the same November meeting of Synod where it passed (one has to admit) by a very large majority.

2. The Act of Synod is an exclusive product of the House of Bishops, not a synodical body with clergy and lay representation. That means of course, that it was produced by an entirely male and clerical body – not an insignificant factor.

3. The Act, in breath-taking contrast to the 1992 Measure, was never referred to diocesan and deanery synods for debate, reflection and *testing*. This accounts for the alarming ignorance among many usually well informed laity and clergy about the content of the Act, because the more grassroots levels of our synodical system were not involved in the process of its passage.

Unquestionably the concept of women priests was far more rigorously tested through the body of the church than the concept of extended episcopal oversight. The latter reflects surely, a more radical departure from a catholic understanding of orders than the extension of that order to include women. The Act, understandably given the speed with which it was manufactured, has all the hallmarks of a hastily constructed, unconsultative document. To put it bluntly: one must contrast nearly twenty years of testing and discernment of the ordination of women to the priesthood with ten months to produce the Act of Synod and to create the novelty of Provincial Episcopal Visitors. It is worth noting for future reference the speed at which that ‘lawnmower’ can move when certain interests are involved.

### IV. Theological reflection on the Act

To its architects and practitioners, the major arguments for the Act seem to be based on a certain understanding of safeguarding consciences combined with a rather late conversation to the Anglican principle of comprehensiveness. First of all, what do PEVs have to do with the principle of Anglican comprehensiveness? The Bishop of Richborough, one of the PEVs, wrote on this very point in response to criticism of the

Welsh Church’s decision to go down a somewhat similar road as the Church of England.

*Such an attempt at diversity in doctrine is no innovation. We have made comprehensiveness a virtue ever since the Elizabethan Settlement, for instance, managing to hold in one Church some who consider the Eucharist in a receptionist light,*

7 Although focusing on the last few decades, readers should note that the ordination of women in the Church of England has a longer history. See Brian Heene, *The Women’s Movement in the Church of England 1850-1930* (Oxford, 1988) and especially Sheila Fletcher’s superb biography of its greatest champion, Maude Royden: *a life* (Oxford, 1989).

8 Grace Sentamu quoted by her father in General Synod, 5 July 1998 and cited in Margaret Webster, *A New Strength, A New Song* (London, 1994), p. 115.

9 *Bonds of Peace* is based largely on a slightly earlier document *Being in Communion* (GS Misc 418, 1993).

and so differ little from Zwingli, and others who believe in the real presence in a way indistinguishable from the Council of Trent. What is new, however, is the determination of the supporters of women's ordination to press ahead despite the very large minority in our Church opposed to this novelty.<sup>10</sup>

As a professional historian of the very period appealed to by the bishop, it must be stated that at no point our history has the endorsement of comprehensiveness ever resulted in the creation of an extended or alternative episcopal system. Anglicans hold and have always held all sorts of views on all sorts of important doctrinal subjects, including issues as fundamental as whether salvation involves free-will or is predestined. When has the Church of England ever responded to this reality by anything remotely resembling the Act of Synod? The example of the Eucharist the bishop uses is a good test case: if a parish priest or PCC do not share their bishop's understanding of the real presence, are they entitled to seek extended episcopal oversight? Surely not. Secondly, scholars of the sixteenth century Reformation more and more are stressing the unpopularity of the Reformation and that one cannot really speak of England as 'reformed' until well into Elizabeth's reign. The Elizabethan Settlement, which the bishop admires for its 'comprehensiveness', was an Act forced on the majority by a minority - perhaps there are some parallels there after all!<sup>11</sup>

Further, if the ordination of women had failed to achieve a two-thirds majority in all three houses of Synod in 1992, I do not think we would be hearing much from the opponents of a priesthood 'comprehending' men and women about the virtues of 'comprehension': it is a principle which in application flows in only one direction. History teaches that Anglican comprehensiveness has endured *precisely* because diversity of belief and practice has *not* been contained by setting up competing or even parallel sacramental and episcopal structures.

