



# **Religious representation in a democratic legislature.**

A case study of the Lord Bishop of Sodor and Man in Tynwald.

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## **Final Report**

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## Summary.

The Isle of Man is a largely autonomous territory of the United Kingdom Crown. It entered the territories of the Crown in the fourteenth century, but remained under the control of a vassal monarch, the Lord, until 1765. In that year the Crown 'revested' the regalities of the Lord into itself, and the British authorities exercised direct authority over the Island. From the mid-nineteenth century on, however, the Island regained an increasing level of autonomy, this time vested in the Tynwald – a body broadly analogous to the United Kingdom Parliament – rather than the Lord. Today the dominant constitutional body in the Island is Tynwald. Executive authority is largely exercised by a government drawn from its members, and commanding its support, while it exercises a plenipotentiary legislative authority over the jurisdiction.

Tynwald, although meeting regularly as a single body, is for most purposes divided into two Branches – a directly elected House of Keys, and the Legislative Council. The Council originated in the Lord's retinue of principal officials. Although the Council included ecclesiastical officers as early as 1614, it was not until after the Revestment of 1765 that this became established as the invariably practice. Throughout the nineteenth century the Council included the Lord Bishop of Sodor and Man, the Vicars-General, and the Archdeacon of the Diocese. In the early twentieth century the lesser ecclesiastical officers were removed, and the Council began to include a number of members elected by the Keys, as well as officials appointed by the Crown or the Governor. Throughout the twentieth century this element increased, until today the Council consists of nine members elected by the Keys, the Bishop, and the Attorney General who sits without a vote as a legal advisor.

Although the Bishop's seat and vote survived this major constitutional change, it was not uncontested. From 1958 on, reform of the Bishop's role was suggested – often but not invariably as part of a broader constitutional change – by individual members of Tynwald, Commissions, and Committees. The changes of 1980 left the Bishop as the last unelected member of the Council with a vote, and subject to intense scrutiny – most notably in 1981-3, 1992-4, and 2000-1.

A study of the work of the Bishop in Tynwald between 1961 and 2001 shows that his vote has been decisive on 53 occasions. Although demonstrating to some extent the significance of the vote, this does not properly delineate the nature of the Bishop's role, which requires detailed analysis of all debates concerning or involving the Bishop, rather than simply those where his vote proved to be decisive. Such an analysis shows that the Bishop was expected to contribute to debate in two major areas – moral issues and technical issues concerning the Manx Church. The voice of the Bishop in moral issues can be seen in debates concerning gaming, sex between men, abortion, and Sunday trading. In relation to the Manx Church, the Bishop took a lead role in ecclesiastical legislation before Tynwald, but also had a role in debates over church property, legislative ceremony, the nature of oaths, and prison Chaplains. Although proposals were put forward to limit the role of the Bishop to moral issues in particular, Bishops were entitled to, and did, contribute on a range of other topics. It is in these particular topics, however, that the Bishops were seen as having a special role.

As well as expectations as to subject matter, the Bishops operated within expectations as to their modes of contribution. The strongest of these is that the Bishop should not become entangled in party politics. There is also a strong expectation that the Bishop should represent the Manx Church and Christianity more generally, although this expectation does not seem to have been realised in relation to

non-Christian religions. There is some evidence that the Bishop is also entitled to use both secular and religious modes of argumentation, and that he should not expect to be the only religious voice in Tynwald, or even the uncontested voice of the Manx Church.

The study suggests an eleven point taxonomy for the analysis of religious representation in deliberate assemblies. Applying this taxonomy to the Bishop, and to the Lords Spiritual in Westminster, we see that religious representation in the two bodies is very similar, making lessons learnt from the Manx study applicable to consideration of reform of the House of Lords; and the broader literature on reform of the Lords Spiritual relevant to consideration of the Manx situation.

Analysing this form of religious representation first in a legal sense, it seems likely that such representation is permissible, but not obligatory, so long as the interests of unrepresented religious communities are not unreasonably compromised. The gender bar on religious representation in both legislatures may, however, be problematic. If international law, most immediately under the European Convention on Human Rights, gives a strong emphasis to the right to non-discrimination on the grounds of gender over the right to religious self-determination, the gender bar on the Bishops may be unlawful *per se*. It may be, however, that the Manx and English Church can discriminate in relation to its leaders, but not where this discrimination will be endorsed by the State in the composition of the national legislature.

Moving away from legal restraints on the composition of the legislature, a range of justifications for the role of the Bishop, and the Lords Spiritual, emerge from debates over the future of the role in the twentieth and early twenty-first centuries. Process arguments see the Bishop as improving the quality of the legislative and deliberative processes – for instance through his insulation from normal political processes. Public benefit arguments find a broader benefit to the Manx state or society – for instance safeguarding the continued existence of the Diocese of Sodor and Man. Community benefit arguments see benefits accruing to the Manx Church, or Manx Christianity more broadly – for instance through the oversight of ecclesiastical legislation.

We conclude from this study that the current model of religious representation in Tynwald is probably the simplest involving *ex officio* representatives that can be envisaged. A focus on this form of religious representative underplays the extent to which other spiritual voices can be heard in the chamber. Although other legislators speak with a spiritual voice, the Bishop does have a distinctive role. He contributes a Manx Christian perspective to debates on moral issues, and functions as a technical expert on the Manx Church. The broader idea of the Bishop as representing religion generally, including non-Christian faiths, has not been fulfilled in relation to communities outside of interdenominational Christianity. International law provides few limits on the choices of Tynwald as to religious representation, although the gender limit on the Bishop may be problematic, and a variety of justifications for the role of the Bishop emerge from debate. It may be artificial, however, to seek a single justification for his role – his legitimacy may derive from the cumulative effect of several grounds, each of which could be applied to others, none of which combine in any other single office.

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# **I: Introduction.**

## ***1.1 The project.***

The principal purpose of this project was to explore the working of ex officio religious representation in a democratic legislature. By studying in detail the work of the Lord Bishop of Sodor and Man in the Manx Tynwald we hoped to illuminate such representation more broadly, informing the debate on the future of such representation in both the Isle of Man and the United Kingdom.

