

THE CONSTITUTIONAL IMPLICATIONS OF THE SURVIVAL OF THE DIOCESE OF SODOR AND MAN.

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INTRODUCTION.

The Isle of Man is an almost entirely self-governing Crown Dependency whose principal constitutional institution is the Tynwald. The population of around 80,000 is evenly split between Manx born and non-Manx born residents.¹ As a largely autonomous territory, the Isle of Man has a distinctive economy with financial services, online gaming, and registration of shipping, aircraft and spacecraft making a substantial contribution.

The principal organ of governance in the Isle of Man is the Tynwald. Tracing its origins back at least as far as the Norse period, Tynwald and its constituent parts have at different times acted as national legislature, national executive, court and reviewer of juries. Today Tynwald is a tricameral legislature from which are drawn the national executive. The directly elected, 24 member, House of Keys is the dominant Branch of Tynwald. The 11 member Legislative Council, consisting primarily of House of Keys appointees but also the Anglican Lord Bishop of Sodor and Man, now has a secondary role in the legislative and executive business of Tynwald.

While the Legislative Council, and its members, are no longer the dominant force in the Manx constitution, they remain unusually powerful for a non-elected chamber. In particular, until recently the Legislative Council was not only required to assent to most legislation, subject to a cumbersome and rarely invoked override power, but also voted on the appointment of the Chief Minister – the leader of the Manx government. Controversy over the composition and powers of the Legislative Council has been an endemic feature of Manx public life, but has been particularly acute since the appointment of Lord Lisvane to review the functioning of Tynwald. One aspect of this controversy has been the voice, and the vote, of the Lord Bishop of Sodor and Man, an Anglican Bishop, in the Council.

¹ IOMG, *2016 Isle of Man Census Report*, (2017) GD 2017/004 at 8.

This brief note focuses on the position of the Lord Bishop, and the controversy around the Lisvane Review on their role in the Legislative Council, including the intervention of the Archbishop of York and the impact ecclesiastical intentions as to Diocesan structure had on Manx constitutional choices. In the current controversy, more decisively than in previous considerations of the issue, “the Lord Bishop is a member of Tynwald because he is Lord Bishop; and there is a diocese to which he can be Lord Bishop because he is a member of Tynwald”.² I argue that the crucial input of the Church of England into the debate was not subject to sufficient scrutiny in the key debates. In the medium term the concerns raised over the voting power of the Lord Bishop are unlikely to recede, and if and when the issue is returned to, there needs to be a more critical approach to the key arguments of the Archbishop of York and the Lord Bishop of Sodor and Man.

THE LORD BISHOP OF SODOR AND MAN IN TYNWALD.

Before 1765 the Council consisted of a core of officers, often English, appointed by the Lord of Man who “had their diet with the family”.³ This included the Lord Bishop and other ecclesiastical officers. The Council consisted of the principal officers of the Lord, and were responsible for executive government and, along with the more commonly Manx House of Keys, legislation by Act of Tynwald. The Keys had a substantial role in appointing their own new members, so that “the Keys became more and more a closed corporation and membership was largely confined to a few leading families”.⁴ Just before the introduction of elections in the middle of the 19th century, they were described to the Lieutenant Governor as “the Gentry of the Island both in talent and property”.⁵

Conflict between the Keys and the Council was not uncommon in this period. To choose one example, there was an ongoing dispute over the powers of the Council between 1715 and 1726, which involved imprisonment en masse of members of the Keys in 1715, and a purge of the Keys by the Governor in 1726.⁶

In 1765, as a response to the loss of British revenue from activity categorised by the British as smuggling, and the Manx as trade, the British Crown purchased the majority of the regnal rights from the Lord of Man. As I have discussed elsewhere, this was a very

² PW Edge and CCA Pearce, ‘The work of a religious representative in the a democratic legislature: A case study of the Lord Bishop of Sodor and Man in Tynwald, 1961-2001’ (2004) 9(2) *Marburg Journal of Religion* at 19.

³ W Sachaverell, *An account of the Isle of Man*, (1702), Essay Three.

⁴ R.B. Moore, “The Roll of the Keys”, (1956) IOMNHAS (P) V(2), 47.

⁵ Drinkwater to Loch, 2 Feb 1863, (SRO: Loch Papers, GD 268/116).

⁶ See further A.W. Moore, “The House of Keys – Its origin and constitution”, (1889) *Yn Lioar Manninagh* 1, 245.

significant moment in the evolution of the Manx constitution.⁷ Upon purchase, the Isle of Man could have been subsumed into British mechanisms of governance. In fact, the internal constitution of the Island was left strikingly untouched. One significant change, however, concerned the place of ecclesiastical officers in the Council.

Lord Atholl, the last feudatory Lord of Man, did not sell all his rights to the Crown in 1765. In particular, between 1765 and 1827 the right to appoint the Lord Bishop, and the other ecclesiastical officers, lay with Lord Atholl and his successors. Between 1777 and 1793 the ecclesiastical officers were excluded from the Council on the basis that they were appointed by a subject, rather than the Crown. In 1793 the then Lord Atholl was appointed as Governor, as part of a settlement with the family over Revestment, and at the same time the ecclesiastical officers were readmitted to the Council. This anomaly was dealt with by purchase of the right to appoint ecclesiastical officers in 1827. Lord Bishop William Ward, who served as Lord Bishop from 1828 to 1838, was the first to be appointed by the British Crown.

