CONSENSUS AND THE CONSTITUTION

THE REJECTION OF THE BILL TO ENABLE WOMEN TO BE ORDAINED AS PRIESTS BY THE GOVERNING BODY OF THE CHURCH IN WALES

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On the evening of Wednesday, 6 April, 1994, the Governing Body of the Church in Wales voted by secret ballot – the first such ballot in the seventy-four year history of that Body – on the motion that the Bill to Enable Women to be Ordained as Priests be passed. The result of the vote was as follows:

	For	*Against*
BISHOPS	5	1
CLERGY	75	47
LAITY	148	51

The Bill was therefore rejected, having failed to achieve a two-thirds majority in each of the three orders of Bishops, Clergy and Laity as chapter II of the Constitution of the Church in Wales demands. The requisite two-thirds majority was obtained among the bishops and the laity, but not among the clergy. Not surprisingly, the result has occasioned much distress for the supporters of women's ordination to the priesthood. This distress has manifested itself in different ways.

It is the purpose of this article to focus upon a serious issue of a canonical nature raised by the failure of the Bill. It concerns dissatisfaction with the necessity of obtaining a weighted majority for such developments, a requirement which is by no means unique to Wales. Its seriousness is evident from the fact that such dissatisfaction has led to calls for the bishops to use those episcopal powers which are theirs by virtue of their consecration, rather than through their consitutional appointment, to override the decision of the Governing Body and go ahead and follow the wishes of the majority who voted in each order and ordain women to the priesthood.

1. HISTORICAL INTRODUCTION

Before examining this issue, however, it is worth recalling the history of the movement for women's ordination in Wales. It was as far back as April 1975 that the Governing Body passed two motions concerning women's ordination. These were:

(1) That the Governing Body considers that there are no fundamental objections to the ordination of women to the priesthood.

(2) That the Governing Body considers that it would be inexpedient for the Church in Wales to take unilateral action in this matter at the present time.

The voting on these two motions was as follows:[1]

(1)	*For*	*Against*
BISHOPS	6	0
CLERGY	87	18
LAITY	120	14

* The author, who is Legal Assistant to the Governing Body of the Church in Wales, wishes to emphasise that the opinions expressed in this article are entirely his own and do not in any way purport to represent those of any other person or body within the Church in Wales.

1. The voting on both these motions was by show of hands but, for the sake of having a complete record, the votes were also counted by orders and the results published. Vide, *the Ordination of Women to the Priesthood: The record of the debate during the April 1975 session of the Governing Body of the Church in Wales,* (Penarth, 1975), pp. 23 and 31.

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(2)	*For*	*Against*
BISHOPS	3	2
CLERGY	70	4
LAITY	70	12

The Governing Body did however proceed shortly afterwards to legislate for the ordination of women to the diaconate, the Canon to Enable Women to be Ordained as Deacons being promulgated in April 1980. Undoubtedly, the fact that Wales led the way with regard to the making of women deacons has contributed to the disappointment now felt by many that the province will lag behind her sister provinces in the British Isles with regard to ordinations of women to the priesthood.

The second of the two motions set out above embodied the belief of the Church in Wales that the ordination of women priests was something that one province should not undertake alone; rather it was something for the Anglican Communion as a whole to contemplate and decide. However, by the start of the 1990s, it was clear that a unified progress towards this goal was not going to be achieved, several Anglican provinces already having acted unilaterally. It was against this background of unavoidable division within the Communion that Wales decided to take the step of considering women's priesting for itself, conscious that its sister churches in the British Isles had either already done so[2] or would shortly be so doing. Accordingly, in September 1991, the Governing Body debated the following motion:

> That the Governing Body requests the Bench of Bishops to consider introducing a Bill to the Governing Body to allow women to be ordained to the priesthood.

A vote by orders on this motion was called for by the Governing Body and, a simple majority being required in each order for the motion to pass, the voting was as follows:

	For	*Against*
BISHOPS	4	2
CLERGY	68	43
LAITY	116	39

This resolution is important for two reasons. Firstly, it necessarily, if only impliedly, repealed the second resolution reached in 1975 regarding the inexpediency of proceeding unilaterally. Secondly, the voting clearly revealed that less than two-thirds of the order of clergy present and voting wished even to discuss the issue. The implications of this second point for the presumed success of any future bill were therefore evident.