Our approach to this study is essentially tripartite. Firstly, we seek to place the context of the Bishop's role in the legislature within the broader frame of Manx constitutional and ecclesiastical law and history. This can be found in Chapters One and Two of this report. Secondly, we analysis the interplay within the legislature to provide insights into the way in which the Bishop fulfils, and is expected by other members to fulfil, his role in Tynwald. In contrast with important earlier work on the Lords Spiritual in Westminster, our primary focus is on in-depth, qualitative analysis of the debates rather than a primarily quantitative analysis of words spoken and votes made. This analysis can be found in Chapter Three of this report. Finally, we reflect on the Manx experience more broadly in terms of both law and policy. We make use of the earlier analysis to develop a taxonomy of religious representation, a taxonomy which shows the close similarities between the Manx and United Kingdom position. We then consider the legal limits upon Tynwald's choices in relation to the future of religious representation, before concluding with a critical summary of the main justifications which can be put forward for the role of the Bishop. This broader reflection can be found in Chapter Four of this report.

The remainder of this chapter introduces the essential Manx context for this study, including the development of the Manx constitution, and the changing religious context.

## ***1.2 Demographic outline<sup>1</sup>***

The Isle of Man is located in the centre of the Irish Sea, roughly equidistant between England, Ireland, Scotland and Wales. Its 227 square miles now hold a population of around 76,000, over a third of which lives in the capital, Douglas.

The traditional Island industries of farming, fishing and mining gave place by the early twentieth century to a flourishing tourist trade, boosted by the institution of annual workers' holidays in north-western England. Two World Wars cut off the supply of tourists, hitting the Manx economy hard despite British government payments in respect of enemy alien internment camps on the Island. Tourism recovered in the later years of the twentieth century, but it was now becoming practical to take holidays further afield. To rescue the economy, divergence between tax and financial regulation regimes on the Island and in England was exploited to attract to the Isle of Man first wealthy individuals seeking to minimise capital taxes, and more recently – with considerable success – the offshore financial services industry.

Employment opportunities on the Island, coupled with low direct taxation, now attract a steady influx of residents from both sides of the Irish Sea as well as from

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<sup>1</sup> See further V. Robinson and D. McCarroll, *The Isle of Man: Celebrating a Sense of Place*, (Liverpool: Liverpool University Press, 1990).

the broader European Union. The current population compares with around 40,000 at the Island's first census in 1821, which rose to some 55,000 in late Victorian times, fell to slightly over 50,000 for most of the early twentieth century, reached a nadir of 48,000 in 1961 and has risen steadily ever since.<sup>2</sup>

A work permit system has been in operation for half a century, and residence control legislation is in place though not yet operative. For higher education, broader employment opportunities or city life, it is necessary to leave the Island, which makes for considerable mobility especially in the younger section of the population. Slightly fewer than half the Island's inhabitants are now Manx-born, English and Northern Irish and Irish immigrants making up the bulk of the remainder.

The Manx tongue, related to Irish and Scots Gaelic was in common use until the nineteenth century by all save English incomers and a governing class centred on the former capital, Castletown.<sup>3</sup> A rapid decline then followed, due to the need to communicate with visitors to the Island, the use of English in the school system and a sense that English was the language of social advancement. By the 1930s Manx-speakers were rare and monoglot speakers almost unknown. Today English is the universal medium of communication. Awareness of the language's significance to the Island heritage has caused a resurgence of interest, however; Manx-medium schooling is available and 2.2% of the population now claim some degree of fluency.

### ***1.3 The development of the Manx constitution.***<sup>4</sup>

After the conquest of the Isle of Man by Harald Haarfager, King of Norway, in the ninth century, the Island stood at the intersection of three spheres of influence. Although the Kings of Mann were almost invariably bound in service to a more powerful monarchy, the fluctuations of this relationship suggest an independent, minor, power changing allegiance for its own advantage. Until 1266 the kingdom was Norse in character. In that year, following the death of the Manx King, the Kings of Norway and Scotland agreed that the Island should pass to the Kings of Scotland.

Between 1266 and 1399 the Manx Crown was held by a variety of English and Scots Kings and nobles. Although after 1346 the Scots ceased to press their claim to the Island. The earliest English magnates ruling the Island claimed to inherit the position of their Norse predecessors, so it was not until 1399 that the Kings of England unambiguously used the language, now controversial, of 'conquest'.<sup>5</sup>

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<sup>2</sup> Population statistics are derived largely from the Isle of Man Government website, <http://www.gov.im> (1/9/2002).

<sup>3</sup> Castle Rushen replaced the Island's original capital, Peel, at the accession of King Magnus Olafsson *circa* 1252. Douglas has been considered the capital since the Governor's move from Castletown in 1863.

<sup>4</sup> See further P.W. Edge, *Manx Public Law*, (Preston: Isle of Man Law Society, 1997) at 121-138; D.G. Kermode, *Devolution at work: A case study of the Isle of Man* (Farnborough, 1979); D.G. Kermode, *Offshore island politics: The constitutional and political development of the Isle of Man in the Twentieth Century*, (Liverpool: Liverpool University Press, 2001).

<sup>5</sup> Henry IV's declaration in Parliament on 30.9.1399 (James Gell, ed., *An Abstract of the Laws, Customs and Ordinances of the Isle of Man, compiled by John Parr, Esq.*, Douglas 1867, 25-26; Tomlin's *Statutes at Large* I, 519; 2 Bl Com 242) and the recitals in his grant of the Island to Henry Percy dated 19.10.1399 (Gell, 23) may be contrasted, in their 'conquest' terminology, from the declaration made by Edward III on 9.8.1333 disclaiming any royal interest in the Island (text in J.R. Oliver, ed.,

The conquest put an end to whatever freedom the Island had formerly enjoyed to determine its own external alliances. Lacking separate international personality, its only voice on the international plane was that of the English King. The King also claimed the freedom of a conqueror to change the laws of his territory, acting both within and apart from the English Parliament.<sup>6</sup> But in virtually all respects Manx customary law remained intact,<sup>7</sup> and separate development from England was assured when King Henry IV initiated the practice of granting the Island in fee to a trusted vassal, together with a generous package of ‘regalities’ that would allow the Manx King virtually exclusive dominance in Manx internal affairs. Although Thomas III later decided that it was more politic to style himself Lord of Man, the nature of the grant was not thereby changed.