In 1866, two important and intermeshed constitutional reforms took place. Firstly, a degree of autonomy was restored to the Isle of Man through an Act of Parliament which provided for increased Isle of Man Government control of financial matters.⁸ Secondly, as a *quid pro quo*, the House of Keys was transformed from a self-perpetuating oligarchy to a directly elected chamber. Although the principle of an elected Keys was implemented in 1867, the conception of the electorate was very narrow, with a franchise limited to adult males able to meet a high property qualification. The Isle of Man moved comparatively swiftly to female suffrage, however, with the House of Keys Election Act 1881.⁹

A previous Lieutenant-Governor of the Island, Lord Hope, had opposed the democratisation of the Keys because he feared that greater legitimacy would lead to a more assertive House of Keys, so that they would “claim far greater and more arbitrary power ... at issue with the British government and any Council consisting of Members nominating by the Crown”.¹⁰ With the move to an elected House of Keys, conflicts between the Keys and the Council intensified and took on a Manx versus Imperial nature.

⁷ P.W. Edge, “Sovereign/Lord? The enduring legal importance of Revestment”, *Proceedings of the Isle of Man Natural History and Antiquarian Society* XV, 110 (2017)

⁸ Isle of Man Customs and Harbours Act 1866.

⁹ On which see R Fyson, *The struggle for Manx democracy*, (2016) 217-248.

¹⁰ Hope to Fitzroy, 16 August 1853 (MNHL: Letterbook vi, f, 578-95).

In 1907 the House of Keys had petitioned the UK Home Secretary with a number of specific proposals for constitutional reform, including reforming the composition of the Council so that the majority of its members would be directly elected, with a minority nominated by the Crown.¹¹ In 1911 the Home Secretary appointed a Departmental Committee to consider these issues, led by Lord MacDonnell¹²

The McDonnell Report endorsed reform of the composition of the Legislative Council. They supported the idea of an elected element in the Council, but rejected direct election in favour of the Keys acting as an electoral college. They supported the retention of the Lord Bishop because of “his traditional connection with the Council and Tynwald, ... the ecclesiastical interests confided to his charge, and ... his respected and authoritative personality”.¹³ They did not, however, see a justification for retaining the Archdeacon and Vicar-General, and were concerned that the Council should be of moderate size.¹⁴

As a result, from 1919 the composition of the Council gradually changed. The Isle of Man Constitution Act 1919,¹⁵ removed the Archdeacon, the Vicar General, and the Receiver General. They were replaced with two members appointed for fixed terms by the Lieutenant-Governor, and four members elected by the House of Keys. A succession of reforms between 1961 and 1980 replaced ex officio and appointed members with members elected by the House of Keys. Since 1990 the Legislative Council has consisted of the President of Tynwald, who is elected by the members of Tynwald and sits ex officio as President of the Legislative Council; the Lord Bishop of Sodor and Man, who sits ex officio; the non-voting Attorney General, who sits ex officio; and eight Members of the Legislative Council (MLCs) elected for a fixed term by the House of Keys.

McDonnell did not, however, recommend changes to executive government, which remained in the hands of the Lieutenant-Governor until surprisingly late. After the Second World War an Executive Council composed of members recommended by Tynwald became increasingly powerful and autonomous. By 1986 members of ExCo were appointed by a Chief Minister nominated by Tynwald. In 1990 ExCo was renamed the Council of Ministers, who held office at the pleasure of a Chief Minister nominated by Tynwald. This latter point

¹¹ Petition of the House of Keys, 27th February 1907 (MacDonnell Report, Appendix I).

¹² Formally, *Report of the Departmental Committee on the Constitution etc of the Isle of Man*, (1911) London:HMSO.

¹³ *Ibid*, at 22.

¹⁴ *Ibid*, at 22.

¹⁵ Isle of Man Constitution Act 1919 s.6, 7.

should be stressed. Unlike in the UK, where the Prime Minister is appointed on the basis of their support in the House of Commons, in the Manx system the Chief Minister was appointed based on their support across Tynwald – including not only the directly elected MHKs, but the indirectly elected MLCs, the President of Tynwald, and the Lord Bishop of Sodor and Man.

The Lord Bishop sat as one member of a small chamber, constituting a considerably higher proportion of the Council than the combined Lords Spiritual in the House of Lords – more than 10%, as opposed to roughly 2% of the House of Lords. To a greater extent, then, changes in the power of the Legislative Council as a whole reflect changes in the power of the Lord Bishop. Before 1961, no Act of Tynwald could pass without the distinct consent of the Legislative Council. This became a central concern for the Keys in 1957, resulting in a Tynwald resolution asking the Lieutenant-Governor to set up a constitutional commission, which in 1959 resulted in the MacDermott Report.¹⁶ The MacDermott Report, produced by a commission led by the Chief Justice of Northern Ireland, Lord MacDermott, led to the Isle of Man Constitution Act 1961.

