

APPELLATE TRIBUNAL OF THE ANGLICAN CHURCH OF AUSTRALIA

To the Most Reverend J.B.R. Grindrod, K.B.E., Primate of Anglican Church of Australia.

OPINION OF THE APPELLATE TRIBUNAL

Having received your Reference of the 16th day of May 1985 which contained questions for the opinion of the Appellate Tribunal set forth in Schedule A to the Reference and numbered therein 1 to 8, the Tribunal resolved, under s.58(1) of the Constitution of the Anglican Church of Australia, to obtain the opinions of the House of Bishops and the Board of Assessors with respect to the questions and, with those opinions and other relevant material before it, met at Sydney in the State of New South Wales on the 3rd day of August 1985.

All members of the Tribunal attended that meeting, namely -

The Most Reverend K. Rayner, Archbishop of Adelaide
The Most Reverend D.W.B. Robinson, Archbishop of Sydney
The Right Reverend A.C. Holland, Bishop of Newcastle
The Honourable Mr. Justice Cox (President)
The Honourable Mr. Justice Tadgell (Deputy President)
The Honourable Mr. Justice Young
Mr. K.R. Handley, Q.C.

The opinion of the Tribunal with respect to each of the questions in Schedule A is as follows:

- QUESTION 1 (1) Does any provision of sections 1, 2, 3 or 4 of the Constitution or any principle of the Church of England or any principle of doctrine or worship or any other matter or thing referred to in those sections prevent the bishop of a diocese from ordaining a woman to the office of deacon using a relevant form contained in
- a. the Book of Common Prayer?
 - b. an Australian Prayer Book?
- (2) If the answer to either part of (1) is in the affirmative,
- a. what is the provision, principle, matter or thing which prevents a bishop from so doing?
 - b. why does it so prevent him?

(3) *Would the answer to any question in part (1) or part (2) be different if synod had enacted a canon which contains the clauses which appear in Schedule "B" to these questions?*

ANSWER (the Archbishop of Sydney dissenting as to ss.3 and 4 and the President and Mr. Handley, Q.C. dissenting as to s.4):

As to (1)(a): No.

(b): No.

As to (2): No answer is required.

As to (3): No.

QUESTION 2 *Does s.74(6) of the Constitution limit -*
a. the order of deacons referred to in s.3, or
b. admission thereto
to male persons?
If not, why not?
If so, why so?

ANSWER

As to a : No.

As to b : No.

Reasons:

- (i) In the opinion of the Tribunal, s.74(6) of the Constitution is concerned with the interpretation of the Constitution itself, not with the interpretation of the Book of Common Prayer or the Ordinal or the Thirty-nine Articles or any other document.
- (ii) The Tribunal (the Archbishop of Sydney dissenting) is of the opinion that the words in s.3 of the Constitution that refer to the orders of ministry are not "words ... importing the masculine."
- (iii) There is also a question, which it is not necessary for the Tribunal to decide, whether s.74(6) has anything at all to say about the interpretation of words in the Constitution that refer to clerical persons.

QUESTION 3 *Would a canon which contains provisions in the terms set out in the Schedule "B" -*
a. be inconsistent with s.1, s.2, s.3 or s.4 of the Constitution?

b. (i) authorise, or
(ii) involve
an alteration in or variation from any service
or Article in contravention of any principle
of doctrine or worship laid down in the
Book of Common Prayer together with the
Thirty-nine Articles?

In either case, if not, why not?

ANSWER (the Archbishop of Sydney dissenting):

As to a : No.

As to b(i) : No.

(ii): No.

Reasons:

See the Tribunal's separate reasons.

If it is necessary to provide by canon for the adaptation of the male personal pronouns in the Ordinal to deal with the ordination of women to the diaconate - a matter upon which the Tribunal expresses no opinion - it would be advisable so to provide specifically, and the draft canon in Schedule B fails to do this.

There is a question whether those of the Canons of 1603 that relate to Ministers - their Ordination, Function and Charge, particularly Canons 33 to 36, constitute laws of the Church of England, applicable in some or all of the Australian dioceses by virtue of s.71(2) of the Constitution, with respect to the qualifications of ordinands including a requirement that only men may be ordained to the sacred ministry. This matter has not been referred to us and we are not in a position to express a firm view about it. However, in the opinion of the Tribunal, if by virtue of s.71(2) there is such a requirement it is one that may be abrogated by an appropriate canon of General Synod.

QUESTION 4 *If the answer to question 3 a. is in the affirmative,
a. what part or parts of such provisions would
be inconsistent as aforesaid?*

- b. As to each part which would be inconsistent, with what provision or provisions of the Sections referred to, would it be inconsistent?
- c. If the inconsistency is inconsistency only with s.4 but the canon does not authorise or involve contravention of a principle of doctrine or of worship, would such a canon be within the power of general synod?

If not, why not?

