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'WOMEN CANNOT TRULY BE BISHOPS': THE LOGICAL AND CANONICAL IMPLICATIONS OF THIS VIEW

Daniel J. Hill

This article distinguishes the position that women cannot be consecrated as bishops (the 'nullity' view) from the position that women can, but should not, be consecrated (the 'irregularity' view). Without any presumption made as to the truth or falsity of the 'nullity' view, this article examines the wide-ranging implications of holding that view under the Canon Law of the Church of England.

Introduction

On 26 January 2015 the service of consecration of the Reverend Libby Lane to the Suffragan See of Stockport was held in York Minster.¹ It was the first ceremony of consecration of a woman to the episcopate in the history of the Church of England. The Queen's nomination under letters patent came on 15 January 2015,² just under two months after the consecration of women to the episcopate became permissible according to the canon law of the Church of England.³ The Amending Canon (No. 33) received royal assent on 10 November 2014,⁴ subsequent to approval by the General Synod on 14 July 2014.⁵ The enabling Measure, the Bishops and Priests (Consecration and Ordination of Women) Measure, was

¹ Church of England, 'Rt Revd Libby Lane Consecrated at York Minster,' online: <https://www.churchofengland.org/media-centre/news/2015/01/rt-revd-libby-lane-consecrated-at-york-minster.aspx>, accessed 29 January 2015.

² Crown Office announcement, recorded in The Gazette, issue 61118, 20 January 2015, online: <https://www.thegazette.co.uk/notice/2265573>, accessed 29 January 2015.

³ General Synod, 'Business Done at 7:15pm on Monday 17 November 2014,' online: <https://www.churchofengland.org/media/2118815/bd%20nov%2014.pdf>, para 3, accessed 28 November 2014.

⁴ <https://soundcloud.com/the-church-of-england/synod-monday-november-17th-part-1?in=the-church-of-england/sets/general-synod-november-2014>, accessed 15 January 2015.

⁵ General Synod, 'Business Done at 6:35pm on Friday 11 July 2014,' para 8, online: <https://www.churchofengland.org/media/2033850/bd%20july%202014%20final.pdf>, accessed 28 November 2014. See also General Synod, *Report of Proceedings 2014: July Group of Sessions* Volume 45:2 315–320 online: [https://www.churchofengland.org/media/2087195/report%20of%20proceedings%20with%20index%20\(july%202014\).pdf](https://www.churchofengland.org/media/2087195/report%20of%20proceedings%20with%20index%20(july%202014).pdf), accessed 28 November 2014.

approved by the House of Lords on 14 October 2014,⁶ by the House of Commons on 20 October 2014,⁷ and the royal assent was reported on 23 October 2014.⁸

It is well known that not every member of the Church of England, still less every member of a church that recognises the orders of the Church of England as valid, agrees with this development. This is taken into account in the Declaration of the House of Bishops itself, whose fourth principle reads as follows:

Since those within the Church of England who, on grounds of theological conviction, are unable to receive the ministry of women bishops or priests continue to be within the spectrum of teaching and tradition of the Anglican Communion, the Church of England remains committed to enabling them to flourish within its life and structures[.]⁹

It is to be noted that this principle speaks of those 'unable to receive the ministry' of female bishops. In fact, this inability comes in two kinds. First, some think that the consecration of women to the episcopate is an illicit or irregular development, i.e. one that should not be undertaken,¹⁰ but that, nevertheless, such consecrations will be valid: the women purportedly consecrated will be real bishops in the Church of England and

⁶ See *Hansard* HL Deb 14 October 2014, vol 756, cols 165–188, online: <http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141014-0002.htm>, accessed 28 November 2014.

⁷ See *Hansard* HC Deb 20 October 2014, vol 586, cols 706–724, online: <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141020/debtext/141020-0002.htm>, accessed 28 November 2014.

⁸ See *Hansard* HC Deb 23 October 2014, vol 586, col 1043, online: http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141023/debtext/141023-0001.htm#column_1043, accessed 28 November 2014, and *Hansard* HL Deb 23 October 2014, vol 756, col 761, online: <http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141023-0001.htm#14102379000702>, accessed 28 November 2014.

⁹ *House of Bishops' Declaration on the Ministry of Bishops and Priests*, GS Misc 1076, 19 May 2014, p.2, para 5, online: <https://www.churchofengland.org/media/2011184/gs%20misc%201076%20-%20women%20in%20the%20episcopate%20of%20bishops%20declaration.pdf>, accessed 28 November 2014.

¹⁰ NB This is not the view that Synod should not have approved the consecration of women to the episcopate, but, now that it has, women should be consecrated. Nor is it the view that in an ideal world there would be no consecration of women to the episcopate, but that in our world it is permissible.

the Church of God,¹¹ even if it was wrong for them to be so consecrated.¹² Call this ‘the irregularity view.’¹³

By contrast, secondly, some think that the consecration of women to the episcopate is not merely illicit but also invalid, that is, null and void: the women purportedly consecrated will not be real bishops in the Church of God or Church of England, but bishops in name alone. On this, second, view, none of the words or actions of these women would carry the canonical weight of episcopacy, and the relevant sees would remain vacant.¹⁴ Call this ‘the nullity view.’¹⁵

To expand a bit more on the distinction between regularity and validity:¹⁶ an action can be the mere speaking of words or it can be also the establishment of a marriage by exchanging vows. An action is invalid if it purports to be something but fails really to be that thing. So, for example, rehearsing one’s wedding vows the night before does not, contrary to popular belief, constitute a valid act of marrying someone, nor would an actor’s saying the words of the vows on stage. By contrast, while it is illicit, i.e. wrong, for a Christian to exchange marriage vows with a non-Christian,¹⁷ nevertheless such an act is admitted by almost everyone to be a valid act of marrying, that is to say, it gives rise to a real marriage that would prevent each party from contracting another marriage unless

¹¹ If one accepts Canon Law then it follows from someone’s being a bishop in the Church of England that that person is a bishop in the Church of God, as the central prayer of the service of consecration of a bishop puts it: ‘Receive the holy Ghost, for the Office and Work of a Bishop in the Church of God’ (<https://www.churchofengland.org/prayer-worship/worship/book-of-common-prayer/the-form-and-manner-of-making,-ordaining-and-consecrating-of-bishops,-priests-and-deacons/the-consecration-of-bishops.aspx>, accessed 28 November 2014).

¹² NB It is compatible with this view that some, but not all, purportedly episcopal actions performed by female bishops will be null and void.