The 1961 Act introduced a special procedure whereby a Bill could become an Act of Tynwald without the consent of the Legislative Council expressed both in their own Branch, and in Tynwald Court as a whole.¹⁷ This required not only a majority or, in some cases, a special majority in the House of Keys, but also that the Council should have repeated opportunities to pass the Bill themselves. Originally, these provisions could only be triggered if the Council had failed to pass the Bill after two years, but in 1978 this was changed to one year.¹⁸

These provisions were only used once. The Licensing (Sunday Opening) Bill 1979 came before the Legislative Council after all the requirements for dispensing with their consent had been met. The Council rejected it for a final time, knowing that it would become law in any case, on January 9 1979. The Bill failed with a 4:5 split. There was an argument put that the Council should accede to the inevitable, but it did not convince, perhaps in part because it concerned the moral issue of drinking on Sunday. Mr Kneale, for instance strongly

¹⁶ See J Belchem, “Constitutional development and public policy, 1900-79” in J Belchem (ed.), *A New History of the Isle of Man Volume 5: The Modern Period 1830-1999* (2001) at 163-164.

¹⁷ Isle of Man Constitution Act 1961 s.10(1).

¹⁸ Constitution (Amendment) Act 1978.

felt that “even though we know it is an academic exercise now that the Bill will go through, we should, if we feel that our opposition is right and justified, still maintain it”.¹⁹

Perhaps more typical may be the approach of the Council to The Isle of Man Constitution (Amendment) Bill 1964, which became law as the Isle of Man Constitution Amendment Act 1965. The Bill was intended to remove the Second Deemster from the Council. It had been rejected by the Council in two previous sessions, and was reintroduced having satisfied all the requirements for dispensing with Council assent. The Council considered it again, and, apart from a very minor amendment, acquiesced in the law. The Attorney General, who voted with the 5:3 majority captures a mood which must have been present in the Council in this circumstance: “I heartily disagree with the matters proposed in the Bill. I am nevertheless glad in a way that the Bill has been passed so that it will not become law by default, and I beg to move that the Bill do pass”.²⁰

A key feature of the 1961 style mechanism for bypassing the Council was that the Council would always know whether the mechanism was live. In 2006, however, the Constitution Act 2006 subtly, but significantly, changed this. The Act simplified the 1961 mechanism to allow the House of Keys to dispense with the consent of the Council to a Bill which had not been passed by the Council within 12 months after being sent to the Council from the Keys. This override was triggered by the passing of a motion with a special majority of 17/24.²¹ Unlike the earlier mechanism, the Council has no opportunity to acquiesce in the legislation once the Keys has done all it needed to do in order to trigger the override.

THE LISVANE REVIEW.

The Lisvane Review²² had its origins in a 2015 motion which envisaged a referendum on establishment of a directly elected, unicameral, Tynwald.²³ This specificity did not survive early debates in Tynwald, and the Lisvane Review sought to examine the functioning of the branches of Tynwald, to assess their efficacy, to consider the scrutiny structure, and to make recommendations for reform if necessary.

Lord Lisvane, once appointed, acted with commendable dispatch and openness. He took oral evidence for two weeks in summer 2016, with all 33 witnesses livestreamed,

¹⁹ Report of Proceedings of the Legislative Council, 9 January 1979, at C47.

²⁰ Report of Proceedings of the Legislative Council, 29 March 1965, at 956.

²¹ Constitution Act 2006 s.1.

²² GF No.2016/0047; available online at <https://www.gov.im/media/1352029/review-of-the-functioning-of-tynewald-gd-2016-0047.pdf> (accessed 7/12/2018), hereafter Lisvane.

²³ Proceedings of Tynwald Court, 19 May 2015, 132(12), at 1726.

recorded in Manx Hansard, and transcribed online. He took a further 51 written submissions, and also made extensive use of Manx primary sources although, with the exception of the position of the Lord Bishop of Sodor and Man, not the academic literature.

Lisvane recognised that one of the Manx drivers for unicameralism was “a dislike of the present status and mandate of Legislative Council”.²⁴ A substantial discussion of the role of the Lord Bishop of Sodor and Man concluded that no serious change was needed – striking given the recurrent calls for the Lord Bishop to lose their place in LegCo or, as a less radical alternative, become like the ex officio Attorney General with a voice but not vote.²⁵ More broadly, however, Lord Lisvane recommended that LegCo should not vote on taxation or appropriation, that members should not normally be part of the executive, and that they should not vote on the appointment of the Chief Minister.²⁶

The Lisvane Review was published in April 2016, with Tynwald’s formal consideration beginning in June 2017. The place of the Lord Bishop on that Council came into question despite Lord Lisvane recommending no change to the position of the Lord Bishop. A motion to have the vote of the Lord Bishop considered by the Select Committee examining Lisvane was vetoed by the Council, despite a clear majority in the Keys. The Select Committee secured from Tynwald a clarification of its remit, confirming that it should consider whether the Lord Bishop should retain his vote.²⁷

The Select Committee recommended that the Lord Bishop should retain his vote, and have the same rights and duties as other members of Tynwald. Contrary to this recommendation, Mr Shimmins proposed an amendment that would remove the vote of the Bishop in both Legislative Council and Tynwald. Voting was very close. Mr Shimmins’s amendment was lost, with a very close vote in the Keys (11 to 13), and in the Council (3 to 5, the Lord Bishop having left the Chamber at the point of voting). The recommendation of the Select Committee was passed with the same ratio – indeed, with exactly the same members losing the vote in both cases.