A longer term historical perspective, provides an even sharper challenge and raises issues of far more fundamental theological concern than rather late in day appeals to 'comprehensiveness'. One of the underlying theological principles of sacraments in the western Church was worked out in response to the Donatist controversies of the fourth century. The Donatists were a group of Christian rigorists who insisted that the orders and sacraments of anyone who had weakened in the face of fierce persecution were rendered invalid – or 'tainted' – by that action. The Donatists called such clergy *traditores*. These 'puritans' of late antiquity went so far as to reject the validity of the baptisms of persons conducted by such a *traditor* or who had been ordained by one – a type of negative apostolic succession. The Donatist controversy compelled Augustine of Hippo to take the Christian theology of sacraments and orders to a level of definition previously unknown

in the Church and his convictions have shaped all subsequent theological thinking on such matters. Ironically, Augustine is probably best known - and the most criticized across a range of Christian traditions - for his pessimistic view of human nature expounded in his battles in later life with Pelagius. Whereas Augustine's insights into the nature the sacraments and orders forged by the bitter disputes with the Donatists have continued to shape almost all subsequent theological thinking on such matters across the vast majority of churches. In a nutshell, the truly ecumenical, the truly *catholic* view we inherit from Augustine is that the individual qualities of a validly ordained minister or priest (or bishop), do not have any 'affect' on the authenticity of the sacraments administered by that individual. The Anglican expression of this doctrinal understanding is found in Article 26 of the 39 Articles.

*Although in the visible Church the evil be ever mingled with the good, and sometimes the evil have chief authority in the Ministration of the Word and Sacraments, yet forasmuch as they do not the same in their own name, but in Christ's and do minister by his commission and authority, we may use their Ministry, both in hearing the Word of God, and in the receiving of the Sacraments. Neither is the effect of Christ's ordinance taken away by their wickedness, nor the grace of God's gifts diminished from such as by faith and rightly do receive the Sacraments ministered unto them; which be effectual, because of Christ's institution and promise, although they be ministered by evil men.*

Powerfully, this is an understanding of ordination and sacraments which is upheld not only by the Roman Catholic and Anglican Churches, but by all the magisterial reformers of the sixteenth century as well. Free-will or predestination dogged the debates of the Reformation period, but even in those bitter times, this fundamental understanding of ordination and sacraments was upheld – until, one is tempted to say, the Act of Synod.

Is that too severe a criticism to offer? The Bishop of Ely in the November 1993 debate, offered a strenuous defense of the validity of women's orders, while at the same time supporting the Act:

*When women are made priests in the Church of God by prayer and the laying on of hands, what will be done will be what the Church has always done since the days of the apostles.<sup>12</sup>*

One is left with the question as to how one can hold that view and support the Act. To quote the Bishop of Richborough again:

*To enable us to coexist when Holy Orders were being altered has required that there should be places **where traditional-***

10 The Bishop of Richborough, *The Tablet* (18 January 1997), p. 75. It is worth noting that 'receptionism' describes far more accurately the Eucharistic theology of Calvin, not Zwingli, the latter being better known for his 'memorialism'.

11 For a discussion and critique of recent historiography of the English reformation see Chapter 1 of Judith Maltby, *Prayer Book and People in Elizabethan and Early Stuart England* (Cambridge, 1998). The late seventeenth century Non-jurors do not make a happy precedent, see Roger Turner, 'Bonds of Discord: alternative episcopal oversight examined in the light of Non-juring consecrations', *Ecclesiastical Law Journal* 3:17 (1995).

12 Rt Revd Stephen Sykes, Report of Proceedings (General Synod, November Group of Sessions, 1993), p. 986.

*ists could be sure of the valid orders of the celebrant [my italics]. So that this could happen, there had to be bishops to minister to these parishes and individuals.*<sup>13</sup>