¹³ As well as ‘irregular’ and ‘illicit’ the word ‘uncanonical’ is sometimes used. I shall avoid this since some canons speak to validity as well as (or instead of) regularity liceity.

¹⁴ *Women in the Episcopate: The Report of the Bishops of Guildford and Gloucester* (GS Misc 826, online: <https://www.churchofengland.org/media/1230140/gsmisc%20826.pdf>, accessed 19 December 2014) recognises that there are these two views, though with respect to female presbyters, which it cashes out in terms of not recognising ‘women priests in absolute terms’ over against ‘simply declining their ministry’ (para 6.6).

¹⁵ Another name might have been ‘the sedevacantist view,’ but this name is usually reserved for the view that the See of Rome is vacant: <https://en.wikipedia.org/wiki/Sedevacantism>, accessed 26 November 2014.

¹⁶ The distinction is assumed in the Canons themselves; cf., e.g., Canon B 27 para 4, ‘The minister shall satisfy himself that those whom he is to present have been validly baptized,’ online: <https://www.churchofengland.org/about-us/structure/churchlawlegis/canons>, accessed 28 November 2014.

¹⁷ See 2 Cor 6: 14 (‘Do not be yoked together with unbelievers’).

the relationship were dissolved (e.g. by death of one party). By contrast, somebody that purports to make marriage vows to himself or herself,¹⁸ does something not merely illicit¹⁹ but also invalid. The purported marriage is null and void, and there is no bar on the individual's marrying properly to someone else.²⁰ In particular, the individual would not have to divorce himself or herself to marry a new party; the individual's marital status has not changed.

In this article I trace through the implications of the nullity view for someone that wants to remain obedient to the rest of Anglican theology and canon law. I shall not make any statements concerning the liceity/regularity or the validity of the consecration of women to the episcopate; what follows is purely an exercise in following through the implications of the nullity view. This should obviously be of interest to those that hold the nullity view, but it should also be of interest to others, since it may be that they will think that the implications provide an additional argument against the nullity view. I shall leave this for others to evaluate.

1. Canon A 4

It might be objected right at the start that it is impossible for a proponent of the nullity view to remain obedient to the rest of Anglican theology and canon law, since Canon A 4 of the Canons of the Church of England states:

those who are so made, ordained, or consecrated bishops, priests, or deacons, according to the [...] Ordinal, are lawfully made, ordained, or consecrated, and ought to be accounted, both by themselves and others, to be truly bishops, priests, or deacons.²¹

It is sufficient to reply to this that, as a matter of fact, there are clergy within the Church of England that take the nullity view and intend to remain obedient to the rest of Anglican theology and canon law apart

¹⁸ As Grace Gelder did in March 2014: Nick Cunard, 'I married myself,' online: <http://www.theguardian.com/lifeandstyle/2014/oct/04/i-married-myself-wedding>, accessed 22 November 2014.

¹⁹ As Gelder comments, 'it is plainly a statement of self-love, and I was under no illusion how self-indulgent that might appear' (Cunard, 'I married myself.').

²⁰ As Gelder also comments, 'just because I married myself, it doesn't mean that I'm not open to the idea of sharing a wedding with someone else one day' (Cunard, 'I married myself.').

²¹ This objection was pushed in *Women in the Episcopate: The Report of the Bishops of Guildford and Gloucester*, and *Women Bishops in the Church of England? A Report of the House of Bishops' Working Party on Women in the Episcopate* (GS1557; 'the Rochester Report'), online: <https://www.churchofengland.org/media/38523/gs1557.pdf>, accessed 26 November 2014.

from Canon A 4, and the investigation of the consequences of this view is a worthwhile enterprise.²² A second point is that canon law is standardly held to bind only the clergy and lay officers,²³ so we could still investigate the implications for a layperson not holding office. But the most important point is that the upholder of the nullity view can assent to the strict letter of Canon A 4, since Canon A 4 asserts that if someone is consecrated a bishop according to the Ordinal then that person is lawfully consecrated a bishop and ought to be accounted a real bishop. The point is that the upholder of the nullity view will not agree that women fall under the antecedent of this conditional; the upholder of the nullity view will not allow that any women are consecrated bishop, they merely purport to have been consecrated. It might be responded that this makes a mockery of the Canon, but the real, historical purpose of the Canon was to defend the Ordinal against Roman Catholic attacks that it was a defective form of ordination that rendered *all* purported ordinations performed in accordance with it null and void.²⁴ The proponents of the nullity view, however, have different grounds for holding that the purported consecrations of female bishops are null and void. It is not the case in any event that consecration is automatic on going through the service in the Ordinal: for example, if the candidate for consecration is not baptised then the purported consecration is null and void, as will have been any purported ordinations to the diaconate or presbyterate.²⁵

²² In fact, many Anglo-Catholic clergy of the Church of England have been wrestling with Canon A 4 for a while; cf. the 2006 document ‘Consistent with Canon A4: A contribution from the Legal Working Party of Forward in Faith’: http://www.forwardinfaith.com/news/pages/Consistent_with_Canon_A4.pdf, accessed 22 November 2014.

²³ ‘we are all of opinion, that the canons of 1603, by their not being confirmed in parliament, do not *proprio vigore* bind the laity; I say *proprio vigore*, for in some respects they do; there being many provisions in these canons that are of ancient allowance, and declaratory of the ancient usage of the church of this realm, which bind by an authority precedent to these latter canons’ *Middleton v Crofts* (1736) 26 English Reports 788, 790, (Lord Hardwicke). For critical discussion, see Philip Jones ‘The Canons of 1603: Binding the Laity’ (April 21, 2012, online: <http://ecclesiasticallaw.wordpress.com/2012/04/21/the-canons-of-1603-binding-the-laity/>, accessed 22 November 2014). It seems to me that some canons, such as A 1, do indeed bind all lay members of the Church of England, but that this is not true of every canon.

²⁴ Leo XIII, *Apostolicae curae* (1896), paras 21 and 36.

²⁵ See Sir Robert Phillimore, *The Ecclesiastical Law of the Church of England*, (2d ed.; ed. Sir Walter Phillimore; London: Sweet and Maxwell, 1895), Part II, Chapter 3, §5, p. 93.

2. Canonical Duty of Allegiance

It might also be alleged that this discussion is rendered moot by the Canonical Duty of Allegiance:

According to the ancient law and usage of this Church and Realm of England, the priests and deacons who have received authority to minister in any diocese owe canonical obedience in all things lawful and honest to the bishop of the same, and the bishop of each diocese owes due allegiance to the archbishop of the province as his metropolitan.²⁶

The upholder of the nullity view will not see himself or herself as in breach of this, since he or she thinks that the see is vacant, and that there is no female bishop. (The defender of the irregularity view will also not see himself or herself as in breach of this, since, although he or she regards the see as occupied by a real female bishop, he or she will regard obedience to her as not being lawful, and, hence, not covered by the Canon.)