²⁴ Lisvane, at 24

²⁵ Lisvane, at 35-37.

²⁶ Lisvane, at 33-34.

²⁷ Select Committee on the Functioning of Tynwald, *Interim Report of the Select Committee on the Functioning of Tynwald: Remit and Work Plan*, (July, 2017).

While the Lord Bishop did not lose his vote in the Council as a result of this vote, other constitutional developments have led him to lose his vote in appointing the Chief Minister.

In 2016 Tynwald had met to appoint a new Chief Minister. Although the appointment would be by a majority of the voting members of Tynwald together, for the first time this sequential, with the vote of MHKs taken first, and then the vote of the Legislative Council taken “once the results in the Keys have been announced”,²⁸ with an expectation that the Council would vote with the majority of the Keys.²⁹ No candidate secured a majority of the vote of the Keys, with Mr Quayle the frontrunner with 12 votes.³⁰ Members of the Legislative Council were then called upon to vote, and Mr Quayle received all 9 votes, including that of the Lord Bishop, giving him the majority needed to be elected as Chief Minister. Appointing a Chief Minister who had not commanded a majority in the elected Keys was not uncontroversial.³¹

Lord Lisvane had recommended that members of the Legislative Council should not vote on the appointment of the Chief Minister. The Select Committee intended to report on the issue in February 2018, but constitutional change overtook them.

In 2016 the House of Keys had passed a Bill to exclude members of the Legislative Council from the vote on the Chief Minister.³² The Bill had failed to pass in the Legislative Council, with the Lord Bishop one of only two in the Council who supported the Bill. In 2017 a motion was proposed to allow the Bill to proceed in any case.³³ The vote was close, with precisely the special majority of 17 needed, but resulted in both the use of the new style override for the first time, and a significant change in the body which approves, and can choose to stop approving, of the Chief Minister.³⁴

The loss of a role for the Lord Bishop for the appointment of the head of the Manx government has not proven controversial, possibly because the change did not single out the Lord Bishop in particular, or because that role was unusual even when compared with other

²⁸Proceedings of Tynwald Court, 4 October 2016, 134(1), at 225-6 per the President.

²⁹Proceedings of the House of Keys, 19 December 2017, 137(7) at 1230 per Mr Quayle.

³⁰Proceedings of Tynwald Court, 4 October 2016, 134(1) at 597 per the President.

³¹ See for instance https://www.energyfm.net/cms/news_story_450339.html (accessed 7/12/18).

³² Council of Ministers (Amendment) Bill 2016.

³³For the full debate same Proceedings of the House of Keys, 19 December 2017, 135(7), 308-326.

³⁴ Council of Ministers (Amendment) Act 2018 s.2; amending Council of Ministers Act 1990 s.2.

British Islands jurisdictions. The possibility of the Lord Bishop losing their vote, or seat, in the Legislative Council was much more controversial.

DEBATING THE PLACE OF THE LORD BISHOP IN THE COUNCIL.

An earlier study of the work of the Lord Bishop has stressed the distinctive voice of the Lord Bishop in Tynwald.³⁵ This distinctive voice was described by a number of contributors in the key debate in ways consonant with this earlier research.³⁶ Mr Ashford, for instance, thought that “the Bishop does have a role in speaking and representing all faith groups”, although this did not justify him having a vote.³⁷ Mrs Corlett saw him as “a steadying view and ... a moral compass”.³⁸ The Chief Minister combined these two threads, seeing the Bishop as both “representing a multitude of faiths” and “maybe giving a different tangent, a view on our debates ... a different slant on life which personally I value immensely”.³⁹ Valuing the Bishops voice was common in those who supported his retaining his vote, but MHKS such as Mrs Beecroft drew a sharp distinction between the Bishop’s voice, which she valued, and his vote, which she thought was inappropriate.

Other MHKS were critical of the vote of the Bishop as undemocratic and, a closely related point, an anachronism. Mr Shimmins for instance, while valuing the counsel and pastoral advice of the Bishop, was critical of his vote as “a throwback to ... less enlightened times”, but again saw the contribution as analogous to the Attorney General: “the Bishop would also provide wise counsel and pastoral advice”.⁴⁰ Mr Hooper, who is noted for his consistent emphasis on democracy as an essential underpinning for involvement in the legislature, called for the removal of the vote as removing “the last vestiges of feudal rule from this Hon. Court”. This is an interesting echo of the late eighteenth century controversy over the role of ecclesiastical officers appointed by a feudal Lord to the Council. Other members focussed on the lack of even indirect election by the Manx electorate, particularly where the decision of directly and indirectly elected members of Tynwald failed as a result. Ms Edge, for instance, noted that on a number of occasions the vote of the Lord Bishop had been decisive, and found it difficult to comprehend why, given other voting members were

³⁵ PW Edge and CCA Pearce, ‘The work of a religious representative in the a democratic legislature: A case study of the Lord Bishop of Sodor and Man in Tynwald, 1961-2001’ (2004) 9(2) *Marburg Journal of Religion*.