Three seigniorial houses ruled the Isle of Man from 1399 to 1765 – those of Percy, Stanley and Murray. This period saw the emergence from the Island’s ancient ‘law-speaking’ assembly, Tynwald, of a legislative House of twenty-four; the coalescence of the Lord’s senior officers into a legislative Council; and finally the Lord’s acceptance that he should make new law only with the advice and consent of these two chambers. The name ‘Tynwald’ became attached to the new legislative structure, discussed at length below.<sup>8</sup>

During the eighteenth century, the distinctive constitutional position became an inconvenience for the British government. In particular, the Isle of Man was actively involved in trade categorised by the British government as smuggling. The British Prime Minister, Grenville, opened negotiations with the Lord to purchase such rights as would be “expedient to vest in the Crown, for preventing the pernicious, and illicit trade”.<sup>9</sup> By Act of Parliament, the regalities and custom duties of the Lord were “revested” in the Crown in 1765, with the remaining rights associated with the Lordship, such as patronages, landed property and manorial rights, similarly revested by 1826. It may be that this Revestment is best categorised as vesting “a legal entity - the Lordship of the Isle of Man - in a natural person - the then British Sovereign and his heirs”;<sup>10</sup> or alternatively as the surrender of the Lord’s rights to the heir of the original maker of the grant, King George III. On the first interpretation, Revestment saw the purchase of the Lordship by the British Sovereign, who continues to hold the Lordship today; on the second, Revestment saw the abolition of the Lordship, and the removal of any barriers that it posed to the legal authority of the British Crown.

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*Monumenta de Insula Manniae*, Douglas 1862, vol. II, 183). See further P.W. Edge, Manx Public Law, (Preston: Isle of Man Law Society, 1997) at 11-14; S. Sharpe, “Autonomy wrongly denied: The British Government and the Isle of Man” and “The Isle of Man – In the British Islands but not ruled by Britain: A modern peculiarity from ancient occurrences” in P. Davey and D. Finlayson (eds.), Mannin revisited: Twelve essays on Manx culture and environment (Edinburgh: Scottish Society for Northern Studies, 2002).

<sup>6</sup> *Calvin’s Case* (1608) 7 Co Rep 1a, 17b; Letters Patent of James I in 1609/10 (Oliver, *Monumenta*, vol. III, 121); *Campbell v. Hall* (1774) 1 Cowp 204, 213. See further P.W. Edge, Manx Public Law, op.cit., at 47-72.

<sup>7</sup> *Countess of Derby’s case*, Kelw Mich 14 Hen VIII, Bellaway 11 Hen VIII fol. 20. *Earl of Derby’s case*, 4 Co Inst 201, Scots State Papers 27/38; Oliver, *Monumenta*, vol. III, 92-93. See further P.W. Edge, Manx Public Law, op.cit., at 79-85.

<sup>8</sup> See p.18.

<sup>9</sup> See P.W. Edge, Manx Public Law, op.cit., at 129-130.

<sup>10</sup> P.W. Edge, Manx Public Law, op.cit., at 14.

Whichever of these is most accurate, the practical effect of Revestment was to place Manx matters more closely under the control of Great Britain.

Part of this control was effected through mechanisms already established in the Isle of Man, but with King George rather than Lord Atholl fulfilling the Sovereign's role. So, for instance, we see the King joining with Tynwald to pass Acts of Tynwald. We also see, however, mechanisms more clearly based in Great Britain being used in Manx affairs. So, for instance, it became much more common for the Crown to legislate for the Island in the Westminster Parliament. Executive and judicial authority was also concentrated in the Crown, acting chiefly through his Lieutenant-Governor<sup>11</sup> in Castletown and advised on Island government from 1782 by the British Home Secretary.

Nineteenth century Westminster legislation and improved communications both contributed to the Island becoming much more closely aligned than previously to English legal, social and economic developments. While the memory of its distinct heritage fostered a desire for local financial control and ultimately for political autonomy from Whitehall, popular grassroots movements inspired by England's example called for a legislative organ more closely resembling the reformed House of Commons. In 1866 an elective House of Keys replaced the former co-opted chamber of twenty-four, and in return Tynwald Court (the name given to the Council and Keys meeting in joint session) was empowered by Parliament to determine the use of a residuary portion of the Island's customs and harbour dues.<sup>12</sup>

This was, however, far from sufficient for the newly representative Keys, who wished to see native institutions taking a far greater share in the Island's government. There was little serious resentment of the position of the monarch, but there were other respects in which local autonomy could be increased.

Firstly, Parliament could cease to legislate for the Island, repealing its existing provision (especially fiscal) to clear the way for Acts of Tynwald. Since the middle of the nineteenth century the accepted sphere of Tynwald's legislation has increased at the expense of that of Parliament, which is now effectively restricted to issues with an external dimension.<sup>13</sup>

Secondly, the Manx could gain enhanced influence over such Acts if the English-appointed members of the Council were removed, or at least outnumbered. We discuss the composition and powers of the Council at greater length in the following chapter.<sup>14</sup> For the moment, it is worth noting that the Council was, particularly in the nineteenth century, seen as an important mechanism by which the British Government could veto undesired Manx legislation. As Vaukins noted: "[t]he powers of the Council were equal to those of the Keys and provided the Imperial Government with a simple but effective device for controlling affairs without having to exert its authority".<sup>15</sup> The Council during the nineteenth century was composed of officials appointed by the Crown.<sup>16</sup> During the twentieth century, the Council was

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<sup>11</sup> Following a common insular practice, 'Lieutenant-Governor' will generally be abbreviated in this study to 'Governor'.

<sup>12</sup> House of Keys Election Act 1866 (AT); Isle of Man Customs, Harbours and Public Purposes Act 1866 (AP).

<sup>13</sup> See P.W. Edge, *Manx Public Law*, op.cit., at 57-65.