The Oath of Canonical Obedience, while very similar in terms, seems at first more problematic in that it appears to be taken to the person of the bishop:

I, A B, do swear by Almighty God that I will pay true and canonical obedience to the Lord Bishop of C and his successors in all things lawful and honest: So help me God.²⁷

The apparent problem here is that the person that holds the nullity view thinks that the see is vacant, so that there is no Lord Bishop of C to whom the oath may be taken. In point of fact, however, the oath is still taken to the office of bishop even when the see is vacant,²⁸ so the upholder of the nullity view could take it in this spirit after the purported confirmation of a female diocesan.

3. Declaration of the House of Bishops

Another possible argument for declaring the discussion moot lies in the first and second of the five guiding principles put forward by the House of Bishops with reference to the consecration of women to the episcopate:

²⁶ Canon C 1 para 3.

²⁷ Canon C 12 para 3.

²⁸ Personal communication from Sion Hughes Carew, Administrative Secretary to the Legal-Office Synod Team, Legal Office, Church House, 9 December 2014.

Now that legislation has been passed to enable women to become bishops the Church of England is fully and unequivocally committed to all orders of ministry being open equally to all, without reference to gender, and holds that those whom it has duly ordained and appointed to office are the true and lawful holders of the office which they occupy and thus deserve due respect and canonical obedience;

Anyone who ministers within the Church of England must be prepared to acknowledge that the Church of England has reached a clear decision on the matter[.]²⁹

The upholder of the nullity view does not disagree with any of this, however. Although the upholder of the nullity view denies that there will be any valid consecrations of women to the episcopate, he or she does not need also to assert that the vote of Synod was invalid, or that the purported promulgation and execution of the Amending Canon was invalid. And the holder of the nullity view need not deny that the *Church of England* holds that ‘those whom it has duly ordained and appointed to office are the true and lawful holders of the office which they occupy and thus deserve due respect and canonical obedience.’ Of course, the upholder of the nullity view will think the Church of England mistaken in so holding, but that appears to be allowed by the fourth principle of the Declaration:

Since those within the Church of England who, on grounds of theological conviction, are unable to receive the ministry of women bishops or priests continue to be within the spectrum of teaching and tradition of the Anglican Communion, the Church of England remains committed to enabling them to flourish within its life and structures[.]³⁰

Similar considerations apply to the declaration in the Rochester Report that ‘the decision to ordain women priests is open to question, but the orders of those women who have been ordained are not.’³¹ In the context it is clear that the report is not mandating an attitude for individual members or clergy of the Church of England, but, rather, discussing the attitude of the institution as a whole: ‘it necessarily holds [not ‘they necessarily hold’], in line with Canon A 4, that its women

²⁹ *House of Bishops’ Declaration on the Ministry of Bishops and Priests*, para 5, pp. 1–2.

³⁰ *House of Bishops’ Declaration on the Ministry of Bishops and Priests*, para 5, p. 2.

³¹ *Women Bishops in the Church of England?*, para 3.6.26, p. 109.

priests hold valid orders.³² There is no longer any doubt in the official mind of the Church of England on the matter.

4. Powers of Bishops

The first question that occurs to one is: what can bishops do, according to Anglican canon law, that non-bishops cannot? The main paragraph in the Canons setting out the rights, duties, and powers of (diocesan) bishops is Canon C 18, para 4:

Every bishop is, within his diocese, the principal minister, and to him belongs the right, save in places and over persons exempt by law or custom, of celebrating the rites of ordination and confirmation; of conducting, ordering, controlling, and authorizing all services in churches, chapels, churchyards and consecrated burial grounds; of granting a faculty or licence for all alterations, additions, removals, or repairs to the walls, fabric, ornaments, or furniture of the same; of consecrating new churches, churchyards, and burial grounds; of instituting to all vacant benefices, whether of his own collation or of the presentation of others; of admitting by licence to all other vacant ecclesiastical offices; of holding visitations at times limited by law or custom to the end that he may get some good knowledge of the state, sufficiency, and ability of the clergy and other persons whom he is to visit; of being president of the diocesan synod.³³

This list is not claimed to be exhaustive, however, and some of these duties may be performed by someone other than a bishop: for example, archdeacons may also perform visitations.³⁴ Further, some are powers gained by the bishop immediately on election and confirmation (e.g. sitting in the House of Lords, if applicable³⁵), others (e.g. the power to ordain) have to wait for consecration.

I here distill from the above this list of roles/powers exclusive to, or characteristic of, bishops:

1. Consecrations of other bishops.
2. Confirmations.
3. Ordinations to the presbyterate.³⁶

³² *Women Bishops in the Church of England?*, para 3.6.27, p. 109.

³³ Canon C 18 para 4.

³⁴ Canon C 22, para 5.

³⁵ Phillimore, *Ecclesiastical Law*, Part II.1.6, p. 56.

³⁶ Although the Book of Common Prayer talks of the 'ordering of priests' and Article XXXII of the XXXIX Articles of 'Bishops, Priests, and Deacons,' *Common Worship* entitles its ordination service 'The Ordination of Priests, also called Presbyters' (<https://www.churchofengland.org/prayer-worship/worship/texts/>)

4. Ordinations to the diaconate.
5. Authorisation of services
6. Granting of faculties.
7. Consecrations of new churches.
8. Institutions to vacant benefices.
9. Admissions by license of clergy, readers, and lay workers.
10. Conducting visitations.
11. Votes in the House of Bishops.
12. Presiding at diocesan synod.
13. Disciplining clergy.

We shall now proceed to investigate each of these in turn. It is important to note, however, that not all of these are on a par: some raise much wider difficulties for the nullity view than others do.

5. Consecrating other bishops

Although a minimum of three bishops is required for good order for a bishop to be consecrated in Anglican canon law,³⁷ only one is necessary for validity.³⁸ Although many female bishops have already consecrated other bishops in Anglican churches around the Anglican Communion,³⁹ and in other churches whose orders the Church of England recognises,⁴⁰ there has been no instance, as far as I am aware, of a bishop, male or female, that has been consecrated by female bishops with no male bishop participating. In other words, every consecration of a bishop in the Anglican communion or any of the churches whose orders are recognised by the Church of England has had at least one male co-consecrator.⁴¹ Nevertheless, there is no canonical or other guarantee that there will

ordinal/priests.aspx, accessed 28 November 2014), and I shall use the latter term, as more in keeping with the Biblical usage.