³⁶ For the principal debate, see Proceedings of Tynwald Court, 21 February 2018, 135(7).

³⁷ *ibid* at 2524-2528.

³⁸ *ibid* at 3590-3591.

³⁹ *ibid* at 4164-4170.

⁴⁰ *ibid* at 2779-2785.

elected, this should be the case. She was not alone in arguing that every vote in Tynwald needed some form of electoral legitimacy.⁴¹

The antiquity of the Bishops place in the Legislative Council, of course, could be read other ways. Mr Cregeen for instance rejected any arguments based on parallels with other countries, seeing it as “chipping away at the things that make us special”. Mr Boot stressed the “tradition and the mythology that goes with it” of Tynwald – “I am not trying to undermine it all the time and [do not] believe that we will be a better democracy if we destroy some of the traditions that we have”.

Another contested ground was the Manxness of the appointment of the Bishop – a concern related to democracy but distinct, particularly during the 20th century reforms to the Legislative Council. A non-democratic appointment may be accepted despite its undemocratic nature, but rejected because of its foreignness. This was an issue discussed from different angles by a number of contributors. Mr Quayle noted that the appointment process of the Lord Bishop had involved consultation with him as Chief Minister. Mrs Caine on the other hand, thought that “no one on this Island has any say in who is appointed Bishop”. Mr Peake noted that the Lord Bishop was “chosen by one religious organisation with little public influence or accountability”, in contrast to the directly and indirectly elected Members of Tynwald. Mrs Caine, self-identifying as a person of no faith, did not “see the need for a UK-appointed Bishop to be involved in our parliament”.⁴²

A different theme, however, grew to dominate the decision as the debate developed. The earlier study identified the expertise of the Lord Bishop over Anglican ecclesiastical issues as an important part of the understanding of the contribution of the Lord Bishop. This link between the ecclesiastical and the political came to dominate the decision.

We see it first during the discussion of the remit of the Committee. Mr Malarkey warned that “probably a lot of the new Members do not actually realise that if we take the vote off the Bishop we will not have a Bishop”.⁴³ Mr Corkish feared that any loss of the Diocese would result in damage to “the standing of nationhood and the status of our Island”.⁴⁴ Mr Malarkey emphasised that it had been made very clear to past Chief Ministers

⁴¹ See for instance Mrs Corlett: “This for me is not about religion or faith, but it is about something just as fundamental: it is about democracy”, *ibid*, at 2102-3.

⁴² *ibid* at 3319-3320.

⁴³ *ibid* at 3181-3182.

⁴⁴ *ibid* at 2912-2916.

that if the Bishop lost his vote, the Bishopric would be abolished. This was not an entirely new line of argument in the Manx constitutional debate, but the battleground has shifted slightly. In 1982, for instance Mr Kneale argued that the Bishop should remain on an otherwise directly-elected Legislative Council, albeit without a vote, as to do otherwise would encourage those within the Church of England who had been seeking the abolition of the Diocese “for generations”.⁴⁵ In a separate debate in the same year, Mr Radcliffe tied fears of the abolition of the Diocese on financial grounds if the Bishop were to be removed from Tynwald into a desire for greater Manx independence.⁴⁶ In these earlier debates, however, the threshold for the Bishop’s survival was seen as sitting in Tynwald rather than voting.⁴⁷ By 1994, a change to the vote was sometimes seen as also raising this issue. Addressing a proposal that the Bishop should lose the right to move motions and to vote in Tynwald, although not in the Legislative Council sitting separately, Mr Lowey feared that the change would endanger the future of the Diocese.⁴⁸ Although other legislators disagreed – for instance Mr Cannell and Mr Quine – in 2001 Mr Singer referred to “an authoritative source” who had indicated that removing the vote would endanger the survival of the Diocese and lead to amalgamation with an English Diocese.⁴⁹

Some legislators considered loss of the Diocese as a price worth paying for reform. Mr Shimmins, for instance emphasised the parallel with the Attorney General as a non-voting member of the Legislative Council and was prepared to accept the loss of the Bishopric if that were to follow from the loss of the Bishop’s vote. Others were sceptical that the Diocese would be lost, with Mr Hooper quoting an academic blog drawing parallels with the Dean of Jersey as indicating that losing the vote would not necessarily result in losing the ecclesiastical office.⁵⁰ Although the Jersey argument for a voice without a vote had some traction, references to other jurisdictions sparked surprising hostility from other members.

When the Committee considered the substantive issue,⁵¹ the continued existence of the Diocese was central to their thinking. The report emphasised what the Lord Bishop added

⁴⁵ Constitution (Legislative Council) Bill, Proceedings of the House of Keys 4 May 1982, at K474.

⁴⁶ Question to the Executive Council, Proceedings of Tynwald Court 14 December 1982.