The bishops did however introduce a bill to enable women to be ordained as priests. The bill had its first reading in September 1992. The first reading is title only, and, although copies of the bill are published well before the first reading, there is no debate and no vote at that stage. The bill was first debated at its second reading in April 1993, when the principles of the bill were discussed. A vote is taken at the close of the second reading, but the vote is not by orders, the Constitution specifically providing that the question of whether the bill be read a second time must be answered in the affirmative by a majority of the members present and voting.[3] The voting on that question in April 1993 was as follows:

For 199 *Against* 97

2. The Church of Ireland had legislated to allow women to be ordained to the diaconate, the priesthood and the episcopate in 1990.
3. Constitution of the Church in Wales, chapter II, section 38(5). Hereinafter cited as "Constitution" with the chapter and section numbers, following in Roman and Arabic numerals respectively.

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Although only a simple majority is required at the second reading, the figures reveal that only by the narrowest of margins was there at that stage a two-thirds majority in favour. A *volte-face* by only two members would mean that there was not a two-thirds majority of the Governing Body as a whole in favour of the bill proceeding let alone being passed. No one who actually saw the public vote being taken and who noted the proportion of clergy to laity voting For and Against could remain sanguine about the bill's chances of success in the following year. During that year, however, expectations were undoubtedly raised with the successful passage of the English Measure through Parliament and the first ordinations of women to the priesthood in England taking place the very month before the Welsh bill's final stages before the Governing Body.

II THE CONSTITUTIONAL BACKGROUND

In an earlier essay on "Authority within the Church in Wales",[4] the author of this paper drew attention to the role of the Welsh Diocesan Bishops as the guardians of the Anglican tradition received by the Church in Wales at Disestablishment in 1920. The Constitution of the Church in Wales, he argued, both recognises this guardianship role and provides the means by which it can be accomplished. Thus, while ordinary motions before the Governing Body (i.e. motions which do not require bill procedure) need only be passed by a simple majority to become resolutions,

> any one diocesan bishop may request that a vote by orders be taken, in which case the motion is not passed unless it is assented to by a majority of each of the three orders. In other words, if a majority of the bishops is against a motion, it cannot be passed even if all the other members of the Governing Body vote in its favour. The clergy and laity combined can never outvote a majority of the six bishops.[5]

This power of veto is even more apparent when attention is focussed upon bill procedure. Archbishop C. A. H. Green noted in his book *The Setting of the Constitution of the Church in Wales*[6] that the Constitution gave what he called "the widest powers possible" to the Governing Body. These powers extended to changing the Constitution, but more importantly include the right to add to, alter, amend or abrogate matters relating to the faith, discipline, ceremonies, articles, doctrinal statements, rites and formularies of the Church in Wales.[7] These last mentioned categories can only be affected, however, by canons of the Church in Wales passed by bill procedure, that is, by means of a bill which has had three readings before the Governing Body and been finally passed by a two-thirds majority of each of the three orders voting separately.[8] The Order of Bishops, therefore, has an effective veto upon any bill presented to the Governing Body. As any two members of the Governing Body may introduce

4. Vide, Andrew Willie (ed.), '*Living Authority: Essays in memory of Archbishop Derrick Childs*, (Penarth, 1990) pp. 165-178. Much of this section of the current article is drawn from or based on pp. 167-169 of that paper.
5. Op.cit., n. 4 *supra* p. 167, citing Constitution, II 34(1), (2) and (3). Any ten members of the Governing Body can also require a vote by orders on an ordinary motion. If, on a vote by orders, the bishops are in favour but one of the other orders rejects the motion, it can be reintroduced at the next meeting of the Governing Body , when it can be passed provided that all the bishops are in favour and there is a two-thirds majority in one of the other two orders.
6. London, 1937.
7. Green, op. cit., p. 203.
8. Vide, Constitution, II. 36-42.

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a bill for consideration,[9] the necessity for a two-thirds majority in the Order of Bishops for the bill's success means that no change can be forced upon the Church without episcopal assent. However, the bishops' powers are even greater in relation to articles, doctrinal statements, rites, ceremonies and formularies, in that a bill relating to these matters may only be considered by the Governing Body if it has been backed and introduced by a majority of the bishops.[10] In effect, any proposed change with regard to these matters is reserved to the bishops, but even if they wish a change in these areas, such a change cannot be made without the assent of the other two orders.