³⁷ Canon C 2 para 1.

³⁸ Claude Beaufort Moss, *The Christian Faith: An Introduction to Dogmatic Theology* (London: SPCK, 1965), Part II, Chapter 63.ii.4, online: <http://www.katapi.org.uk/ChristianFaith/LXIII.htm>, accessed 22 November 2014.

³⁹ E.g. the consecration of Bishop Michael Joseph Hanley as the tenth Bishop of Oregon by, among others, Presiding Bishop Katharine Jefferts Schori on 10 April 2010: http://archive.episcopalchurch.org/81803_121443_ENG_HTML.htm, accessed 26 November 2014.

⁴⁰ For one example, the consecration of Bishop Johan Tyrberg as Bishop of Lund in the Church of Sweden on 24 August 2014, by, among others, Archbishop Antje Jackelén: <http://www.svenskakyrkan.se/lundsstift/in-english-bishop-johan-tyrberg>, accessed 22 November 2014.

⁴¹ It makes no difference in canon law to the validity of the consecration who is the principal consecrator and who is merely a co-consecrator: Moss, *Christian Faith*, Part II, Chapter 63.ii.6.

always be at least one male co-consecrator, and, if there were, that would affect only liceity/regularity not validity. Hence it is possible that there will be, and in time probably will be, a male bishop consecrated just by female bishops. The point of this is that such a purported bishop on the nullity view will not be a bishop at all, since the action performed by the female bishops will be canonically null and void. It follows that such a man will himself fall under the inabilities canvassed here. He himself will be unable to consecrate any other bishops etc. In theory this could spread through the whole church so that, according to the nullity view, there were no valid bishops left even if there were no time at which all the bishops were female. To avoid this all that would be necessary would be to have at least one bishop that had an all-male line of ancestry in terms of consecration. (The presence of many lines of ancestry in terms of consecration involving female bishops would not itself present a problem of validity, since, as stated, each consecration needs only one validly consecrated consecrator for validity.)

6. Confirmation

If a person's purported consecration to the episcopate is null and void then so will be any confirmations performed by that person. This will then have a knock-on effect for those things for which confirmation is itself a canonical pre-requisite.

6.1 Communion

By canon law the admission to Holy Communion is normally restricted, among members of the Church of England, to those:⁴²

members of the Church of England who have been confirmed in accordance with the rites of that Church or are ready and desirous to be so confirmed or who have been otherwise episcopally confirmed with unction or with the laying on of hands[.]⁴³

Pace Robert Runcie,⁴⁴ if someone considers himself or herself to have been confirmed then he or she will not be 'ready and desirous to be confirmed.' So it looks as though a presbyter holding the nullity view

⁴² The Canon does not, in fact, explicitly add that nobody outside the permitted classes may be admitted to Holy Communion, but that is clearly the intention.

⁴³ Canon B 15A para 1.

⁴⁴ 'Though confirmation is important, canon law clearly states that admission to communion is to be given to those who are episcopally confirmed, *or ready and desirous to be confirmed*. It surely cannot be in doubt that those who have been confirmed by a woman bishop are in such a state' (Runcie, 'Presidential Statement', Report of Proceedings of General Synod, Monday 7 November 1988, online: <http://>

will have to deny Holy Communion to those that have gone through the ceremony of confirmation under a female bishop, since that presbyter will consider them unconfirmed. But denial of Holy Communion here will be a breach of the Sacrament Act 1547, which prescribes with respect to the administering of Holy Communion that no minister may:

withowt lauffull cawse denye the same to any parsone that wool devoutelie and humblie desire it, anny lawe statute ordenance or custome contrarie therunto in any wise notwithstanding[.]⁴⁵

Although the holder of the nullity view will take himself or herself to have a lawful cause, it would be inconceivable that any court of law should allow as a lawful cause the fact that someone confirmed by a female bishop was not really confirmed.⁴⁶

6.2 Ordination

The Canons provide that it is illicit to ordain someone unconfirmed.⁴⁷ Nevertheless, it would seem that such an ordination would be valid,⁴⁸ though irregular.⁴⁹ Despite this, an upholder of the nullity view would be in a bind if, say, asked to support the candidacy for ordination of someone that he or she believed to have been through a ceremony of confirmation with a female bishop.

6.3 Admission to the order of deaconesses and various offices

One knock-on effect lies in the fact that one may not be admitted to the order of deaconesses unless one be confirmed and a regular

www.sarmiento.plus.com/cofe/womenbishopsannexes.html#A, italics added, accessed 26 November 2014).

⁴⁵ Sacrament Act 1547, Section VIII, online: <http://www.legislation.gov.uk/aep/Edw6/1/1/section/VIII>, accessed 27 November 2014.

⁴⁶ Compare the judgment of the House of Lords in the marriage case *Thompson v Dibdin* (1912) AC 533 (HL), where Earl Loreburn said at 540:

It is inconceivable that any Court of law should allow as a lawful cause the cohabitation of two persons whose union is directly sanctioned by Act of Parliament and is as valid as any other marriage within the realm.

⁴⁷ Canon C 4 para 1.

⁴⁸ For the truth of this in Roman Catholic canon law see <http://wdtprs.com/blog/2011/07/quaeritur-confirmed-or-ordained-but-not-in-the-state-of-grace-fr-z-rants/>, accessed 28 November 2014.

⁴⁹ And it would not be irregular if the confirmation were performed under the authority of a bishop by someone not a bishop: Legal Advisory Commission of General Synod, 'Ordinands: Requirement of Confirmation,' para 9, online: <https://www.churchofengland.org/media/1562210/ordinands%20requirement%20of%20confirmation.pdf>, accessed 28 November 2014.

communicant.⁵⁰ The same goes for admission to the office of reader,⁵¹ and the office of lay worker,⁵² and to distribute Holy Communion.⁵³ This might place someone asked to recommend a candidate for one of these offices in a bind if he or she also held to the nullity view: he or she might think that the candidate was not confirmed on the grounds that the ceremony had been performed by a female bishop.