<sup>14</sup> See p.18.

<sup>15</sup> J. Vaukins, *The Manx Struggle for Reform*, (M.M.A., 1984) at 15.

<sup>16</sup> Except for the period before the purchase of the final rights of the Lord, as discussed above.

transformed by the removal of almost all voting members appointed by the Crown or by Crown nominees, and the reduction of its powers relative to the Keys. The principal landmarks on the road to reform were 1919, when three *ex officio* Council members were removed and the first Keys' appointees added; 1961, when the Keys were enabled to override a Council veto on legislation and policy; 1969, when the indirectly-elected Council members came to outnumber the remainder; and 1980, when the Governor ceased to preside over the Council's primary legislative business.<sup>17</sup> Today the Council comprises nine indirectly-elected members and one Crown appointee, the Bishop; but tensions remain over its power to swing the outcome of important elections and delay implementation of the wishes of the directly-elected Branch.

Thirdly, influence could be similarly increased if the royal assent could be given on Manx advice, rather than upon the advice of English Ministers. It has not been unknown, even in the twentieth century, for the royal assent to be refused to Tynwald Bills, either because of conflict with Imperial government policy or because it was considered that the proposed Act would be beyond the powers of Tynwald.<sup>18</sup> In 1981 the Governor was authorised to signify the royal assent to a wide category of Bills, which usually follows, as a matter of course, consultation with a committee of insular officers and politicians.<sup>19</sup> In practice, however, every Bill passing through Tynwald is considered at an earlier stage in Whitehall, where advice may be given, reservations expressed and possibly the Governor instructed to reserve the Bill for assent in England under the older procedure.

Fourthly, the Crown's executive authority could be transferred to Manx institutions that would be capable of acting without the involvement of English Ministers. The transfer of executive government to Manx institutions has been largely completed as regards those functions formerly exercised locally through the Governor. It began gradually in the nineteenth century with the creation of statutory local authorities and the informal setting-up of specialist Boards, assisting in the Governor's functions but comprising members of Tynwald. The Boards became answerable to Tynwald in 1919.<sup>20</sup> After the Second World War, an advisory council was set up to assist the Governor in policy formation. Initially appointed by him after consultation with Tynwald, the Executive Council's composition became statutory from 1961.<sup>21</sup> Financial affairs, which had been directed by the Governor under Westminster legislation before 1958 and under an Act of Tynwald thereafter, passed to an insular Finance Board in 1976.<sup>22</sup> It was this last development, together with the vesting of most other gubernatorial executive functions in the Boards or the Executive Council in 1980,<sup>23</sup> that largely completed the transfer of executive power to the Island, since local organs were not susceptible to the instructions of Whitehall in the same way as the Governor had been.

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<sup>17</sup> Isle of Man Constitution Amendment Act 1919, Isle of Man Constitution Acts 1961 and 1969, Constitution Act 1980 (AT).

<sup>18</sup> See P.W. Edge, *Manx Public Law*, op.cit., at 34-38.

<sup>19</sup> Royal Assent to Legislation (Isle of Man) Order in Council 1981

<sup>20</sup> Isle of Man Constitution Amendment Act 1919 (AT)

<sup>21</sup> Isle of Man Constitution Act 1961 (AT)

<sup>22</sup> Finance Act 1958, Governor's Financial and Judicial Functions (Transfer) Act 1976 (AT)

<sup>23</sup> Governor's General Functions (Transfer) Act 1980 (AT)

The principal change during the 1980s was internal. It was considered that the dispersion of executive government amongst specialist Boards, held together by loose accountability to a legislature without party whips, was not productive of a strong strategic stance. This decade therefore saw a Chairman of the Executive Council, chosen by Tynwald, converted into a Chief Minister with the right to choose his colleagues on that Council, from 1990 renamed the ‘Council of Ministers’. The Boards became incorporated Departments, holding their own lands and property, and Ministers became entitled to act in their name.<sup>24</sup> Aside from approval of legislation and the budget, Tynwald’s main control over the insular executive is now the election of a Chief Minister after every quinquennial Keys’ election. Executive government, once (as in England) almost wholly an expression of the royal prerogative, has changed its character by the gradual encroachment of statute and then by transfer from the Governor to other agencies not associated directly with the Crown. Despite a formal appointment by Governor’s warrant, Manx Ministers do not advise the monarch directly and their very existence depends not on the prerogative but on an Act of Tynwald. Since the land used for public purposes was once almost wholly part of the Crown estate, Ministers would have no control over this if it had not earlier been transferred from the Crown – part-gift, part-purchase – to the statutory Government Property Trustees.<sup>25</sup>

Although these goals have been largely achieved in the last century-and-a-half, significant reminders of the Island’s dependent status remain.

Parliament has not entirely ceased to legislate for the Island. In 1958 its main fiscal legislation was repealed,<sup>26</sup> and in most areas recognised as domestic to the Island a convention has grown up that there will be no Westminster legislation save by Tynwald’s request. In many uncontroversial areas, the Manx wish to adopt reforms made in England has led to the twin practices of passing Acts of Tynwald closely imitating those of Parliament,<sup>27</sup> and of extending Acts of Parliament to the Island by Order in Council. The latter procedure, for which the Westminster Act in question usually gives authority,<sup>28</sup> leaves slightly less freedom to Tynwald but also relieves the pressure on Branch agendas. Extensions (and their removal) can be negotiated directly between United Kingdom and Manx politicians.

Less acceptably, the threat of invoking parliamentary legislative authority has enabled United Kingdom Ministers, when the policy stakes are perceived to be sufficiently high, to coerce Tynwald or other Manx institutions into their own reluctant action. In 1918 this forced the introduction of a Manx income tax; sixty

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<sup>24</sup> Constitution (Executive Council) (Amendment) Acts 1980 and 1986, Government Departments Act 1987, Council of Ministers Act 1990 (AT)

<sup>25</sup> The Trustees were incorporated by the Government Property Trustees Act 1891 and their assets distributed among Departments under the authority of the Government Departments Act 1987 (AT). Significant transfers of Crown land to the Trustees took place in 1923 (the historic sites such as Tynwald Hill, Peel Castle and Castle Rushen) and 1949 (prerogative rights to foreshore, royal minerals, *bona vacantia* etc.).