⁴⁷ For instance in Resolution to adopt Second Report of Select Committee on Representation of the People, Proceedings of the House of Keys 25 January 1983..

⁴⁸ Report on Reform of the Legislative Council, Proceedings of Tynwald Court 13 July 1994

⁴⁹ Constitution Bill, Proceedings of the House of Keys 23 January 2001.

⁵⁰ Peter W Edge, “Tynwald and the Bishop of Sodor & Man” in Law & Religion UK, 28 June 2017, <http://www.lawandreligionuk.com/2017/06/29/tynwald-and-the-bishop-of-sodor-man/> (accessed 7/12/2018).

⁵¹Select Committee on the Functioning of Tynwald, *Third Report*, (February, 2018).

to the Island: “the combination of the presence of the Lord Bishop on the Island and the continuing existence of the Diocese is a matter of great importance to the Island in general for social and community reasons; the Lord Bishop represents a significant part of our continuing heritage. The existence of the Diocese is ... a continuing part of the Island’s cultural heritage”. The report identified as a “key question” whether the Diocese would cease to exist if the Lord Bishop were to lose his vote but remain in Tynwald, and had written to the Archbishop of York to clarify this point.

The Archbishop replied on the 14th of November.⁵² In his reply the vote is described as:

a matter of great importance to the Church of England. It mirrors the position of the Diocesan Bishops who sit in the House of Lords ... and ... reflects the nature of the spiritual tradition of the Isle of Man. A voice on the Legislative Council without a vote would seem to me to be a very weak position. It would be akin to the position of the Deans in the Channel Islands, who are allowed to speak but not to vote in the Parliament. You may be aware that the Channel Islands do not form a separate diocese and have no diocesan bishop; instead they are incorporated into an English Diocese.

The Archbishop had been informed by the Lord Bishop that “the absence of a spiritual vote in Tynwald will cause an issue for many residents of the Island, particularly where voting is required on spiritual issues ... The Bishop serves on Tynwald as a focus for all faith groups on the Island and his voting role on the Legislative Council is testimony to the fact that Tynwald takes seriously the spiritual nature of the Island’s identity, and its moral and ethical responsibility for the life of its people”. He concludes: “If the Lord Bishop’s vote were to be removed, in my view this would significantly undermine the case for Sodor and Man being a separate diocese”.

As a result, the Committee concluded that loss of the vote would lead to loss of the Lord Bishop and downgrading of the Diocese to a part of another Diocese based in England: “We believe that this would have a detrimental impact on the Island’s status and influence”. The Committee noted other advantages to the Lord Bishop’s vote, in particular minimising the need for the President to exercise their casting vote, and an increase in the ability to meet

⁵² His letter is reproduced *ibid*, Appendix One.

quoracy during MLC vacancies. It is clear, however, that this linkage between the vote and the Diocese was crucial to their conclusion that the Lord Bishop should retain his vote.

From the debate which followed the Report,⁵³ it is equally clear that this conclusion was important to a number of members. Mr Malarkey, for instance, confessed to having been undecided on the question of the vote, but he was not undecided on whether the Isle of Man should have a Bishop. Others remained accepting of the loss of the Diocese, with Mr Shimmins categorising it as “a decision for the Anglican Church, not this Hon Court”;⁵⁴ and Mrs Caine anticipating her reaction to the loss of the vote resulting the loss of the Diocese: “I will experience a very small pang of regret for the loss of tradition, but give a silent whoop of celebration at the evolution and modernisation of this parliament”.⁵⁵

The Lord Bishop did not vote on his own vote, choosing instead to leave the Chamber before the vote. He did, however, make a substantial contribution to the debate.⁵⁶ The Lord Bishop emphasised the importance of the Diocese to Christianity –“the diocese is the basic unit of the Christian community, not the parish but the Diocese”. He saw Jersey and Guernsey as fragile because they were “geographically distinct but looked after pastorally from somewhere else”. He noted discussions over the continued existence of the Diocese during the creation of the Diocese of Liverpool in 1875 and suggested that if this were the case, a visit by the Bishop every five or six months might be the result.

Although the Lord Bishop was careful to distance himself from any suggestion that other Members of Tynwald were unable to contribute a moral dimension, he did stress a special role for the Church: “With the best will in the world the Church has in the past cultivated and always wished to cultivate a moral and ethical understanding that many people do not have time to cultivate for themselves, and I think that is what I would regard myself as bringing to the Legislative Council”. This is not an uncontroversial position, but in constitutional terms it is particularly interesting as the Lord Bishop emphasised a special expertise, and perhaps inadvertently moved the position of the Lord Bishop in Sodor and Man closer to that of the (non-voting) Attorney-General than might have been anticipated.

The Lord Bishop also stressed Manx involvement in his appointment. Although recognising this was not the same as being elected, he emphasised that there had been a

⁵³ Proceedings of Tynwald Court, 21 February 2018, 135(7), 835-879.

⁵⁴ Ibid, at 1270.

⁵⁵ Ibid, at 1505-6.

⁵⁶ Ibid, at 2145-2319.

lengthy consultation and that members of the Manx Church had been appointed to the Crown Nominations Commission. He did not mention the discussions with the Chief Minister which the Chief Minister recounted.