This is not directly a reference to the gender of the individual priest, but the implication is clear: there is doubt over the validity of the orders received from a bishop who has ordained women. Can such a view be described with any theological integrity as ‘extended’ episcopal oversight? ‘Alternative’ for all the denials, seems more precise. To rewrite Article 26 of the 39 Articles, the unworthiness of the minister, *does* indeed hinder the effect of the sacrament. And in what sense can this view possibly be described as a catholic understanding of orders? The denial by members of the House of Bishops that a theology of taint underlies the invention of PEVs is deeply unconvincing. The Anglican House of Bishops is not a collective version of the papacy. In Anglicanism we assert that even Councils can err after all<sup>14</sup> and it is the duty the defenders of the Act to produce some theological arguments from ‘first principles’ that will stand up to some intellectual scrutiny. The comparison is not a happy one between clergy in the fourth century who, under persecution, made offerings to idols and a bishop who ordains a woman, or a male priest works along side an ordained woman colleague. Yet it is on this basis that extended episcopal oversight is applied: to avoid *physical* contact with bishops or male priests who have participated in the laying on of hands. It is hard to know what to call this except ‘modern Donatism’, a ‘theology of taint’. Peter Brown’s description of the Donatist mentality in his still magisterial biography of St Augustine of Hippo has striking resonances:

*Briefly, the Donatists thought of themselves as a group which existed to preserve and protect an alternative to the society around them. They felt their identity to be constantly threatened: first by persecution, later, by compromise. Innocence, ritual purity, meritorious suffering, predominate in their image of themselves. They were unique, ‘pure’: ‘the Church of the righteous who are persecuted but do not persecute.’<sup>15</sup>*

What the Act is *not* providing is protection for bishops opposed from being ‘forced’ to ordain women - those safeguards are enshrined in the 1992 Measure. The Act is saying that if a bishop lays hands on a woman in ordination, others have the right to seek the ministry of a bishop whose hands have not been so exposed. (It is worth reflecting on how supporters of women priests denied themselves and were denied, any language about ‘rights’ in ordination. Supporters of PEVs, however, seem to see such provision as a ‘right’.) The Act’s supporters maintain that this is extended episcopal oversight, not alternative – that a PEV is really just another kind of suffragan. Quite remarkably, both *Bonds of Peace* and

the Act itself are completely silent on the question as to *why* another bishop is *doctrinally necessary* under such circumstances. There is no theological rationale, no exposition of first principles, no ‘theological seriousness’ expressed as to *why* if a bishop ordains women he should not also come and conduct a confirmation in a parish over which he has the cure of souls. This ‘real absence’ is pretty staggering. More informally, the bishops publicly deny that there is any ‘theology of taint’ at work here – or a late twentieth century version of Donatism. Nonetheless, one must conclude that under attack in the Act is the fundamental catholic principle of ordination forged in the bitter Donatist controversies, upheld by the magisterial sixteenth century reformers and expressed in the 39 Articles as ‘the unworthiness of the minister which hinders not the effect of the Sacrament’. Your bishop can deny the Resurrection, the Trinity, and the Incarnation; he may be a racist, liar, or thief - but no one will offer you a PEV. But if he ordains a woman to the priesthood, you can call in a ‘safe pair of hands’.

Finally, let us for the sake of argument say that women really do not matter as much as men; that living with such a theology of taint is an acceptable price to pay. Let us forget half the human race and more than half the membership of the Church of England altogether and return to the issue of the protection of conscience and the Act.

In November 1996, the *Church Times* ran an article by a leading member of the ultra-conservative Evangelical group Reform, David Holloway.<sup>16</sup> Plainly and clearly, using the reasoning of the Act of Synod (and the Eames Commission), Mr Holloway laid out Reform’s plans for their own Flying Bishops who would be ‘sound’ on the issue of human sexuality. The stance taken by the House of Bishops in the discussion document *Issues in Human Sexuality* is rejected by Mr Holloway.<sup>17</sup> Bishops will be required to sign a three point document asserting their complete compliance with the belief that sexual activity of any kind (heterosexual included) by lay people and clergy, outside marriage should be subject to ‘appropriate discipline’ in the Church. A diocesan or suffragan bishop who refuses to sign this declaration will be forbidden pastoral and sacramental access to parishes over which he has, of course, the cure of souls.