- d. Why is the part or parts referred to in 4 a. inconsistent with the provisions or provisions referred to in 4 b.?
- e. Would the addition to s.4 of the Constitution of a new sub-section in the following terms, namely,
 "(2) notwithstanding anything in sub-section (1) a bishop may ordain a woman to the office of deacon.",
 permit a question in similar terms to be answered in the negative?

If not, why not?

ANSWER

No answer is required.

QUESTION 5

If the answer to question 3 b.(i) or to question 3 b.(ii) is in the affirmative,

- a. what part or parts of such provision would
 - i. authorise, or
 - ii. involve
 such an alteration or variation?

- b. As to each such part, what principle of doctrine or worship would the alteration or variation which it authorises or involves contravene?

- c. Would the addition to s.4 of the Constitution of a new sub-section in the following terms, namely,

"(2) Notwithstanding anything in sub-section (1) a bishop may ordain a woman to the office of deacon.",

5.

enable the general synod to make a canon which authorises or involves such a contravention?

If not, why not?

ANSWER

No answer is required.

QUESTION 6 *With what principle (if any) of the Church of England embodied in the Book of Common Prayer together with the Ordinal and the Thirty-nine Articles would -*
(a) the ordaining of a woman to the office of
(1) deacon, or
(2) priest
or
(b) the consecrating of a woman or bishop be inconsistent?

ANSWER

(the President, the Archbishop of Sydney, and Mr. Handley, Q.C. dissenting):

As to (a)(1) None.

(2) None.

(b) None.

QUESTION 7 *If any such ordination or consecration would be inconsistent with such a principle, does the plenary authority of the Church extend to making a canon to authorise*
(a) ordaining a woman to the office of
(1) deacon, or
(2) priest
or
(b) the consecration of a woman as bishop?

ANSWER

No answer is required.

QUESTION 8 *(1) Does the authority of the bishop of a diocese of this Church extend to authorising a woman who has been*
(a) ordained to the office of
(1) deacon, or
(2) priest
or
(b) consecrated as a bishop

according to the law of a Church which is in communion with this Church, to minister in his diocese in the office of deacon, priest or bishop as the case may be?

(2) If the answer to any part of (1) is "No", does the plenary authority of the Church extend to making a canon which empowers the bishop of a diocese to authorise such a woman to minister in his diocese in the office of deacon, priest or bishop as the case may be?

ANSWER (the Archbishop of Sydney dissenting):

As to (1)(a)(1): Yes.

(2): Yes.

(b): Yes.

As to (2): No answer is required.

Schedule B, which was referred to in the above Questions, is in the following form -

Schedule "B"

1. *The bishop of a diocese may ordain a woman to the office of deacon.*
2. *The bishop of a diocese may grant to any woman who has been ordained in Australia or elsewhere to the office of deacon a licence to perform the duties of a deacon in that diocese.*
3. *Nothing in section 1 or section 2 shall limit any power or authority possessed by the bishop of a diocese prior to the making of this canon.*

The Tribunal's amplified reasons for its answers will follow.

Pursuant to the provisions of Rule XVIII made under s.63 of the Constitution, I now forward in triplicate by certified mail three copies of this opinion. The Rule requires that a certified copy of the opinion be filed in the Registry of the Primate and that a certified copy be sent from the Registry to each Diocesan Bishop and to such other persons as the Primate may direct.

Given under my hand at Adelaide in the State of South Australia this 14TH day of August 1985.



President,



85 062

OPINION OF THE
APPELLATE TRIBUNAL

ORDINATION OF WOMEN

AUGUST 1985

REASONS FOR THE ANSWERS GIVEN
IN DOCUMENT 85.061



*Signet original
sent to Primate [signature]*

APPELLATE TRIBUNALORDINATION OF WOMEN

Reasons of the Archbishop of Adelaide, the Bishop of Newcastle,
Mr. Justice Tadgell and Mr. Justice Young

The Tribunal had before it submissions from the House of Bishops and the Board of Assessors, including papers on the points at issue by a number of individual members of both bodies. It was also assisted by memoranda from two legal members of the Standing Committee of General Synod commenting on the questions referred to the Tribunal by the Primate. A considerable quantity of other material relating to the ordination of women, written from a variety of standpoints, was available to members of the Tribunal, including the Report of the Doctrine Commission to General Synod in 1977 entitled "The Ministry of Women". In what follows, no attempt is made to reproduce all the arguments raised in these submissions.

The Tribunal noted its 1980 and 1981 decisions on the ordination of women. It decided in 1980 that the admission of women to Holy Orders would be consistent with the Constitution of the Church and specifically that Section 3 of the Constitution did not preclude the ordaining of women into the sacred ministry as bishops, priests or deacons. In the same judgment the Tribunal gave its opinion that there is no doctrine embodied in the Book of Common Prayer together with the Ordinal and the Thirty Nine Articles with which the ordination of women would be inconsistent, but that there might be a principle of the Church of England in Australia embodied in the Book of Common Prayer with which such ordination would be inconsistent. On the latter question the Tribunal did not at that time find it necessary to express a final view.