<sup>26</sup> Isle of Man Act 1958 (AP)

<sup>27</sup> See P.W. Edge, *Manx Public Law*, op.cit., at 26-29.

<sup>28</sup> General powers in this respect were conferred by the Isle of Man (War Legislation) Acts 1914 and 1939 (AP), but the more common practice is for specific Acts to provide for their own extension by Order. See K.F.W. Gumbley, ‘Extension of Acts of Parliament to the Isle of Man by Order in Council’ in (1987) 8 *Manx Law Bulletin*

years on, it led to the cessation of judicial corporal punishment; and in 1990 to the decriminalisation of some sex between men.<sup>29</sup> There is a precedent for the threat to be carried out if Tynwald stands firm: in 1967 the Order in Council procedure was used against Manx wishes to introduce new broadcasting offences into Manx law.<sup>30</sup>

The statutory character of the Manx executive accounts for the fact that it has no competence in fields for which Tynwald does not, in practice, legislate. Any armed forces of the Crown on the Isle of Man take their orders not from Douglas but from the Defence Council in Whitehall; now that there is no regular garrison, even the appointment of the Governor as their local commander has ceased. The First Lord of the British Treasury has advised on the appointment of the Island's Bishop since the Murray family surrendered its patronage of the See in 1827. Additionally, Whitehall and not Douglas furnishes the monarch's advisers in foreign affairs, and a non-binding consultation is the most that can be expected before the Crown undertakes international obligations in the Island's name. Because the enforcement of compliance with such obligations is among the key purposes for which the legislative authority of Parliament is still invoked, demands have at intervals been heard for the Isle of Man to represent itself on the international plane, thus completing a transition to full independence. But the cost and complexity of independence for such a small territory has hitherto held Island politicians back from pursuing this goal, and indeed a recent Ministerial report indicated that the optimum level of autonomy should already be considered achieved.<sup>31</sup>

#### ***1.4 The changing religious scene.***

The arrival on the Isle of Man of Irish converts, around the start of the fourth century, marked the beginning of the Island's Christian era, as revealed by the presence of a number of ogam inscriptions.<sup>32</sup> The subsequent Norse colonisation of the Island, given the well-documented organisational preferences of the Norse, suggests propitious circumstances for the development of a unified national church from the mid-tenth century, a supposition supported by available archaeological evidence.<sup>33</sup>

Under the Norse hegemony, episcopacy became the norm, and the Isle of Man was in due course placed under the metropolitan oversight of Trondheim. Much of the *jus commune* of western Christendom found its way into the Island's customary law. The Island was divided into seventeen parishes, an Abbey was founded at

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<sup>29</sup> See further P.W. Edge, Manx Public Law, op.cit., at 29-30.

<sup>30</sup> By extension of the Marine etc. Broadcasting (Offences) Act 1967, inspired by the activities of the 'pirate' station Radio Caroline.

<sup>31</sup> *4th Interim Report of the Council of Ministers on Future Constitutional Objectives – The Implications of Independence*; TC 22.11.00. [Footnote references in this study to *Debates in the Manx Legislature (Hansard)* are given by date of the debate together with the forum, abbreviated as follows: TC = Tynwald Court, LC = Legislative Council, HK = House of Keys.]

<sup>32</sup> P.M.C. Kermode, Manx Crosses, (London: 1907); C. Swift, Ogam stones and the earliest Irish Christians, (Maynooth: 1997).

<sup>33</sup> J. Graham-Campbell, "The early Viking age in the Irish Sea area" in H.B. Clarke et al, Ireland and Scandinavia in the Early Viking Age, (Dublin: 1997), at 104-130; A.M. Cubbon, "The Archaeology of the Vikings in the Isle of Man", in C. Fell et al (eds), The Viking Age in the Isle of Man: Selected Papers from the Ninth Viking Congress, (London: 1983) at 13-26.

Rushen, and the episcopal See was endowed with lands and tithes that made the Bishop an economic power in the Island. By the date of the English conquest, both Bishop and Abbot were considered ‘barons’, indeed the only Manx Barons, and paid fealty for their estates to the King’s new tenant-in-chief.<sup>34</sup>

The Lord’s right to appoint the Bishop meant that, from the fifteenth century onwards, the See was not infrequently occupied by an English absentee. The resulting isolation of the Manx clergy and laity meant that insular religious practice might take some time to reflect developments across the Irish Sea. The reformation of liturgy and popular religion was slow, and there was even some delay in the surrender of religious houses to the Crown. However, in 1541 the Imperial Parliament planted the seeds of future integration by transferring the Island to the ecclesiastical province of York.<sup>35</sup> Before the sixteenth century was out, more active bishops were supporting their clergy in the use of vernacular versions of the English liturgy, and Tynwald was also taking steps to do away with surviving practices held to be ‘superstitious’.<sup>36</sup>

The spectrum of religious views on the Island in the early seventeenth century was less broad than in England. Catholicism was more thoroughly eradicated from the Manx scene, while the stricter Protestants found less reason to separate. Legislative tolerance, there being no extension of Westminster’s harsher recusancy laws, seems to have resulted in a very minimal growth of the older Dissenting traditions. There were, however, echoes of the English rivalry between clerical and lay authority, especially in the matter of appeals from the Bishop’s jurisdiction.

Isaac Barrow, the best-known Bishop of the Restoration period, inaugurated a tradition of episcopal concern for the Islanders’ general well-being, encouraging public subscription to augment poor stipends and endowing charities for ministerial and general education. A century of widespread popular loyalty to the religious Establishment followed, and when Bishop Thomas Wilson’s high views of clerical authority brought rivalry with the Lord’s Officers back to crisis-point, public sympathies lay very largely with the Bishop. This was one of a number of factors which allowed the moral disciplinary jurisdiction of the ecclesiastical courts to survive well into the eighteenth century, surprising visitors accustomed to its virtual desuetude in England.