The legislative authority of the Governing Body, therefore, is subject to a system of carefully constructed controls. In that earlier essay, the author argued that these controls have as their purpose the safeguarding of the traditions which the Church in Wales inherited at Disestablishment from changes which might damage its orthodoxy. The burden of ensuring that such changes do not occur rests principally upon the diocesan bishops. They can always prevent such changes because their assent is necessary for the passing of any bill, and they have an effective power of veto over all motions before the Governing Body. However, although they can prevent innovation in the manner just described, they are not able themselves to innovate without the assent of the other orders.[11] From this, it can be seen that the governance of the Church in Wales is controlled by means of a delicate balance which seeks to guard the tradition which the church has inherited and which subjects innovation to careful control. The conclusion arrived at in that earlier essay was:

> The bishops operate within this structure as the guardians of the received tradition, to ensure that innovation does not take the Church in Wales outside of its orthodox heritage, and the other orders can act to prevent the bishops from forcing unwelcome change upon the church at large. In this, there is a clear belief that received tradition is valid, and that it cannot become invalid by the passage of time.[12]

The author remembers writing that last sentence and then reading it very carefully with a sense of unease. He had – indeed, has – no doubt that it is an accurate statement of the constitutional position of the Church in Wales with regard to innovation. However, it begs the question of whether the belief enshrined in the Constitution of the Church in Wales that received tradition cannot become invalid by the passage of time allows the Church to remain true to the promptings of the Holy Spirit. This is not just a question for the Church in Wales. Most churches within the Anglican Communion require weighted majorities in each of their Orders or Houses for radical innovation or change to occur. The question is general; the province of Wales just happens to be raising the question in a particularly urgent manner at present.

III A CONSTITUTIONAL SOLUTION?[13]

At this point, some readers may think that the question raised is one for theologians rather than lawyers, even canon lawyers. Undoubtedly, it is insofar as one seeks an answer to the question of whether received tradition can become

9. Constitution, II. 38.
10. Constitution, II. 36.
11. Other than by the limited exception described in n.5 *supra*.
12. Op. cit., n.4 *supra* p. 169.
13. This section of the article is based on seminars delivered in 1992 and 1994 as part of the Cardiff Law School's LL.M. course in Canon Law. The author wishes to acknowledge the stimulus given by discussion at those seminars to the publication of this paper.

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invalid by the passage of time. However, there is a question here for lawyers too, and a challenging question at that. It is this. If received tradition can become invalid with the passage of time, can legal mechanisms be supplied to allow the Church both to safeguard its received tradition and yet remain true to the promptings of the Holy Spirit? It is this question, which is in effect a challenge to the draftsmen of the Church's constitutions, which the author wishes to address in this paper.

The requirement of a weighted majority to effect a change in a constitution or basic law is not an arrangement which is unique to Churches within the Anglican Communion. Many nation states make use of this procedure with regard to the amendment of their written constitutions. Indeed, one may well suspect that the absence of a written constitution in the United Kingdom contributes to the dissatisfaction regarding the use of weighted majorities in British institutions, for the concept is to some degree culturally alien. Nevertheless, the requirement of a weighted majority is a familiar mechanism in the constitutional arrangements of many modern states. Italy is a case in point, and the provisions of Italian constitutional law relating to amendments to the republic's constitution are worth examining with regard to the question raised above.

Italy, like the United Kingdom, has a bicameral legislature, although both the Italian Chamber of Deputies and its Senate are elected bodies. For the Italian constitution to be changed, it is necessary for a bill to be passed by both chambers on two occasions, at least three months apart. On the first occasion, it is necessary for the bill to have a simple majority in each chamber, that is a majority of the members present and voting must be in favour. On the second occasion, for the bill to pass, it must have an absolute majority in each chamber, that is a majority of the members in each chamber, not just of those present and voting, must be in favour.[14]

The bill does not, however, even then, pass directly into law. It will only pass directly into law, by being promulgated by the President of the Republic, if, at the second stage, it received a two-thirds majority in favour in each house. If it did not achieve such a weighted majority, then there is a wait of three months before the President is allowed to promulgate it. During this period of suspense, it is open to one-fifth of the members of either chamber or five Regional Parliaments or 500,000 electors to call for a referendum on the bill. If such a referendum is requested, the bill will only pass into law if a majority of those who vote in the referendum are in favour of the change. Although it is this suspensive referendum on constitutional issues which is of particular interest here, it is worth noting that in Italy any piece of legislation may be the subject of a popular abrogative referendum, that is five Regional Parliaments or 500,000 electors may require a referendum on a non-constitutional item of legislation with which they are dissatisfied, and only if a majority of those voting in the referendum is in favour of the law will it be valid.[15]