He saw a strong link between establishment and his place in Tynwald: “if one has establishment of the Church then a corollary of that is the involvement and engagement of the Church within the everyday processes of legislation and government”. Similarly stressing Anglican distinctiveness, he referred to the importance of the parochial system: “I am interested in everyone who lives on the Isle of Man and any member of my clergy is interested directly and completely in anyone who lives their parish. It has to do with pastoral care which is exemplified, as I say, through representation in the structures of government, of education, which is why we have hospital and university chaplains for example, and health care and elsewhere”.

Finally, he saw an organic link between Christianity and the Manx (and UK) states: “the democratic process on which we rightly set so much store has been generated by the Judeo-Christian tradition and for that reason it seems to me that to separate those two things is a complex and complicated thing to do”, referring on a number of occasions to the “spiritual deposit and tradition” of the Manx Church.

MATTERS FOR THE NEXT DEBATE?

As noted, the vote continuing the place of the Lord Bishop as a full, voting, member of the Legislative Council was a close one. It was particularly close in the dominant House of Keys. A number of MHKs indicated that to lose the vote, and the Lord Bishop, was irreversible, but that a decision could be made to do this at a later date, Mr Malarkey for instance encouraged undecided members to keep the vote for the moment, and “wait for two or three years”.⁵⁷ Others called for the Church itself to consider whether the vote was itself an obstacle to a voice. Mr Cannan, for instance, suggested that the debate was a good moment for the new Bishop to reflect on whether “he is best serving the interests of the community, and of the Church and of the respective faiths, by being inside this Court” or from outside.⁵⁸

The earlier study found that individual office-holders varied considerably in their contributions to the legislative process. The new Lord Bishop, Peter Eagles, was installed on 30 September 2017, just in time for the final debate on whether his office should carry a vote

⁵⁷ Ibid, at 2397.

⁵⁸ Ibid, at 1699-1700.

in the Legislative Council. His contributions to the debate over his vote indicated an organic link between the Manx state and the Manx church, the benefits to the Manx Church of a distinct Diocese, his claim to a special expertise in moral and ethical understanding, and his commitment to everyone in the territory of the Isle of Man as part of his commitment to pastoral care. His highest profile contribution since has been during the passage of the Abortion Bill.

Abortion law in the Isle of Man was considerably more restrictive than that of England and Wales, even after a substantial piece of legislation in 1995,⁵⁹ which led to Manx women travelling to England to privately secure lawful terminations.⁶⁰ This high profile piece of legislation was, as may be expected, tremendously controversial, but as well as building on a public consultation which indicated a very strong majority for reform, it had secured very strong support in the House of Keys, being approved by a margin of 22 to 2.

At the First Reading in the Legislative Council,⁶¹ the Lord Bishop was concerned that the Bill “takes us into a new category and one which sits possibly outside and beyond the norms of liberal Western understanding, for all that it may be compliant with human rights”.⁶² At the Second Reading⁶³ the Lord Bishop emphasised his special duties: “to have a concern for everyone who lives on this Island”; and “to care for people of faith, for people of all faiths to some degree”.⁶⁴ He was very involved in the debate, going so far as to call a number expert witnesses to answer questions from himself and others. Although not categorised as such, the MHK who had led the passage of the Bill was called as a rebuttal witness by an MLC, as was an employee of the Department of Health and Social Care. The Third reading secured the support of 8 members.⁶⁵ The only member voting against the Bill was the Lord Bishop, who tabled a very substantial number of amendments to be considered. These included reducing a number of time limits under the legislation, and limiting abortion on the grounds of disability, issues which had been debated in, and rejected by the House of Keys. As well as disagreeing with statements of fact made in the Keys, the Lord Bishop was concerned at “moral slippage”,⁶⁶ and indicated he would vote against the Bill because it did

⁵⁹ See P.W. Edge, "Reforming Termination of Pregnancy" [1995] 3 Web Journal of Current Legal Issues.

⁶⁰ 88 women travelled from the Isle of Man to England for terminations in 2016.

⁶¹ Proceedings of the Legislative Council, 22 May 2018, 135(16) at 246-257.

⁶² Ibid, at 517-519.

⁶³ Proceedings of the Legislative Council, 12 June 2018, 135(17) at 261-327.

⁶⁴ Ibid, at 202

⁶⁵ Proceedings of the Legislative Council, 26 June 2018, at 331-379.

⁶⁶ Ibid, at 1885.

not show “that hallmark of the liberal society that enables us to respond graciously and compassionately to all, including those who are seriously disabled”.⁶⁷ Challenged on his reference to moral slippage, he expanded in his final remarks that “there is scope for the provision for abortion to become expedient and for the underlying issues of human relationships, of poverty, of education and of deprivation to be given less emphasis than they require”.⁶⁸

Unsurprisingly, his intervention was seen as controversial, for instance being described by the Campaign for Abortion Law Modernisation (CALM) as “cynical repeats of previous, failed, attempts to restrict the scope of the Abortion Reform Bill”.⁶⁹ The Abortion Bill alone gives an important example of Bishop Eagles as an active member of the Legislative Council, prepared to return to issues of principles decided by substantial majority in the Keys, and prepared not only to contribute to the discussion of contentious issues of principle, but to shape that discussion by the calling of expert witnesses.