Religious plurality became a significant feature of Manx affairs with the first successful Methodist mission in 1775. As movement into and out of the Island increased during the nineteenth century, a variety of other Dissenting traditions gained footholds. But it was Methodism that caught the imagination of the grassroots population, rivalling and indeed overtaking conformity to Established forms of worship once the chapels had begun seriously to compete from the 1830s. In the latter part of the century it was Methodism that dominated the House of Keys,<sup>37</sup> while the

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<sup>34</sup> The authority of Trondheim was confirmed in a Bull of Eugenius III of Rome in 1152. An account of the barons’ fealty to the Lord appears in the record of the session of 18.1.1417 that appears at the start of *Statutes of the Isle of Man*, ed. J. Frederick Gill [hereafter ‘*Statutes*’], vol. I, London 1883. Although a substantial ecclesiastical figure and major landowner resident on the Island, the Prioress of Douglas Priory was not considered a Baron in the same sense as the male ecclesiastics.

<sup>35</sup> Bishoprics of Chester and Man Act 1541 (AP)

<sup>36</sup> Act of Tynwald of 10.10.1609 (*Statutes* I 72)

<sup>37</sup> Methodist views on temperance and licensing were a dominant issue in the Keys elections of 1897 – see D.G. Kermode, Offshore Island Politics: The constitutional

Council retained a built-in majority of religious Conformists. The Island's Conformists were of a generally 'low-church' stamp, imported English ritualism being confined to a few isolated centres. This contributed to continuing good relations with the Dissenting chapels, and it was not uncommon for Methodists to divide their Sundays between their own congregation and the parish church. Methodist and Conformist alike saw the Island's religious institutions as theirs: the parish churchyard remained the common burial-ground, and insular indignation at English proposals to merge the Manx See with Carlisle in 1836<sup>38</sup> was universal. When a ritualist Bishop of the 1870s fell into dispute with one of his own evangelical clergy, the minister found allies in the House of Keys while the Bishop had to look for effective support to Westminster.<sup>39</sup>

In the last two decades of the nineteenth century, following the English lead, an informal 'diocesan conference' including selected laymen was convened at intervals to consult with the Bishop on matters affecting the Established religious provision in the Island. This was integrated into the equally informal arrangements for English national representation of active Conformist worshippers, which were succeeded in 1919 by a Church Assembly at Westminster with statutory powers.<sup>40</sup> By analogy with such powers, the insular Conference was empowered in 1925 to frame religious Bills for direct introduction into Tynwald.<sup>41</sup>

The formal existence of the Diocesan Conference set the seal on a half-century's gradual division of function between the agencies of public worship, preaching and religious oversight on the one hand and the remaining – often novel – public agencies (such as marriage registrars, the High Court, the Board of Education and local authorities) on the other. In popular conception, and their own terminology, the first group of agencies had become 'the church' or, to distinguish it from Dissenting structures, 'the Church of England', Conformists being known as 'Anglicans'; while the latter group (and, by extension, Tynwald) constituted 'the State'. As the twentieth century continued, the extension to or imitation on the Island of much English religious legislation increased the formal distance between the religious Establishment and the generality of Manx society. Episcopal authority was enhanced and the practical involvement of both Tynwald and the Governor decreased. Financial dependence on the pooled English ecclesiastical resources administered by the Church Commissioners in Westminster became acute. But as in England, Manx Established religion found new allies in the Dissenting religious bodies and in the Roman Catholicism that was now beginning to establish an insular presence. In an Island that had resisted the introduction of judicial divorce till 1938, 'the churches' discovered a common enemy in the decline of Christian religious practice.

The post-war period saw a decline in such practice that followed the English trend. But for a number of reasons it was not so rapid: there were no industrial conurbations, and very little immigration by ethnic groups with non-Christian traditions. Thus we find an adherence to old patterns of churchgoing and to labels like

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and political development of the Isle of Man in the Twentieth Century, (Liverpool: Liverpool University Press, 2001) at 25.

<sup>38</sup> See p.24.

<sup>39</sup> The dispute over St Thomas's Douglas is described in C.C.A. Pearce, "The Independence of the Manx Church", (2002) *Electronic Journal of the Centre for Manx Studies*.

<sup>40</sup> Church of England Assembly (Powers) Act 1919 (AP)

<sup>41</sup> Church Assembly Act 1925 (AT). For further details see p.29.

‘Methodist’ (although Methodism was in fact harder-hit than the Establishment and lost its place as the dominant protestant tradition). It is the House of Keys (not merely the Speaker, as in England) that appoints a Chaplain, and it is still rare for members not to join in the responses before daily business, or to be absent from the occasional service for members at St George’s Douglas or the Royal Chapel of St John. The debates in Tynwald discussed in Chapter III,<sup>42</sup> illustrate how discussion has been coloured and passions raised by the Methodist witness to temperance and the Lord’s Day, Catholic and high Anglican conviction on the sanctity of life, and the rejection of sex between men associated with conservative Christianity.

Growing nationalism and appreciation of the Manx heritage has brought with it a realisation that the structures of religion, physical and institutional, are actually part of that heritage. A conservationist lobby joins active churchgoers in seeking to preserve threatened ecclesiastical buildings. There was unprecedented indignation on the part of leading Island politicians in 1974 when an incoming Bishop announced an intention to dispose of the ancient episcopal residence.<sup>43</sup> Revival of the 1836 plan to unite the episcopal See with a northern English one is regarded with abhorrence by Islanders who have very little record of active episcopalian worship. Few now object strongly to churchwardens’ management of the Island’s ancient burial grounds, or to the procession of beneficed clergy at the annual Tynwald ceremony.