It should be emphasized that these referenda are very different from the consultative processes used by some Churches to test feeling in the dioceses and parishes prior to the introduction of legislation. Under the Italian system, the referendum is a right which can be claimed after the legislation has been

14. Costituzione della Repubblica Italiana, art. 138.
15. Costituzione della Repubblica Italiana, art. 75.

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considered and passed in its final form. Every person who is qualified to vote in an election for the Chamber of Deputies can participate in a referendum, that is virtually every citizen over the age of eighteen.[16] In effect, the referendum is an institution whereby the people can reclaim their legislative sovereignty from the legislature if they feel that they are being led in a direction in which they do not choose to go.

That, of course, is not the problem being discussed here. Here, the problem is the reverse. What can be done if the legislative body (the Governing Body of the Church in Wales being the example, but only an example, in our discussion) is felt to be failing to respond to the promptings of the Holy Spirit as witnessed by the people of God generally within the Province. The Italian model is, however, nevertheless serviceable as a starting point for constructing a possible solution.

Suppose that, as in April, there is a majority in favour of a change in each of the Church's three orders – bishops, clergy and laity, but there is not a two-thirds majority in one or more of the orders. Some now feel that that should be enough to allow the change to proceed. Such a view may be perceived as undermining the need for consensus among the faithful which the current two-thirds rule protects. However, on the Italian model, the bill should pass if within a specified period a referendum is not requested. It would be open to a quantified number of the Governing Body members, or of a specified number of qualified electors – i.e., those whose names are properly entered on the electoral rolls of parishes – to request a referendum on the issue of whether the bill should pass. On the Italian model, the option might also be exercisable by a specified number of diocesan conferences. This option would probably be of greater significance in a province with a greater number of dioceses than Wales' six.

This scenario follows exactly the Italian model of allowing the bill to pass into law provided there is a majority of each order in favour and no referendum is called. This may, however, be thought too extreme a solution to the problem under discussion. Instead, it might be thought that the referendum should operate in the reverse circumstance. Thus, if a bill failed to receive two-thirds majorities in each or any of the three orders, the bill should fail as at present unless a referendum is requested to maintain it. A referendum could be called by the appropriate number of Governing Body members or qualified electors provided it had received a simple or absolute majority in each of the three orders. It might even be chosen to limit the referendum to circumstances in which two-thirds of the bishops and possibly of one other order were in favour but there was only a bare majority, absolute or simple, in the third order. These are questions which would need to be answered according to the specific needs of the Church in question.

Several questions with regard to the introduction of such a referendum have now been identified. These are:

1. Should the referendum be positive or negative, that is:
   (a) should it be required to bring a change into effect where the legislative body has failed to endorse a change by weighted majorities; or,
   (b) should it be negative, aimed at stopping the introduction of changes which have not attained weighted majorities?

16. Certain classes of person are excluded from voting, e.g., those suffering from civil incapacity, such as mental patients, and those sentenced to imprisonment for serious crimes.

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2. In either case, should a weighted majority in favour of the change be necessary in either:
   (i) the order of bishops; or,
   (ii) in the order of bishops and one other order,

   before either:
   (a) in the case of a positive referendum, a referendum could be called; or,
   (b) in the case of a negative referendum, the bill would be eligible to pass if no referendum were called?
3. Who should be allowed to call for a referendum:
   (a) a certain number of bishops;
   (b) a certain number or fraction of the members of the legislative body;
   (c) a certain number of clergy and/or qualified electors;
   (d) a certain number of diocesan conferences or ruridecanal conferences or parochial church councils?
4. Should voting in such a referendum distinguish between the wishes of clergy and laity in the province?
5. What sort of majority among the faithful (or among the clergy and laity severally) should be required to cause the bill to pass – simple, absolute or weighted?

However the other questions are answered, it is submitted that in response to question 2 no positive referendum should be allowed unless there is at the very least a weighted majority of the order of bishops in favour of the change.[17] This safeguards their role as guardians of the faith. The referendum ought never to be used to undermine episcopal stewardship of the Church and its teaching. The positive referendum would always therefore be a means by which the whole people of God could make its voice heard above that of its legislative body so as to approve of an episcopally-led innovation. It would ensure that institutional structures did not intervene to the detriment of the bond between the will of the people of God and the leadership of their chief pastors.