6.4 'Actual Communicant'

There are also several offices for which one has to be an 'actual communicant.' These include churchwarden,⁵⁴ elected member of the Parochial Church Council,⁵⁵ co-opted member of the Parochial Church Council,⁵⁶ elected member of the Deanery Synod,⁵⁷ co-opted member of the Deanery Synod,⁵⁸ elected member of the Diocesan Synod,⁵⁹ co-opted member of the Diocesan Synod,⁶⁰ elected member of the House of Laity of the General Synod,⁶¹ and co-opted member of the House of Laity of the General Synod.⁶² The relevance of this here is that the technical definition of 'actual communicant' makes reference to confirmation:

"actual communicant" means a person who has received communion according to the use of the Church of England or of a Church in communion with the Church of England at least three times during the twelve months preceding the date of his election or appointment being a person whose name is on the roll of a parish and is either -
(a) confirmed or ready and desirous of being confirmed; or

⁵⁰ Canon D 2 para 1.

⁵¹ Canon E 4 para 1.

⁵² Canon E 7 subpara 1(a).

⁵³ Regulations on the Administration of Holy Communion made by the Church Assembly, November 1969, s1(1), online: <https://www.churchofengland.org/about-us/structure/churchlawlegis/canons/supplementary-material.aspx>, accessed 28 November 2014.

⁵⁴ Churchwardens Measure 2001 s 1(3)(b), online: <http://www.legislation.gov.uk/ukcm/2001/1/body>, accessed 28 November 2014.

⁵⁵ Church Representation Rules 2011 s 10(1)(b), online: <https://www.churchofengland.org/about-us/structure/churchlawlegis/church-representation-rules>, accessed 28 November 2014.

⁵⁶ Church Representation Rules 2011 s 14(1)(h).

⁵⁷ Church Representation Rules 2011 s 10(1)(b).

⁵⁸ Church Representation Rules 2011 s 24(7).

⁵⁹ Church Representation Rules 2011 s 31(3).

⁶⁰ Church Representation Rules 2011 s 30(5)(c).

⁶¹ Church Representation Rules 2011 s 37(1)(a).

⁶² Church Representation Rules 2011 s 42(2).

(b) receiving the Holy Communion in accordance with the provisions of Canon B 15A paragraph 1(b);⁶³

The point here, again, is that since the upholder of the nullity view will think that those that have been through a ceremony of confirmation at the hands of a female bishop will not technically have been confirmed, he or she will be in a bind if, say, asked to recommend a candidate for one of these offices.

7. Ordinations to the presbyterate

Under Anglican canon law for someone to be a presbyter that person must be so ordained by a validly consecrated bishop.⁶⁴ If the person purporting to ordain is not a bishop then the purported ordination is null and void.⁶⁵ The consequence of this is that those taking the nullity view concerning the consecration of female bishops will have to think that many purported presbyters (male presbyters as well as female presbyters) have not been validly ordained, and so are not real presbyters at all.⁶⁶ It might be thought that this raises a further problem: it might be thought that if someone is not validly ordained presbyter that person cannot be consecrated bishop, whether by a man or a woman.⁶⁷ This is not so, however. In *ordinatio per saltum* the ordination to a higher office brings with it in addition ordination to the lower office for someone that has not previously been ordained to the lower office.⁶⁸ (In Anglican theology

⁶³ Church Representation Rules 2011 s 54(1) .

⁶⁴ Canon C 1 para 1.

⁶⁵ The case of the Church of South India is not an exception to this; Resolution 54, ‘The Unity of the Church—The Anglican Communion and the Church of South India,’ from the 1948 Lambeth Conference reads in para (d): ‘That ministers of the Church of South India who have not been episcopally ordained should not be regarded as having acquired any new rights or status in relation to the Anglican Communion as a whole solely by reason of the fact that they are ministers of that Church,’ online: <http://www.lambethconference.org/resolutions/1948/1948-54.cfm>, accessed 29 November 2014.

⁶⁶ Compare Archbishop Robert Runcie’s remark about ‘the theological absurdity of being able to recognise and accept the ministry of male priests or deacons but not the ministry of the woman bishop who ordained them’ (‘Presidential Statement’).

⁶⁷ As far as I have been able to determine, there has as yet been no instance of a bishop’s having been (purportedly) ordained to the presbyterate, or even to the diaconate, by a female bishop in any church whose orders are recognised by the Church of England.

⁶⁸ Cf. John Wordsworth, Bishop of Salisbury, *Ordination Problems Reordination and Ordination “Per Saltum” and Home Reunion* (London: SPCK, 1909); online: <http://anglicanhistory.org/england/jwords/saltum.html>, accessed 28 November 2014, citing Aquinas, *Summa Theologiae* (Suppl.) Q35.a5.sc.

a bishop remains a presbyter on consecration, and a presbyter remains a deacon on ordination presbyter.⁶⁹) So if someone not validly ordained as a presbyter were presented for consecration as bishop there would be no problem of validity.⁷⁰

Of course, *ordinatio per saltum* is still irregular/illicit, so an upholder of the nullity view might be in a bind if asked concerning someone that went through the ceremony of ordination to the diaconate at the hands of a female bishop to recommend that person for ordination to the presbyterate, and similarly for ordination to the episcopate.

We shall now proceed to examine the knock-on effects of the nullity view's accounting null and void the presbyteral ordination of those that go through a ceremony of presbyteral ordination at the hands of a female bishop.

7.1 Admissions to Offices

The Act of Uniformity 1662, s 10, which section is still in force, states:

No person whatsoever shall thenceforth be capable to bee admitted to any Parsonage Vicarage Benefice or other Ecclesiastical Promotion or Dignity whatsoever...before such time as he shall be ordained Preist according to the forme and manner in and by the said Booke prescribed unlesse he have formerly beene made Preist by Episcopall Ordination.⁷¹

The strong term 'capable' here clearly means that any admission will be invalid, i.e. null and void, if not of a validly ordained presbyter.⁷² This would seem to imply that those taking the nullity view would also have to hold that many benefices are vacant, since the admissions would not be valid in their view. In fact, however, an official sentence of voiding the benefice would be necessary for it to be voided.⁷³

⁶⁹ Cf., for this truth stated by an Anglican, Moss, *Christian Faith*, Part II, Chapter 63.ii.5. For a statement by a Roman Catholic, cf. Bishop Kevin Rhoades's homily at an ordination to the diaconate 14 September 2014 (<http://www.catholic.org/news/national/story.php?id=56925>, accessed 22 November 2014).

⁷⁰ The most famous historical example of *ordinatio per saltum* was Ambrose of Milan, ordained a bishop from the lay state. For this and other examples, see Joseph Bingham, *Origines Ecclesiasticae or The Antiquities of the Christian Church* (London: Straker, 1834) Book II, Chapter 10 (Volume 1, pp. 110ff.). There is some doubt whether Ambrose really was consecrated bishop from the lay state. See Wordsworth, *Ordination Problems*. Wordsworth gives these more certain examples: Fabianus, Philogonius, Nectarius, Eucherius, and Thalassius (§11).