The first question to be considered was whether the further evidence presented to the Tribunal required these answers to be altered. In respect of the Fundamental Declarations in Sections 1 to 3, it is argued that the admission of women to Holy Orders would be inconsistent with the teaching of the canonical scriptures, specifically with the injunction to silence in I Corinthians 14:33-36 and I Timothy 2:11-15, and with passages relating to the "headship" of men and the subjection of wives to their husbands. One view put to the Tribunal was that the ordination of women as bishops or priests would be contrary to scripture, but that the ordination of women as deacons might be contrary to scripture only if they were licensed to preach. We noted, however, that the passages in question are subject to widely different interpretation by biblical scholars of comparable reputation and competence. If these passages are to be interpreted literally and as having

universal application, women would not only be precluded from ordination but from exercising other functions in the Church (as lay preachers or even as askers of questions) which have been generally accepted as consistent with the teaching of scripture. We are of the opinion that the weight of contemporary biblical scholarship emphasises that these passages must be interpreted in the context of the teaching of the New Testament as a whole, and that when seen in this light they are not to be taken as prohibiting the ordination of women. The 1977 Report of the Doctrine Commission of General Synod concluded that the admission of women to any of the three Holy Orders would not be contrary to the teaching of scripture and this conclusion was implicitly endorsed by Resolutions 23 and 27 of the 1977 General Synod. Having considered the evidence submitted, we would affirm the 1980 decision of the Tribunal that the admission of women to any of the three Holy Orders would not be inconsistent with the teaching of scripture.

In respect of Section 3, it is also argued that "the three orders of bishops, priests and deacons in the sacred ministry" which this Church will ever preserve are in essence male orders and that these orders would not be preserved if women were admitted to them. Arguments are adduced from the maleness of Jesus Christ and of the twelve apostles and from the practice of the Church up to the time when the Constitution was adopted of admitting only males to Holy Orders. Against this it is argued on the basis of Romans 16:1 and I Timothy 3:11, that there is evidence of women as deacons in the early Church and that the deaconesses of the early Church are to be understood as women deacons (though it is difficult to assess the weight of this evidence as there is no certainty that these women fulfilled the same functions as male deacons). More significantly, it is further argued that it is only the change of status of women in many cultures which has occurred in the past century that has enabled the Church to appreciate implications in the teaching of the New Testament which require the opening to women equally with men of all functions and offices of ministry in the Church. It is argued that this explains why medieval and reformation theologians, insofar as they considered the question at all, were selective: they paid attention to those passages which taken alone appeared to restrict the ministry of women, while they neglected other passages - and indeed the main thrust of the New Testament - which implied the opening of all Christian ministry to women.

The critical question is whether the three orders are inherently male or whether they are orders which happened to be, but were not necessarily, composed of male members. For the orders to be preserved, it is necessary to preserve more than their names. Their essential functions and their relationships with one another also need to be preserved. There is no suggestion that the admission of women to Holy Orders implies a change in the functions and relationships to one another of these orders. What would change would be one of the qualifications for membership; but qualifications for membership in these orders have varied from time to time without changing the orders themselves. It was once required that candidates for ordination be learned in the Latin tongue, as the Preface to the Ordinal testifies. More importantly, it was once the law that illegitimate men were debarred from Holy Orders. These qualifications for admission to Holy Orders have altered, but the orders themselves have been preserved. We believe that this would be true of the admission of women, and having reached the conclusion that such admission would not be contrary to scripture we are of the opinion that the preservation of these orders would not be negated by the admission of women to them.

Section 4 of the Constitution raises different issues and there are difficulties of interpretation. We think the reference to the Book of Common Prayer in the first proviso to Section 4 ("Provided, and it is hereby further declared....") includes reference to the Ordinal which is invariably printed with the Book of Common Prayer and is intended to be comprehended by the expression "the above-named Book of Common Prayer". This is significant because the ordination of women would require an alteration in the male personal pronouns in the Ordinal. Any such alteration would be excluded if it contravened "any principle of doctrine or worship laid down" in the Prayer Book, Ordinal or Articles. No principle of worship appears to be involved, and in 1980 the Tribunal expressed the opinion that no doctrine embodied in these formularies was involved. The Tribunal did not then give a final answer to the question of whether any "principles of the Church of England embodied in the formularies was involved.

Consistent with what has been said in respect of the Fundamental Declarations, we hold to the Tribunal's earlier opinion that no "principle of doctrine....laid down" nor "doctrine....of the Church of England embodied" in the Prayer Book, Ordinal and Articles is involved in the ordination of women. What is more difficult to determine is whether any

"principles of the Church of England embodied" in the said formularies would be breached by such ordination. In determining this question the definition of "principle" is critical. Some light on the way in which "principle" is to be understood is shed by the definition in Section 74 (3) of the Constitution which states that "'the doctrine and principles embodied in the Book of Common Prayer' and the 'articles of religion' sometimes called 'Thirty-nine Articles' means the body of such doctrine and principles". If this definition is not to be dismissed as a tautology it must be taken to mean (so far as "principles" are concerned) that this Church is bound by the body of principles as a whole, and consequently by the main thrust of those principles rather than by every individual rule and custom which might be included on a broad definition of "principle".