These questions leave out of account practical problems, such as how a referendum would be conducted. In fact, the Church is in a particularly strong position in this regard, having a sound, systematic organisation from parish to provincial level. A special Vestry meeting could be convened, for instance, to take the vote or at which the ballot could take place; the electoral roll is already in position as a register of lay electors, and the churchwardens, as the bishops' officers in the parish could properly act as returning officers. Clergy could vote at ruridecanal chapters, where the rural deans, again episcopal appointees, could be the returning officers.

The key questions are those of principle. Should the people of God as a whole in a particular province or group of provinces be capable of direct involvement in deciding difficult policy issues? Without prejudice to a free answer being given by the reader, it is submitted that today this is a question which deserves to be at the least addressed, as modern communications and higher standards of education than in past ages both mean that the people of God have a far greater awareness of the issues which face the Church and a more easily satisfiable claim

17. It could even be argued that in small provinces, such as Wales, the diocesan bishops should be unanimously in favour of the change before a positive referendum might be sought. Constitution, II.34(3), *vide* n.5 *supra,* might be appealed to in this regard, where a two-thirds majority in one order plus unanimity among the bishops overrides a majority against in the third order when an ordinary motion is reintroduced after being defeated in a vote by orders at the previous meeting of the Governing Body. However, in that instance, it is a majority against that is being overridden, whereas in the situation under discussion there is a simple majority in favour, and, moreover, the wishes of the opponents are not necessarily going to be overridden in this instance. What the referendum tests is whether the vote of the orders in the Governing Body actually represents the mind of the Church at large on the issue in question.

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to be involved directly in its decision-making processes. Moreover, the availability of an appeal to the views of the whole people to God in a province when the usual organs of provincial government are thought to have failed in providing a satisfactory answer could be an important safety valve, a ready means to prevent frustration mounting into pressure for unconstitutional responses in such circumstances. Such pressure certainly existed in Wales both before and after the final vote on the priesting of women.

IV UNCONSTITUTIONAL SOLUTIONS

On the evening of Friday, 11 March 1994, a little under four weeks before the final stages of the Bill to Enable Women to be Ordained as Priests came before the Governing Body, S4C, the Welsh-language fourth television channel in Wales, broadcast its weekly discussion programme *Ffau'r Llewod,* "The Lions' Den".[18] The programme that night featured a debate on the priesting of women. As the programme drew to a close, one of the participants, Professor D. P. Davies of the Department of Theology and Religious Studies at Lampeter and Deputy Principal of St. David's University College, commented that he hoped that if there were a majority in each order in favour of the bill in April, even if it were not a two-thirds majority, the bishops who were in favour of ordaining women would go ahead and do so. Verbal support for such unconstitutional action was also given by two clerics – one male, one female – within hours of the bill being rejected by the Governing Body on another S4C broadcast, *Taro Naw,* "Striking Nine".[19]

The consequences of any bishop taking such an unconstitutional step would be undoubtedly dire, while its ultimate ramifications for the individuals concerned and the Church generally are so dependent upon the reaction of those offended by such conduct as to be almost endlessly hypothetical. The fact that such a response has been suggested, albeit not by the bishops, underlines the need for some mechanism whereby popular dissatisfaction within the Church with a provincial legislative body's rejection of an episcopal initiative can be properly expressed and directed into a constructive rather a destructive channel. The constitutional referendum is such a device. It is the author's contention that in the wake of recent events in both the Church of England and the Church in Wales, the issue deserves to be addressed and that ecclesiastical lawyers and constitutional draftsmen should be prepared to rise to the challenge of providing the necessary mechanisms if required to do so. The issue of whether in such circumstances a device such as the referendum should be employed is broader than the current context of the ordination of women in which is has been here discussed. It is basically concerned with whether the institutions of the Church are prepared to accept that in such situations the promptings of the Holy Spirit are best appreciated through the response of the people of God as a whole and not through that of a segment alone, and amend their legislative procedures accordingly.

18. S4C, Friday, 11 March 1994, 9.00 p.m.
19. Actually broadcast on this occasion, it being a special edition, at half-past ten: S4C, Wednesday, 6 April 1994, 10.30 p.m. The Archbishop of Wales and the Bishop of Llandaff participated in the discussion, as did Professor D. P. Davies, who repeated his view that, in theology though not in law, the bishops in favour might proceed to ordain women to the priesthood, but tempered it by adding as an alternative that they might at least care to consider licensing women priested elsewhere to minister in their dioceses.

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