⁷¹ <http://www.legislation.gov.uk/cy/aep/Cha2/14/4/england/1991-02-01>, accessed 16 December 2014.

⁷² This was confirmed in *R v Ellis* (1888) 16 Cox CC 469.

⁷³ William Watson, *The Clergy-Man's Law or The Complete Incumbent* (3d ed.; London: Nutt and Gosling, 1725), Chapter 6, p. 55.

7.2 Eucharist, Absolution, Anointing of the Sick, Blessing

By canon law only a validly ordained presbyter may preside at the Eucharist or Holy Communion,⁷⁴ pronounce the absolution,⁷⁵ anoint the sick,⁷⁶ and pronounce God's blessing.⁷⁷ Although the natural inference would be that these acts if performed by someone not validly ordained presbyter would be null and void,⁷⁸ against this proposition is the 1599 case of *Costard v Winder*, which concerned a lay-person invalidly admitted as parson:

in regard he was parson *de facto*, and such an one whereof the law takes conusance [*sic*] by his induction, and the people cannot take notice of any other, all acts done by him during that time shall bind as well as if he had been rightful parson: for it would be mischievous, if all the acts by such averments should be drawn in question.—And every one agreed, that all spiritual acts, as marriage, the administration of the sacraments, &c. by such an one, during the time that he is parson, are good[.]⁷⁹

Nevertheless, such acts would still be irregular if performed by an invalidly ordained presbyter, and so the holder of the nullity view would not be able to co-operate with them, e.g. by inviting such a presbyter to preside at Holy Communion.

8. Ordination to the diaconate

This raises the same problems as ordinations to the presbyterate, but with fewer knock-on effects.

9. Authorisation of services

Most services are authorised either directly by canon⁸⁰ or by the General Synod.⁸¹ The diocesan bishop can, however, authorise the continued use

⁷⁴ See Canon B 12 para 1.

⁷⁵ See Canons B 11 para 1 and B 29 para 1.

⁷⁶ See Canon B 37 para 3, and 'The Order for the Visitation of the Sick' in the Book of Common Prayer, online: <https://www.churchofengland.org/prayer-worship/worship/book-of-common-prayer/the-visitation-of-the-sick.aspx>, accessed 1 December 2014.

⁷⁷ Halsbury's Laws of England, Volume 34 (2011), para 394.

⁷⁸ This is the case in Roman Catholic canon law: c. 900§1 of the 1983 Code of Canon Law, online: http://www.intratext.com/IXT/ENG0017/_P37.HTM, accessed 19 December 2014.

⁷⁹ *Costard v Winder* (1599) 78 English Reports 1005

⁸⁰ Canon B 1(1).

⁸¹ Pursuant to Canon B 2(1).

of otherwise expired forms of service.⁸² This might place a parishioner holding the nullity view in a bind: if the service in use at his or her church were legal only because of the authorisation of a female bishop then he or she might feel unable to attend what would be, in his or her eyes, illegal worship.

10. Granting of faculties

The consistory court is, technically, the court of the diocesan bishop,⁸³ and the chancellor is appointed by the bishop.⁸⁴ This means that the person holding the nullity view would have to think that any chancellor or deputy chancellor purportedly appointed by a female bishop were not really appointed, and, hence, that any judgments purportedly handed down or faculties purportedly issued by such a purported chancellor or deputy chancellor were themselves null and void. This places the holder of the nullity view in a serious position, since making alterations to a church building without a faculty is an offence against ecclesiastical law.⁸⁵ Would the holder of the irregularity view also logically have to refuse to co-operate with a chancellor or deputy chancellor appointed by a female bishop? No. Although the chancellor is, and the deputy chancellor may be, appointed by the bishop, each of them is independent of the bishop,⁸⁶ and their judgments and faculties are not the bishop's.

11. Consecrations of new churches

Canon B 40 provides:

No minister shall celebrate the Holy Communion elsewhere than in a consecrated building within his cure or other building licensed for the purpose, except he have permission so to do from the bishop of the diocese[.]⁸⁷

⁸² Canon B 2A(1).

⁸³ Ecclesiastical Jurisdiction Measure 1963, s. 1(1), online: <http://www.legislation.gov.uk/ukcm/1963/1>, accessed 18 December 2014.

⁸⁴ Ecclesiastical Jurisdiction Measure 1963, s. 2(1).

⁸⁵ *Sieveking and Evans v Kingford* (1866) 31 JP 179, 36 LJ Eccl 1, 15 LT 300.

⁸⁶ 'mere appointment by the equivalent of an executive organ cannot be seen to impeach the independence of the chancellor. [...] the chancellor is required to take an oath of independence which acts as a guarantee of a certain degree of independence from the body nominating him' (*Tyler v United Kingdom* (unreported), App no. 21283/93, (Admissibility decision, European Commission of Human Rights, 5 April 1994)).

⁸⁷ Canon B 40.

Since consecrations are reserved to bishops alone,⁸⁸ this means that the holder of the nullity view would, logically, refuse to recognise the purported consecration by a female bishop of the building in which Holy Communion is celebrated—meaning in turn that a minister holding the nullity view would feel bound not to celebrate Communion in such a building. This would be problematic in that Canon C 24 para 2 provides that:

Every priest having a cure of souls shall, except for some reasonable cause approved by the bishop of the diocese, celebrate, or cause to be celebrated, the Holy Communion on all Sundays and other greater Feast Days and on Ash Wednesday.⁸⁹

So, the ‘priest having a cure of souls’ and also holding the nullity view would be in a real bind: constrained by canon law to celebrate Communion yet with nowhere that the nullity view would allow it to be said.

12. Institutions, Collations, and Admissions

Canon C 8 para 2 explicitly says ‘A minister duly ordained priest or deacon [...] may officiate in any place only after he has received authority to do so from the bishop of the diocese.’⁹⁰ The Ordination of Ministers Act 1571 spells out that if there is no permission from the Bishop then any purported institution, collation, or admission is null and void:

And that none hereafter shall be admitted to any Benefice with Cure [...] unless he shall then be a Bachelour of Divinity, or a Preacher lawfully allowed by some Bishop within this Realm, or by one of the Universities of *Cambridge* or *Oxford*.

And that all Admissions to Benefices, Institutions, and Inductions, to be made of any Person contrary to the Form or any Provision of this Act [...] shall be merely void in Law, as if they never were.⁹¹

So, then, it follows from the nullity view that purported admissions, collations, institutions, or licensings performed by a female bishop would

⁸⁸ Newsom *Ch Re St John’s, Chelsea* [1962] 1 WLR 706, 708.