Suggestions of the desirability of disestablishment have been heard from time to time but never pursued. The Isle of Man continues to have a national church, episcopal in polity and committed broadly to the doctrines of the protestant Reformation, whose rules, organs and officers form part of the customary and statute law and public institutions of the land. As Bishop Jones put it recently, “we proudly call the Church here the Manx Church, and we done so since the 17<sup>th</sup> century, so we are hardly newcomers”.<sup>44</sup> On the other hand, there has been a substantial decline in church attendance and denominational membership. The parish churches in the north of the Island stand largely empty and the beneficed clergy frequently serve three or more units that once had a separate cure of souls. Only the fact that the Island as a whole has recently enjoyed record prosperity, which has found expression in the voluntary giving of individual churchgoers, has prevented much greater damage to the Establishment from the near-cessation of English subvention in the late 1990s. Methodism and Roman Catholicism, which possess no historic endowment at all and have always needed to be self-sufficient, have suffered equally or worse from declining adherence, and both have closed chapels.

Although the traditionally established Christian denominations remain the most significant religious communities on the Isle of Man, smaller religious groups have a presence on the Isle of Man, sufficient to be listed in the Manx government’s directory of religious faiths and organisations.<sup>45</sup> This directory includes contact details for a number of independent Christian denominations,<sup>46</sup> the Salvation Army,

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<sup>42</sup> See p.47.

<sup>43</sup> See p.67.

<sup>44</sup> *National Anthem*, TC 22.1.03.

<sup>45</sup> See [www.gov.im/IsleOfMan/religion.xml](http://www.gov.im/IsleOfMan/religion.xml) (17/4/2003).

<sup>46</sup> The Bethel Non-Denominational Church, Christadelphian Ecclesia, Christian Brethren Assembly, Elim Pentecostal Church, Trinity United Reformed Church, Manx Unitarian Fellowship.

spiritualist churches,<sup>47</sup> the First Church of Christian Science, the Baha'i, the Jehovah's Christian Witnesses, and the Church of Jesus Christ of Latter Day Saints, as well as a contact number for the "Jewish Community".

### ***1.5 Conclusions.***

The survival of Manx autonomy into the eighteenth century, and the recovery of that autonomy in the late nineteenth and twentieth centuries, is important to appreciate the role of the Bishop in the Manx legislature. Tynwald is a genuine national legislature, which has exercised its competence in areas as diverse as finance, capital punishment and criminal law generally, inheritance and property. The study of Tynwald is closer to the study of the Westminster Parliament than, say, the National Assembly for Wales or the Scottish Parliament.

The exercise of a legislative function by Tynwald has taken place in a religious context with legal similarities to, but social differences from, England. The privileges and duties of the Manx Church resemble those of the Church of England, and the Diocese is under the ultimate ecclesiastical control of York. The Manx Church functions in the context of a significant Methodist presence in the Isle of Man in the nineteenth and twentieth centuries, and the absence of an increase in non-Christian religions due to migration in the twentieth century. In 2000, Bishop Jones contrasted multifaith Britain with Christian Mann.<sup>48</sup> Although this may be overstating the case, it is worth noting that non-Christian traditions have a smaller presence in the Island than in the United Kingdom.

As mentioned earlier, the Legislative Council has experienced considerable change in the twentieth century. The following chapter considers the development of the Council since the earliest Manx records in the early fifteenth century, with a particular focus on the place of ecclesiastical officers in Tynwald. The chapter concludes with discussion of the campaigns to alter the role of the Bishop in the twentieth century, with especial focus on proposals during the period of this study.

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<sup>47</sup> Greater World Christian Spiritualist Church, National Federation of Spiritual Healing (I.O.M.) Branch, Theosophical Society.

<sup>48</sup> See p.86.

## II: Ecclesiastical officers in Tynwald.

It is against the foregoing background of economic progress, developing relations with England, internal constitutional development and religious change that we must view the position of the Bishop in the Manx legislature. This chapter explores the history of the Bishop's position, which is entwined with the Council presence of other ecclesiastical officers between the early seventeenth and early twentieth century. Chapter III will then consider how the Bishop's rights to sit, speak and vote have been exercised in practice since 1961.

### **II.1 The establishment of ecclesiastical officers in Tynwald.**

The two Branches of the modern Tynwald have quite distinct origins. The tenth- or eleventh-century institution bearing that name was a 'law-speaking' assembly: two Deemsters learned in the customary law expounded and applied that law with the assistance of twenty-four respected men from all parts of the kingdom. The Manx for 'twenty-four', *chiare as-feed*, is commonly offered as the explanation of the anglicised name 'Keys'.

An early fifteenth-century account of the gathering, prefixed to the first entry in the Manx statute book, indicates the addition of a second element: that of a feudal ceremony, at which the relations between the Lord and his barons could be publicly demonstrated by suit of court and the payment of fealty.<sup>49</sup> These 'barons' were the lesser magnates of the Island, male landowners substantial enough to enjoy judicial rights of their own and to stand in a special relationship with the Lord. The magnitude of past religious grants had resulted in all the baronies being vested in ecclesiastical corporations. Alongside the Bishop, the Abbot of Rushen represented his community, as did the superiors of various houses across the sea.

The assembly of barons cannot, however, be considered as the forerunners of the later legislative Council. The feudal court and the law-speaking assembly remained two quite distinct elements of the annual Tynwald gathering. Accounts of later Tynwalds suggest that the two elements were not regularly combined, and there is no evidence of the barons as such participating in law-speaking.<sup>50</sup> Though the first entry in the statute book appears to suggest otherwise, setting out "divers Ordinances Statutes and Customs reputed and used for Laws in the Land of Mann, that were ratified approved and confirmed, as well by the [Lord] and divers other his predecessors, as by all Barons Deemsters Officers Tenants Inhabitants and Commons of the same Land", this cannot be taken as a detailed indication of legislative authority. It includes several categories of people who clearly had no active part to play at that date, and is an attempt to set out the whole community in whose name the law was declared, rather than to list the active participants. The later history of the Manx baronage confirms this view.<sup>51</sup> Thus, although the Bishop remains a baron of

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<sup>49</sup> Session of 18.1.1417.

<sup>50</sup> This was also the opinion of Sir Spencer Walpole, a former Governor, in *The Land of Home Rule – An Essay on the History & Constitution of the Isle of Man*, London 1893, 267.