For this reason we take as our standard the primary definition of "principle" in the Oxford English Dictionary, namely "a fundamental truth or proposition on which many others depend". There is little doubt that the compilers of the Prayer Book, the Ordinal and the Articles assumed that only men would be ordained, and this assumption is reflected in the use of the masculine pronoun. This does not in our view, however, represent a considered and definitive judgment of principle, and the compilers of the formularies did not take the assumption further by embodying it in the formularies in such a way as to constitute a fundamental truth or proposition on which others depend. We see the use of the male pronoun as reflecting customary practice rather than determined principle. It is argued by some that the provision of I Timothy 3:8-13 as one of the readings in the service for the ordination of deacons in itself restricts candidature for the office to males. If this reading prescribed the qualifications for candidates however, it would equally debar an unmarried male. In any case as this is only one of two possible readings provided, it cannot be considered as prescriptive. Accordingly the majority finds no principle of maleness embodied in the formularies which would offend Section 4.

Although Question 1 raised only the question of any impediment in Sections 1, 2, 3 or 4 of the Constitution to ordaining a woman to the office of deacon, it has been convenient in giving these reasons to consider the three offices of bishop, priest and deacon together. We are of the opinion that one of the principles of the Church of England embodied in the Ordinal is that the three Orders stand together and that any person ordained deacon must be capable of proceeding to the higher orders.

Only so can the relationship of the three orders to one another be preserved. This does not require that every deacon must be ordained priest any more than it requires that every priest be consecrated a bishop. There must, however, be no inherent disqualification from advancing to the higher orders. This principle is embodied in one of the closing Collects and the concluding rubric of the service for the Ordering of Deacons. We hold that it would be contrary to this principle if women were to be eligible for admission to the order of deacon but not to the orders of priest and bishop.

In respect of Question 8 it follows from the reasons given above that there is nothing in the Fundamental Declarations or Ruling Principles of the Constitution to prevent a woman who has been ordained to the office of deacon or priest or consecrated as a bishop ministering in this Church. The authority of the bishop of a diocese to authorise a woman who had been ordained according to the law of a Church which is in communion with this Church to minister in his diocese is no different from his authority to authorise a male deacon, priest or bishop to minister in the same circumstances.

APPELLATE TRIBUNAL

Opinion and Reasons relating to the Ordination of Women (1985)

CORRIGENDA

Opinion - p.6 (end) : The date should be completed by adding "14th" in the appropriate place.

Reasons of Mr Justice Cox and Mr Handley Q.C.

- p.11, line 19 : "embodies" should be changed to "embodied".
- p.13, line 2 : "to the Latin tongue" should be changed to "in the Latin tongue".

B.R. Cox
President, Appellate Tribunal
27/8/85

APPELLATE TRIBUNAL

ORDINATION OF WOMEN

Reasons of Mr. Justice Cox and Mr. Handley, Q.C.

We agree with the majority in holding that there is nothing in Sections 1, 2 and 3 of the Constitution of the Anglican Church of Australia - the Fundamental Declarations - that would prevent the ordination of a woman as a Deacon or Priest in the sacred ministry of the Church, or the consecration of a woman as a Bishop. Our difficulty is with Section 4.

Section 4 of the Constitution provides so far as relevant -

"This Church, being derived from the Church of England, retains and approves the doctrine and principles of the Church of England embodied in the Book of Common Prayer together with the form and manner of making ordaining and consecrating of Bishops, Priests and Deacons and in the Articles of Religion sometimes called the Thirty-Nine Articles"

For the purposes of Question 1 we can confine our attention to the Ordinal and the Thirty-nine Articles.

The Preface to the Service, commonly published with the Book of Common Prayer, for the form and manner of making of Deacons, and the Service itself contain a number of references to the candidates who are to be made Deacons. The Preface states that "no man" might presume to execute the office of Deacon except "he" were first called, tried, examined, and known to have such qualities as are requisite for the same. The Preface when referring to a candidate uses the expression "no man" twice and the masculine pronoun six times.

On the other hand in the opening words of the Preface: "It is evident to all men diligently reading ..." the reference to men is clearly a reference to the human race, without distinction of sex.

In the Service itself the personal pronoun "he" is used in some contexts in a general sense without any exclusively

male connotation. See the Bishop's invitation to show cause: "let him come forth ... and shew .." and the Litany: "... have mercy upon all men".

Elsewhere in the Service, however, the masculine personal pronoun is used with reference to the candidates, particularly during that part of the Bishop's examination of the candidate which refers to the office of Deacon where "he", "him" or "his" appears five times.