⁸⁹ Canon C 24 para 2.

⁹⁰ Canon C 8 para 2.

⁹¹ The Ordination of Ministers Act (aka ‘The Subscription Act’) 1571 ss 5 and 6, online: <http://history.hanover.edu/texts/engref/er83.html>, accessed 19 December 2014. Although this was repealed by the Statute Law (Repeals) Act 1969, it seems unlikely that the law is now the contrary in this respect.

indeed be null and void, and, hence, that the ecclesiastical actions of those purportedly admitted, collate, instituted, or licensed would be irregular (though not necessarily invalid).⁹²

13. Admission to the Order of Deaconesses and to Lay Offices

Similar considerations also apply to purported admissions to the order of deaconesses, and to the offices of reader and of lay worker: it is clear from the Canons that only a bishop may admit to these offices.⁹³ Again, it seems as though the holder of the nullity view would have to think that these purported admissions were null and void, and, hence, the ecclesiastical actions of those purportedly admitted irregular.

14. Visitations and Presentations

Visitations by a female bishop of a male presbyter would seem to be problematic, and, indeed, equally problematic, on each of the nullity and the irregularity views. This is because 'visitation implies [...] some coercive authority',⁹⁴ and is intended for 'the supply of such things as are lacking and the correction of such things as are amiss.'⁹⁵ So even though the holder of the irregularity view recognises that the bishop has been validly consecrated, he or she would not feel able to co-operate with what he or she would see as a wrongful use of authority in conducting a visitation on a male presbyter. The problem with this for the holder of the irregularity or nullity view is that the bishop has the power to compel clergy to be present.⁹⁶ Further, as Phillimore puts it: 'contumacy at the visitation or disobedience to the orders of the visitor will be the ecclesiastical offence of disobedience to the lawful orders of the ordinary.'⁹⁷ There is, however, no

⁹² In fact, episcopal permission does not form an absolutely necessary qualification for admission, institution, or licensing, since when there is a vacancy in see the Guardian of the Spiritualities is able to admit, institute, and license (cf., e.g., Francis Rogers, *A Practical Arrangement of Ecclesiastical Law* (Saunders and Benning, 1840), p. 111). Nevertheless, since the female bishop is not the Guardian of the Spiritualities, this point is not of much help to the person holding the nullity view.

⁹³ Canon D 2 para 5, E4 para 1 and E7 para 1.

⁹⁴ Halsbury's Laws of England, Volume 34 (2011), para 211.

⁹⁵ Canon G 5 para 1.

⁹⁶ Norman Doe, *The Legal Framework of the Church of England* (Oxford: OUP, 1996), p. 125.

⁹⁷ Phillimore, *Ecclesiastical Law*, IV.xi.1, p. 1049.

set period of time within which the bishop has to conduct a visitation,⁹⁸ so such a visitation might never happen.

In any case, since archdeacons also have the power to perform visitations,⁹⁹ this is not a problem consequent solely on the consecration of women to the episcopate.

15. General Synod

All diocesan bishops are cited to appear in the House of Bishops of General Synod,¹⁰⁰ as are four non-diocesan bishops of the Province of Canterbury,¹⁰¹ and three of the Province of York.¹⁰² Must the upholder of the nullity view think that any women among their number should have their votes discounted, which might mean that some motions that actually passed would be lost? No. The upholder of the nullity view would have to think their attending and voting illicit, but would not be committed to the view that their votes should thereby be discounted as invalid. This is because the bishops cannot assemble in convocation save by the monarch's writ,¹⁰³ and it seems plausible that this writ establishes valid membership of Convocation, whether or not it is regular.

16. Sitting in the House of Lords

It might be thought that an extra problem for someone holding the nullity view would be that the votes of a purported female bishop in the House of Lords should not be counted. In fact, however, in order to take one's seat as a member of the House of Lords one needs a writ of summons from the Clerk of the Crown in Chancery.¹⁰⁴ It seems that the holder of the nullity view could plausibly take the view that the writ of summons in such a case would be valid, though irregular. In consequence, all the votes of a female bishop in the House of Lords would be valid.

⁹⁸ Peter M. Smith, 'Points of law and practice concerning ecclesiastical visitations' (1991) 2 *Ecclesiastical Law Journal* 189, 208.

⁹⁹ Canon G 5 para 1. See also Canon C 22 paras 2 and 5.

¹⁰⁰ Canon H3 sub-para 1(a), and canon H3 sub-para 2(a).

¹⁰¹ Canon H3 sub-para 1(c).

¹⁰² Canon H3 sub-para 2(b).

¹⁰³ Submission of the Clergy Act 1533, s. 1, online: <http://www.legislation.gov.uk/aep/Hen8/25/19/section/I>, accessed 18 December 2014, and Synodical Government Measure 1969 s. 1(4), online: <http://www.legislation.gov.uk/ukcm/1969/2/section/1>, accessed 18 December 2014.

¹⁰⁴ *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, Chapter 1, §1.08, online: <http://www.publications.parliament.uk/pa/ld/ldcomp/composo2013/2013co03.htm#a6>, accessed 18 December 2014.

17. Presidency of Diocesan Synod

The diocesan bishop is *ex officio* a member of, and president of, the diocesan synod.¹⁰⁵ Since the diocesan holds this post *ex officio* it seems that the holder of the nullity view would have to say that the female bishop's presidency was null and void. This would not automatically make the whole synod void,¹⁰⁶ but it might possibly nullify the purported votes of the female bishop.¹⁰⁷ Since, however, diocesan synods do not have general legislative power,¹⁰⁸ this probably will not be of great concern to the person holding the nullity view.

18. Disciplining clergy

The bishop 'by virtue of his office and consecration, is required to administer discipline.'¹⁰⁹ Some disciplinary penalties are now administered by the ecclesiastical courts,¹¹⁰ but the bishop can still impose prohibition, removal from office, revocation of license, injunction, rebuke,¹¹¹ suspension,¹¹² and deposition.¹¹³ Would these penalties be null and void according to the nullity view? It would seem so, since a penalty imposed by an individual not the relevant bishop would be of no effect at law. This spells trouble, however, since these are judicial acts, and it is a principle of English law that purported judicial acts ought not to be considered void unless and until judicially declared so.¹¹⁴ In any case, if the holder of the nullity view were to consider a disciplinary penalty imposed on him or her null and void and to continue to perform acts forbidden by the disciplinary procedure then he or she would commit a further offence.¹¹⁵

¹⁰⁵ Church Representation Rules, para 30 ss (2),(3).