*PCCs may then request their incumbent to invite for confirmations only subscribing bishops. This is not judgemental; it is saying that a failure to subscribe is indicative of impaired **koinonia**. Once a bishop can subscribe to these points, **koinonia** will be repaired. The bishop is not banned – that is juridical and **ultra vires**. Rather it is a matter of invitation and welcome. Any sub-sequent non-diocesan confirmation would be valid, although irregular.*<sup>18</sup>

13 The Tablet (18 January 1997), p. 75.

14 Article 21 of the 39 Articles.

15 The quotation is from a Donatist statement of their case made in 411. Peter Brown, *Augustine of Hippo*, (Berkeley, 1967), p. 214. See also Robert F. Evans, *One and Holy: the Church in Latin Patristic Thought* (London, 1972), esp. pp. 89-91.

16 David Holloway, ‘Wanting to Reform the Church’, *Church Times* (25 October 1996).

17 *Issues in Human Sexuality* (GS Misc 382, 1991).

18 Holloway, *Church Times* (25 October 1995).

Such a policy – if applied equitably – would dry up weddings in the Church of England to a trickle, but this is not the place to address Reform’s particular point, but use it to illustrate the more important general point about Church order and the protection of conscience. On what grounds, given the precedent created by the Act, is Reform to be denied? On what grounds is any group to be denied ‘a bishop of choice’ on any range of issues about which Anglicans of conscience disagree? Suppose one has different views from one’s bishop on the remarriage of divorced persons, or the use of force in conflict - both important moral questions – may one have a PEV who has the same view? Why only on the issue of gender do we overthrow the time tested doctrine that ‘the unworthiness of the minister hinders not the effect of the sacrament’? A recent consultation at St George’s, Windsor which endorsed the state of play with the Act did not adequately address this point:

*There was also considerable concern lest the Act of Synod be seen as a precedent for providing extended episcopal oversight for other groups claiming that they could not, in con-*

*science, receive the total ministry of their diocesan bishop. It was generally thought that a bishop’s sacramental acts (i.e. ordination) has a **greater degree of objectivity and finality than a bishop’s opinions on ethical or doctrinal issues** [my italics].<sup>19</sup>*

This seems to miss the point: it is precisely because a bishop’s sacramental acts like ordination, have ‘a greater degree of objectivity and finality than a bishop’s opinions’ that the Act is so theologically defective. In November 1997, the Archbishop of York issued a stern rebuke to Mr Holloway’s attempts to remove his parish in Jesmond from the jurisdiction of the new Bishop of Newcastle. Had Dr Hope not done so, he would have given in to a highly defective understanding of the relationship of conscience to the catholic orders of the Church. However, one is left with the burning question as to what the qualitative difference is between what the vicar of Jesmond wanted and the provision of PEVs for the opponents of the ordination of women. Could it be that some consciences are more privileged than others?

## V. Conclusion

We need to decouple the notion of a secure place for the opponents of the ordination of women from the Act. Many provisions were made for them in the 1992 Measure – provisions that were widely exposed to the scrutiny of the larger Church. We need to decouple the Act from the principle of comprehensiveness – for no other issue, issues as much a matter of conscience as the ordination of women, is provision of its kind made. If the ordination of women is still in ‘reception’ then surely Flying Bishops are too. They are as much

subject to scrutiny as anybody else. The Act creates a precedent profoundly undermining to our identity as an *episcopal* church, of catholic orders, and impairs our integrity when in ecumenical dialogue with other churches, both episcopal and non-episcopal. The result of some ‘theological seriousness’ applied to the Act of Synod, leads to the conclusion that to oppose the Act is the properly ecumenical and catholic position, and represents the true understanding of Anglican comprehensiveness.

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19 ‘The Episcopal Ministry Act of Synod 1993: A theological and pastoral review’ (The College of St George, Windsor Consultation, 20-22 April 1998). See “‘In the Light of Experience’: a consultation to review the early years of the ordination of women in the Church of England’ (The College of St George, Windsor Consultation, 22-24 September 1997), which provides a much more detailed and rigorous theological critique of the Act.

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### About the author

Judith Maltby is Chaplain and Fellow of Corpus Christi College, Oxford. A cradle Anglican raised in the ‘Biretta Belt’ of the American Episcopal Church, she has lived in England since 1979. She did her doctoral studies at Cambridge where she held a Research Fellowship at Newnham College and has published on the political and religious history of the sixteenth and seventeenth century England with the Royal Historical Society and Cambridge University Press, including *Prayer Book and People in Elizabethan and Early Stuart*

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