The Rubric at the end of the Service uses the word "he" four times with reference to a Deacon. The use of words importing the masculine in a Rubric is somewhat ambiguous because in other occasional services such as the Visitation of the Sick and the Communion of the Sick words importing the masculine are clearly used to refer to persons of both sexes. Nevertheless in the Rubrics for such services general words are also used which make it quite clear that the services are applicable to persons of both sexes. Thus in the former case the opening Rubric begins: "When any person is sick ..." while in the latter the opening Rubric states: "But if the sick person ... then he ...".

The opening sections of the Service for the making of Deacons used the word "persons" in three places where "men" might have been used and the second Rubric also uses the word "person". These references in themselves are not sufficient in our opinion to render the Prayer Service applicable to the making of women Deacons.

It is clear, as Archbishop Carnley advised us, that -

"The Ordinal and in particular, its Preface, assumes that candidates for Holy Orders will be men and goes on to describe the requirements in terms of the adequate testing of men ..."

In addition to the masculine references in the Preface, in the Rubrics, and in the body of the Service, the Service incorporates three passages from scripture. While the passage from Luke 12.35 is general in its teaching, the passage from 1 Timothy 3.8 refers among other things to Deacons being the husbands of only one wife who herself must possess certain qualities, and Acts 6.2 describes the Church in

Jerusalem choosing seven men to assist the twelve. The incorporation of those passages of Scripture into the Ordinal reflects the Ordinal's policy of confining the office of Deacon to men.

Article 23 of the Articles of Religion dealing with Ministering in the Congregation refers to "any man" and "by men" and raises no separate issue on the present question. Article 36, the other relevant Article, which deals with the consecration of Bishops and Ministers is neutral on the present question.

The question under Section 4 is whether these references to the masculinity of candidates for admission to the order of Deacon embody any doctrine or principle of the Church of England.

Archbishop Carnley also said - and this is representative of a number of such statements in the material before us -

"The question of the ordination of women was not at issue at the time of the composition of these documents of our tradition and thus not even considered as a possibility. Just as there are no references in the Early Church Fathers which indicate that this possibility was considered and rejected, so there is no evidence in our Anglican tradition that this question was considered as a possibility and positively excluded in principle in the documents of our tradition. The documents cannot intentionally and consciously enshrine a doctrine or principle designed specifically to exclude women."

We do not think that the history of the matter supports this view.

The question before us under Section 4 is a legal one. It does not directly involve the interpretation of the scriptures. It is essentially a question of the interpretation of the Ordinal. The Book of Common Prayer, in its different forms, including the Ordinal, originally took effect pursuant to the Acts of Uniformity passed between 1549 and 1662. Our own General Synod, the Doctrine Commission, other Churches in the Anglican Communion, and this Tribunal have taken the view,

based on the scriptures, that there are no fundamental theological objections to the ordination of women. The passages in the New Testament relied upon by those who take the contrary view are interpreted as no more than common sense instructions relevant only to the times when women were in a position of social and legal inferiority.

It is necessary to bear in mind that the question whether the "maleness" of the Ordinal expresses a doctrine or principle within the meaning of Section 4 is to be determined according to the understanding or intention of those who compiled and promulgated the Ordinal. The Ordinal like any other document must be interpreted as at its own date. It should be given the same meaning today as it would have been given at the time when it received statutory effect in the sixteenth and seventeenth centuries. Thus in Shore v. Wilson (1842) 8 E.R. 450 at 533 Tindal C.J. spoke of

"The true interpretation .. of every instrument being manifestly that which will make the instrument speak the intention of the party at the time it was made ..."

Similarly in Ore Concentration Co. v. Sulphide Corporation Limited (1914) 31 R.P.C. 206 at 224 Lord Parmoor delivering the judgment of the Privy Council said -

"It is a general canon of construction, applicable to all documents, that the document should be construed as if the Court had to construe it at the date of publication, to the exclusion of information subsequently discovered."

Every document must be interpreted and understood in the light of the surrounding circumstances which existed and were known to the parties preparing the document or were so notorious at that time that they may be presumed to have been in their contemplation. See Reardon Smith Line v. Hansen-Tangen (1976) 1 W.L.R. 989 at 996 (H.L.) and Codelfa Construction v. State Rail Authority 149 C.L.R. 337 at 350-351. As was said by Lord Wilberforce in a passage quoted with approval by Mr. Justice Mason of the High Court in the case last referred to -

"What the Court must do must be to place itself in thought in the same factual matrix as that in which the parties were."

This principle entitles the Tribunal to have regard to the genesis, the background and the context in which the Book of Common Prayer and the Ordinal came into existence pursuant to the Acts of Uniformity. There are strong grounds for holding that the restriction of ordination in the Church of England to men was deliberate and would have been regarded by the compilers of the Ordinal as, to say the least, important.

First, there is evidence that the right of women to speak in the congregation or to minister in other ways, whether generally or in times of emergency or under no circumstances at all, was a subject of serious debate among certain English reformers of the sixteenth century. See the writings referred to in the Appendix to this opinion. It cannot be said that the subject of a ministry by women received no consideration in the Anglican tradition in the sixteenth and seventeenth centuries.

Secondly, there is the position generally of women in the eyes of the law in sixteenth and seventeenth century England.