¹⁰⁶ The Synod continues during a vacancy in see, for example.

¹⁰⁷ If the purported election of a member of a diocesan synod (or, indeed house of laity of General Synod) is void then that member's purported membership is 'forthwith vacated': Church Representation Rules para 46 (f), online: <https://www.churchofengland.org/about-us/structure/churchlawlegis/church-representation-rules/part-vi.aspx>, accessed 18 December 2014. There is no mention, however, of the nullification of previous purported votes cast by that member.

¹⁰⁸ Doe, *Legal Framework*, p. 84.

¹⁰⁹ Clergy Discipline Measure 2003, s 1, online: <http://www.legislation.gov.uk/ukcm/2003/3>, accessed 19 December 2014.

¹¹⁰ Ecclesiastical Jurisdiction Measure 1963, s 49.

¹¹¹ Clergy Discipline Measure 2003, s 24(1).

¹¹² Clergy Discipline Measure 2003, s 36(1).

¹¹³ Ecclesiastical Jurisdiction Measure 1963, s 50.

¹¹⁴ *Deane & Chapter de Fernes* (1607) Davis 42 at 47, per Sir James Ley, Lord Chief Justice of Ireland.

¹¹⁵ Clergy Discipline Measure 2003, s. 29; Ecclesiastical Jurisdiction Measure 1963, s 54.

19. Canonical Obedience

We referred above to the canonical obedience owed by presbyters and deacons to the diocesan:¹¹⁶

According to the ancient law and usage of this Church and Realm of England, the priests and deacons who have received authority to minister in any diocese owe canonical obedience in all things lawful and honest to the bishop of the same[.]¹¹⁷

The meaning of ‘lawful’ was judicially determined by the Privy Council in 1863:

The oath of canonical obedience does not mean that the Clergyman will obey all the commands of the Bishop against which there is no law, but that he will obey all such commands as the Bishop by law is authorized to impose[.]¹¹⁸

The situation here is the same as that with respect to a visitation: the nullity view and the irregularity view would agree that an order given by a female diocesan bishop to a male presbyter or deacon need not be followed, since, according to these views, it is not one validly authorised by law.¹¹⁹ The problem here, though, is that it is a legal offence for a presbyter or deacon under the authority of a diocesan bishop to disobey a lawful order given by that bishop.¹²⁰

20. Other roles

It will be difficult for someone that takes the nullity or the irregularity view to accept appointment in any role that involves supporting or assisting a

¹¹⁶ There is no obedience owed to a suffragan bishop *in and of his or her own right*, but all the ‘jurisdiction or episcopal power or authority’ that a suffragan has is derived from the diocesan, and so would attract the duty of canonical obedience in virtue of that connection: Canon C 20 para 2. I am grateful to Stephen Slack for clarifying this point for me.

¹¹⁷ Canon C 1 para 3.

¹¹⁸ *Long v Bishop of Cape Town* (1863) 15 ER 756, 776.

¹¹⁹ There is a variant of the irregularity view that holds that such a command is authorised by the law of the Church of England, but that this law is trumped by divine law. This view, however, is not under consideration in this paper since it does not claim to follow canon law.

¹²⁰ *Rugg v Bishop of Winchester* (1868) 16 ER 533, 540.

female diocesan bishop: roles such as archdeacon,¹²¹ rural dean,¹²² and, of course, suffragan bishop.¹²³ Churchwardens are, technically, officers of the bishop.¹²⁴ This might at first seem to suggest that a holder of the nullity view could not be a churchwarden if the diocesan were female, but, in fact, the only compulsory interaction between bishop and churchwarden is at any visitation that the bishop holds.¹²⁵

21. Vacancy in See

Since when a see is vacant an instrument is drawn up either by the outgoing diocesan¹²⁶ or by the Archbishop or senior bishop of the province¹²⁷ to specify the delegation of episcopal power in the diocese, it might be thought that the holder of the nullity view could continue to recognise the persons specified in this instrument as the valid authorities in the diocese after the female bishop has taken office. These instruments are time-limited,¹²⁸ however, so this solution is not available for the long term for the holder of the nullity view.

22. Suffragan Bishops

Canon C 20 para 2 states:

Every bishop suffragan shall use, have, or execute only such jurisdiction or episcopal power or authority in any diocese as shall be licensed or limited to him to use, have, or execute by the bishop of the same.¹²⁹

This means that the holder of the nullity view cannot receive or recognise the ministry of a male suffragan to a female diocesan, since the holder of the nullity view does not think that the female diocesan can validly license anyone to have jurisdiction or use episcopal power or authority. One might then think that the holder of the nullity view could, by this same argument, receive a female suffragan to a male diocesan.

¹²¹ See Canon C 22 para 4.

¹²² See Canon C 23 para 1.

¹²³ See Canon C 20 para 1. See also *Resourcing Bishops: The first report of the Archbishops' Review Group on bishops' needs and resources* (London: Church House, 2001), Appendix E, 'The legal role of bishops' para 4.4.

¹²⁴ Canon E 1 para 4.

¹²⁵ See Canon G 6.

¹²⁶ Dioceses, Pastoral and Mission Measure 2007, s 13, online: <http://www.legislation.gov.uk/ukcm/2007/1>, accessed 17 December 2014.

¹²⁷ Dioceses, Pastoral and Mission Measure 2007, s 14.

¹²⁸ Dioceses, Pastoral and Mission Measure 2007, s 14(2) and s 13(9).

¹²⁹ See Canon C 20 para 2.

But the suffragan is not the mere mouthpiece or puppet of the diocesan in canon law. The diocesan is not thought of in canon law as acting in or through the suffragan. The suffragan has his or her own power, albeit licensed and limited by the diocesan. This means that the holder of the nullity view cannot receive or recognise the ministry of a female suffragan, even if the diocesan is male.

23. Is there precedent in the non-juring schism?

It might be thought that the holder of the nullity view can learn from the experience of the non-jurors, who did not accept the episcopacy of the bishops appointed by William III. But there are two differences here: (i) the non-jurors did not dispute that those consecrated bishop under William III were validly consecrated,¹³⁰ and (ii) the non-jurors were able to appeal to someone that they considered the valid sovereign (James II in exile) for legal acts to validate their position.

Conclusion

For those that hold the nullity view and also wish to follow the canon law of the Church of England the implications are many and far-reaching.¹³¹

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¹³⁰ The royal assent is not necessary for consecration to be valid.

¹³¹ I'd like to thank Lee Gatiss, Sion Hughes-Carew, Stephen Slack, and Richard Sturch for their assistance in connection with issues raised in this paper.