The closeness of the vote, and the willingness of the new Lord Bishop to pursue an assertive legislative agenda even when contrary to a substantial majority of the Keys, make it at least possible that the issue of his role in the Legislative Council will be returned to in the medium term. In that case, there needs to be closer scrutiny of the arguments from the Archbishop and the Lord Bishop around Diocesan status and the role of the Lord Bishop.

Firstly, the Archbishops’ categorisation of the position of the Lord Bishop lacks nuance. It is inaccurate, for instance, to say that the position of the Lord Bishop “mirrors” that of the Lords Spiritual. As noted above, the work of Legislative Council is not the same as that of the House of Lords – most strikingly illustrated by his role in electing the Chief Minister following the last election. Neither is the impact of the Bishop on their small chamber the same as the impact of the Lords Spiritual – even taken as a group – on their chamber. The discussion of the Select Committee on quoracy makes this clear. Nor is it clear that the Archbishop reflected on the very different history of “the nature of the spiritual tradition” in the Isle of Man and in England. A predominantly Christian tradition may be what is meant, but within that broad theme, there are significant differences between the Manx and the English context. In particular, the place of Methodism in the Manx scene is

⁶⁷ Ibid, at 1895-6.

⁶⁸ Ibid, at 1946-1949.

⁶⁹ Quoted in <http://www.iomtoday.co.im/article.cfm?id=41123&headline=Bishop%20under%20fire%20over%20abortion%20bill%20moves§ionIs=news&searchyear=2018> (accessed 28/9/18).

important for understanding of that tradition, for instance through the domination of the House of Keys by Methodist members in the second half of the 19th century (in contrast to the Anglican Council of the same period).⁷⁰

Similarly, the way in which the Lord Bishop serves as “the focus for all faith groups” is not detailed. The work of the Lord Bishop in representing a viewpoint beyond the Church of England is a recurrent theme in debates over the role, driven in the past by the position of an established Church of England in a majority non-Anglican country. A detailed study of the work of individual Bishops shows, perhaps unsurprisingly, that the way this work is undertaken varies from Bishop to Bishop.⁷¹ Bishop Nicholls in 1980, for instance, was concerned that Jewish and Muslim slaughter methods caused great distress to many people and was “different from the one used in (if I may use the words in the widest terms) a Christian community”. Bishop Attwell in 1986 expressed similar concern that a proposal might create problems “with regard to Muslims and Koranic law, where you can marry a girl at 12 and divorce is simply a male thing”. Bishop Jones in 2000 welcomed a clause exempting Sikhs from motor-cycle helmet rules as respecting them in a very sensitive way – although it may be worth noting that he had been entirely silent on that legislation, and was juxtaposing it with a discussion of summer opening of public houses, a concern closer to the Methodist interests more commonly raised by the Lord Bishop in the twentieth century. Bishop Jones in 2000 also took the view that, unlike the UK, the Isle of Man remained a Christian country, rather than a multicultural one. It will be interesting to see how the current Bishop ensures he represents all faith groups, particularly those with a tradition of tension with Christianity, such as contemporary paganism, and how he copes with representing a faith-based issue frankly incompatible with Anglican Christianity. The emphasis on a territorial role may be a sign of a universalism to be held in tension with his position as the leader of a minority faith, one defined by particular religious beliefs, in the Isle of Man.

Turning to the Committee, the report moves swiftly from their judgment that losing the vote would risk the Diocese, to finding that the impact on the Island’s status and influence was sufficient reason to retain the vote. Three issues should have been considered. Firstly, was there a significant difference between the status and influence of the Isle of Man and

⁷⁰ PW Edge and CCA Pearce, “Official religious representation in a democratic legislature; Lessons from the Manx Tynwald”, (2004) 46 *Journal of Church and State* 575, at 581-586.

⁷¹ PW Edge and CCA Pearce, ‘The work of a religious representative in the a democratic legislature: A case study of the Lord Bishop of Sodor and Man in Tynwald, 1961-2001’ (2004) 9(2) *Marburg Journal of Religion* at 14-15.

Jersey? Jersey had featured in the debate before it was invoked by the Archbishop. It may be that a reduction from a Bishop to a Dean within the Anglican structures would have a negative impact on the status and influence of the Island, but no evidence was given for this view. Secondly, is there something special about the status and influence conferred by an Anglican Diocese? Manx people are affiliated with a range of religious organisations, with a range of structural solutions to Manx distinctiveness. The Methodist Church, for instance, is structured as a single circuit, and a Methodist District in its own right. The Channel Islands are, similarly, a Methodist District (albeit consisting of a Jersey and a Guernsey Circuit). The Catholic Church, on the other hand, treats the Island as part of the Archdiocese of Liverpool; and Jersey as part of the Diocese of Portsmouth. The Latter Day Saints treat the Isle of Man as part of one of the six UK Missions. Finally, accepting loss of status and influence, how could that be weighed against the benefits of the loss of the vote identified by those seeking change?