There is no doubt that at common law a woman was not "entitled to exercise any public function" other than those of the monarch. See Chorlton v. Lings (1868) L.R. 4 C.P. 374 at 388, Beresford Hope v. Lady Sandhurst (1889) 23 Q.B.D. 79 at 95. At the time of the Acts of Uniformity this principle operated independently to bar women from public office, and hence from ordination in the established Church of England.

Thirdly, there are the clear precepts, as it seems to us, in the Canons of 1603. Canons 31 to 76 deal with Ministers - their Ordination, Function and Charge. The male personal pronoun is used throughout when referring to a candidate for holy orders. See especially Canons 33 to 36. Canon 34 provides: "No bishop shall henceforth admit any person into sacred orders, which is not of his own diocese, except he be" etc. and goes on to specify the necessary qualifications of age, education, and so on - plainly referring

exclusively to men. In that respect it simply echoed the common law. The consequence was that, by virtue of these Canons, and quite independently of the Ordinal, there was an effective legal barrier to the ordination of women in the Church of England. In our opinion, this supports an interpretation of the Ordinal that treats the references, to male ordinands only, as intentional and, to those who published the Ordinal, of considerable importance.

So regarded, the language of the Ordinal is seen not merely to assume that candidates will be men; it actually states in plain language that they will be men. There is more in the Ordinal than a mere unexpressed assumption. The Ordinal, in our view, states the requirements for ordination so as to exclude women. That we may see things differently now cannot change the character of the Ordinal in this respect.

The question is whether the exclusion of women from holy orders under the Ordinal should be regarded as a matter of doctrine or principle. Section 4 speaks of "the doctrine of the Church of England embodied in the Book of Common Prayer" and so on. Doctrine is defined in Section 74 to mean the teaching of the Church on any question of faith. In our opinion, the Ordinal's exclusion of women from holy orders is not a matter of doctrine, as defined, within the meaning of Section 4.

Does the Ordinal in this respect embody a principle? Section 73(3) states that

"In this Constitution 'the doctrine and principles of the Church of England embodied in the Book of Common Prayer' and the 'articles of religion' sometimes called the 'Thirty-nine Articles' means the body of such doctrine and principles."

Precisely what this somewhat oracular provision means is not clear. Probably it does not do more than require that the doctrine and principles of the Church be regarded as a whole, not in complete isolation from one another. We do not think the definition should be given an interpretation that so qualifies the ordinary meaning of "principles" in Section 4 that something that would otherwise be categorized as a principle, within the meaning of the expression "doctrine and

principles", may no longer be so described. No justification appears for treating the concluding words of Section 73(3), "the body of such doctrine and principles", as words of limitation. The meaning of "principles" is made plain, in our view, by the context and by a comparison between Section 4, in which the word appears, and the three sections that precede it. The "principles" referred to in Section 4 must be principles of the Church, which relate to the Church, yet fall short of being matter of faith and doctrine. One of the many Oxford English Dictionary meanings for "principle" is

"5. Fundamental truth or proposition, on which many others depend ..."

This meaning would appear to be excluded in the context of Section 4 because the fundamental truths and laws of the Church of England are those referred to in Sections 1, 2 and 3 which comprise the Fundamental Declarations of Chapter 1. That is the place for principles of the first rank, as it were - identifiable as such because they are, so far as the Constitution is concerned, utterly unalterable. (See Section 66.) The principles of the Church of England referred to in Section 4, whether doctrinal or otherwise, are not unalterable - they may be changed by canon or, if need be, by amending Section 4 itself - and must therefore be taken to be principles of a different, lesser kind, not fundamental in the same sense as the principles contained in Chapter I. In our view the OED meaning of "principle" which is appropriate in the context of Section 4 is -

"A general law or rule adopted or professed as a guide to action; a settled ground or basis of conduct or practice; a fundamental ... reason of action, esp. one consciously recognized and followed. (Often partly coinciding with sense 5.)"

It seems to us that the requirement that candidates for ordination in the Church of England be men has hitherto been a general rule or law adopted as a guide to action, that it has until recently been a settled ground or basis of conduct and practice, and has consciously been recognized and followed, that is, it is no mere accident that hitherto women have not been ordained. As we have attempted to show, it is not to be

equated with such qualifications as the age of the candidate or his ability to defend the faith to the Latin tongue. It would have been regarded by everyone as a principle of Anglican ordination at the time the Ordinal was fashioned. Whether people were right or wrong about that, whether they had thought enough about it to make the best judgement, are not to the point.

In our opinion, therefore, the Ordinal does embody a principle of the Church of England within the meaning of Section 4 that men only are qualified for ordination.

Substantially the same reasoning applies, because of its language and provenance, and with the same conclusions, to the Ordinal that is contained in An Australian Prayer Book.

Our conclusion that the Ordinal goes further than Scripture in confining ordination to men is not inconsistent with the majority view of the Tribunal that the ordination of women is not contrary to Sections 1, 2 and 3 of our Constitution. As we have attempted to show, the questions under Section 4 are directed to a different issue and to the Ordinal rather than to the scriptures. This very distinction was recognized by this Tribunal in its 1980 decision when it decided that the ordination of women was not inconsistent with Sections 1, 2 and 3 but might be inconsistent with Section 4.

It is for these reasons that we dissented from the Tribunal's answers to Questions 1 and 6. We concurred in the answer to Question 3, however, because the principle that we consider to be embodied in the Ordinal is not, in our opinion, a "principle of doctrine or worship" within the meaning of Section 4.

Except on the matters dealt with in this opinion, we are in general agreement with the reasons given by the majority for the Tribunal's answers to the questions contained in the reference.

APPENDIX

1. "An Answer to Sir Thomas More's Dialogue" by William Tyndale 1531, Ed. Parker Society 1850 pages 18, 29, 30, 98, 151, 176-177.
2. "The Catechism" of Thomas Becon (Chaplain to Cranmer) circa Ed. VI Ed Parker Society 1844 p.376

"of these words of St. Paul we learn that it is not lawful for women to teach in the congregation openly, which only appertain unto men, yea, and unto such men alone as are appointed by public authority unto the ministry: notwithstanding women to preach and teach in their own houses, it is not only not forbidden, but also most strictly commanded"
3. "The works of Dr. Whitgift" (later Archbishop of Canterbury) Second Portion containing the Defence to Thomas Cartwright 1574. Ed. Parker Society 1852 pages 499-505, 537. At p.500

"Women may not speak ordinarily in the congregation, but upon occasion they may speak"

At p.503 he refers to a discussion of this question in Calvin's Institutions, and in Zwingli's De Baptismo, and at 537 he refers to a Canon of Gratian and adds

"So that the Canon inhibiteth women to preach or to baptize in the open church and public assemblies."
4. "An exposition of the Thirty Nine Articles" by Rogers (Chaplain to Archbishop Bancroft) circa 1580 Ed. Parker Society 1854 page 240 commentary on Article 23

"To describe who were to be chosen and called. For they are to be men, not boys or women"

Lower on the same page in his treatment of "the errors and adversaries unto this truth" Rogers states:

"That women may be deacons, elders and bishops; the former the Acephalians, the later the Pepuzians did maintain."
5. Dr. Gaden in his advice to the Tribunal at page 7 stated

"As far as women are concerned before the third century, we hear of two servants said to be

ministra (deacons?) whom Pliny tortured for information and the Acts of Thecla and Paul portray Thecla as a missionary commissioned by Paul to teach and perhaps to baptize. However, women prophets who teach and perform other ministries predominate, but mostly in circles later judged as heterodox - Marcionite, Gnostic and Montanist - where they teach, baptize and preside at the eucharist, as was the right also of male prophets according to the Didache. In the case of the Montanists, at least, of whom it is said quite specifically that they admitted women into the clergy as presbyters and bishops (Epiphanius, Pararion 49.2-3)..."

APPELLATE TRIBUNALORDINATION OF WOMENCONCURRING REASONS OF MR. HANDLEY Q.C. ON SECTION 3

I have joined with the majority in their answers to question 1 so far as Section 3 of the Constitution is concerned, but I wish to explain briefly my reasons for doing so. The true meaning and operation of Section 3 of the Constitution can become legal questions for this Tribunal, but in substance the questions are and remain questions of theology involving the true understanding of the Scriptures.

This is a mixed Tribunal composed partly of Bishops and partly of lawyers. As a legal member of the Tribunal I do not bring, and am not expected to bring, any profound or even substantial knowledge of theology to its deliberations.

The House of Bishops have advised us by 10:2 majority, and the Board of Assessors by a 3:2 majority that there are no fundamental theological objections to the ordination of women such as would attract the prohibitions implicit in Section 3.

On the other hand there is the strongly defended minority view supported as it is by the practice of the Anglican Church since the Reformation and the practice of mainstream Christendom dating back to the days of the

early Church. Moreover it seems to me that this long practice did not simply develop by default or as a matter of habit. Some heretical Churches in the second and third centuries ordained women and even had women Bishops, and the question of the ordination of women was re-examined in England and elsewhere during the Reformation.

Moreover the male priesthood of the early Church itself followed an exclusively male priesthood in Israel. The male Jewish priesthood was not merely socially conditioned because at the time the pagan religions of the area involved both female gods and priestesses. The latter situation persisted into Roman times ("Diana of the Ephesians" etc).

Nevertheless the male Jewish priesthood of the Old Testament, and the New Testament writings relied upon by the minority may have been no more than God's prescription for Israel and the early Church at a time when both were confronted with pagan religions involving female gods, priestesses and temple prostitution. It is possible therefore that they do not enshrine an eternal truth for the Church militant.

I am also conscious that down to the last century certain New Testament writings were relied upon to support the view that slavery was consistent with Christianity. Today it is universally accepted that the passages in question enshrined no such principle.

In all these circumstances the doubts that I have on the issues raised by Section 3 do not enable me to reach the strong positive conviction that I would need before I could dissent on a theological question from the clear majority view of this Tribunal, the House of Bishops, the Board of Assessors, General Synod, and other parts of the Anglican communion. Compare Acts 5: 38-39.

K. R. Handley

APPELLATE TRIBUNAL
ORDINATION OF WOMEN

Reasons of the Archbishop of Sydney

QUESTION 1.

I dissent from the majority opinion because I consider that to ordain a woman to the office of deacon would contravene Section 3 in two respects: (a) it would fail to preserve the order of deacon as that order is to be understood in this Section, and (b) it would contravene a command of Christ insofar as it would give authority to a woman to exercise the preaching office in the congregation.

Section 3 speaks of "the three orders..." implying that they are such as can be readily recognized within the context of this constitution. In fact "the three orders ..." cannot be other than those orders whose meaning, nature, and purpose is described in the Ordinal, the 39 Articles, and the canons already endorsed by the Constitution. The orders in question are considered (e.g. in the Ordinal) to have been appointed by God in his divine providence, to have been in Christ's Church since the Apostles' time, to have been sanctioned by the Apostles as witnessed by the New Testament, and to be attested in "ancient authors". How others may think of these orders, or how they may be thought of today, is irrelevant to the meaning of "the three orders" which Section 3 binds this Church to preserve.

The order of deacons is, in the terms indicated, an order of men who assist the priest or curate both in divine service and in pastoral supervision, and who preach if qualified. The male character of the order is attested in the very term 'deacon' - whose normal meaning and usage in English was always masculine, 'deaconess' being the traditional ecclesiastical term for a woman who had a function of assistance - in the exclusive male terms employed in the wording of the ordination service, in the description of the office of deacons in the New Testament passages used in the Ordinal, and also in the canonical recognition of the office of deacon as "a step or degree to the Ministry (sc. the priesthood), according to the judgement of the ancient fathers, and the practice of the primitive Church" (Canon 32), a recognition which is alluded to in the ordination service itself.

It will be argued later than what we have here is a "principle of the Church of England embodied in" the Ordinal and Articles which Section 4 of the Constitution prevents the Church from contravening by ordaining a woman to the diaconate (and priesthood). But I hold that Section 3 also prevents such an action since "the three orders" there referred to are nothing other than the orders as defined in the references of Section 4. We depend for their definition on Section 4, just as we depend on Article 6 as endorsed by Section 4 for our definition of "all the canonical scriptures of the Old and New Testaments" in Section 2.

Furthermore, since the order of deacons has as its purpose to provide part of the proper and authorized ministry

of the congregation, and since it appertains to the office of a deacon to preach in the congregation if duly authorised, the question arises whether the ordination of a woman to the diaconate would not be contrary to the commands of Christ which, also under Section 3, the Church is bound to obey. The apostolic injunction of 1 Corinthians 14.33-36 supported by the injunction of 1 Timothy 2. 11-15, kept women from the role of regular authoritative preaching in the congregation, and this injunction cannot be excluded from the general assertion of the apostle in 1.Cor.14.37 that "what I am writing to you is the command of the Lord". While of course there was no specific movement in the Church of England to ordain women in the 16th century, the scriptural injunctions forbidding women to preach in the congregation, and the importance of maintaining this principle, were often discussed by 16th century writers, beginning with Tyndale. Becon's catechism refers to the matters, as does Whitgift in his controversy with Cartwright (who accused the Prayer Book of opening the door to the possibility of women ministering!), and Thomas Rogers in the first commentary on the 39 Articles argued that Article 23 excluded women from ordination, and cited historical arguments and precedents of heretics who acted contrary to the scriptural principle. Thus the exclusion of women from this aspect of a deacon's function was a consciously acknowledged position, on grounds alleged from both scripture and tradition, and was not a mere position adopted by default or for reasons of cultural suitability.

In regard to S.4. I agree with the reasons given by the President and Mr. Handley.

In answer to Question 1(3), I dissent from the majority. Such a canon would be, in my view, ultra vires the Constitution because its clauses are inconsistent with the Fundamental Declarations.

QUESTION 6.

Reason for dissent.

I hold, as to (a) (1) and (2) that the ordaining of a woman would be inconsistent with the principle that the church intends (according to the Preface to the Ordinal) to continue, and reverently use and esteem the orders of bishops, priests and deacons as defined in the Ordinal together with Articles 23 and 36; and, as to (a) (2) alone, inconsistent with the principle that "it is not lawful for the Church to ordain anything that is contrary to God's Word written" (Article 20, Of the Authority of the Church).

QUESTION 7

As a dissenter to the answer to Question 6, my answer to Question 7 is No.

QUESTION 8

My reason for dissent is that a bishop could not act on the assumption of communion with a church whose practice

was inconsistent with the Fundamental Declarations of our Constitution (See S.6), and the woman not being a deacon, priest or bishop within the definition of those offices in our Constitution or Formularies.