<sup>51</sup> See opinion of Deemster Heywood & Searle A.-G. on John Quayle's claim to tender fealty to the King in Tynwald, 30th June 1770; Oliver, *Monumenta*, vol. III, 169.

the Isle of Man,<sup>52</sup> his legislative role has no direct connection with this status. In this regard, it may be that the Bishop's place in Tynwald has a different origin from that of the Lord's Spiritual in Parliament. Selbourne considered that the Lord's Spiritual sat as barons, so that the Bishop of Sodor and Man was excluded since before the final Revestment "the lands with which that See was endowed were held, not of the King directly, but of a subject who nominated the Bishop".<sup>53</sup>

The true origin of the Council is to be found in the retinue of advisors and officials attending the Lord, or during his frequent absences his chief officer the Governor, at occasions such as the assembly of Tynwald. Sixteenth-century entries in the Island statute-book show that the transition from law-speaking to law-making brought these Officers a considerably more active role. Certain Officers, with the Deemsters and the Abbot of Rushen, formed a commission for obtaining (in the Lord's absence) the Keys' views on a number of points of law in 1504. A differently-composed body of officers, including one Deemster, was commissioned in 1532 to arbitrate in a dispute between clergy and people over ecclesiastical dues, the Keys putting the people's case.<sup>54</sup> Thereafter Ordinances appear issued both by named commissioners, acting for the Lord, and by 'the Deputy and Council of the Isle' in the Court of Exchequer.<sup>55</sup> It seems clear that by the end of the century the Lord was exercising, by himself or by deputies, a personal lawmaking power.<sup>56</sup> The statute book offers no evidence of any ecclesiastic being at this date numbered amongst the Officers concerned. From 1541 the Bishop and Archdeacon had a different legislative role, however: the Archbishop of York's metropolitan oversight of the Isle of Man brought them seats in the northern provincial convocation, whose ecclesiastical canons were accepted as binding by the clergy of the Island.

The real transformation of Tynwald into a legislative body in the modern sense took place in the seventeenth and early eighteenth centuries. Three roughly contemporaneous elements in this process can be distinguished: a reform of the method of choosing the twenty-four Keys; the recognition that the Lord's legislation required the majority consent of both bodies; and, most importantly for our study, the definitive identification of the Officers comprising the Council for legislative purposes.

During the seventeenth century Acts in the statute book took on a more regular form, and from 1629 the appending of legislators' signatures gave an indication of those responsible for a measure's final form. Besides the Governor, the Deemsters (now treated as Lord's Officers themselves), Attorney-General, Comptroller-General or Clerk of the Rolls, Receiver-General and Water-Bailiff appeared regularly in this capacity. In Instructions to the Governor dated 1614 and issued by Elizabeth Stanley on behalf of the incapacitated Lord, her husband William, it was signified "That her Ladyship's pleasure is that the Lord Bishop of the Island be admitted one of the Council of the Island, and he to be made privy to these Instructions, & his advice

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<sup>52</sup> Lord's Rents Purchase Act 1913.

<sup>53</sup> Selbourne, *A defence of the Church of England*, (London: McMillan and Co., 1886) at 45, see also 24.

<sup>54</sup> 16.4.1504, 31.7.1532; *Statutes*, vol. I.

<sup>55</sup> 16.7.1561, 29.10.1582; *Statutes*, vol. I.

<sup>56</sup> J.R. Dickinson, *The Lordship of Man under the Stanleys – Government and Economy in the Isle of Man 1580-1704*, Manchester 1996, 54 f.

therein to be had touching the performance thereof.”<sup>57</sup> Then in the statute book for 1637, we find for the first time two sets of Officers’ signatures distinguished. Alongside the ‘Officers Temporal’, a group of ‘Officers Spiritual’ comprises the Bishop, the Vicars-General (his delegates for judicial business) and the Archdeacon of the Isle of Man.<sup>58</sup>

If these are indeed the first appearances of ecclesiastics as members of the developing legislature, their dates are easily explained by reference to events in England. The Stanley Lords’ dual role as Manx rulers and English nobles was a channel by which the fashion of government at Westminster might influence the institutions of the Isle of Man. In 1614 King James I was already known for his slogan ‘No Bishop, no King’, while in 1637 his son was standing firmly behind the policies of Archbishop William Laud. Both Charles I and Laud were strong believers not only in religion as part of the business of government, but in the divine authority of monarchy and episcopate to discharge that business with a minimum of interference on the part of lay popular representatives. Nor was Laud’s advice to the King confined to ecclesiastical matters. James Stanley, Lord Strange, who by this time had assumed the administration of the Lordship for his father, was an enthusiastic supporter of the policies of both King and Archbishop. In the smaller polity for which he was responsible, it would be unsurprising if he too should feel the presence of ecclesiastics essential to the consideration of laws, and that his influence should be apparent in arrangements made for the 1637 Tynwald. Unlike the Bishop, the Vicars-General and the Archdeacon had no counterparts in the upper House at Westminster. But as has already been observed, the Council was a body of Officers rather than of barons. This allowed a greater flexibility in its evolution, the body’s practical roles (judicial and advisory as well as legislative) carrying greater weight than the claims of position alone. The inclusion of the Vicars-General and Archdeacon would allow the entire judiciary of the Island to be present at Council deliberations; and if the Bishop followed the Lord in spending substantial periods away from the Island, they would be in a position to represent clerical interests and to report back on proceedings. All the ecclesiastics were, in any event, officers of the Island. They took oaths of office which included an undertaking “with his best advice & counsel to be aiding to the Captain of this Isle or Governor for the time being for the furtherance of the government and benefit of the said Isle”, though this was qualified in the case of the merely judicial officers by the words “as often as they shall be called upon or required thereunto”.<sup>59</sup>

During the Fairfax administration, in the wake of the English Civil War, the episcopal See had been vacant, and other officers of the episcopalian polity took an understandably low profile. Even after the Restoration the signature of Acts by

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<sup>57</sup> Instructions of 25.10.1614, in correspondence taken from the Cellar of Government Office, transcribed 1922 by W. Cubbon at request of the Government Secretary – Manx National Heritage Archives 1052C. An endorsement nevertheless adds ‘Bp. not of the Council without the Lord his Commission. – Halsal’

<sup>58</sup> 24.6.1637; *Statutes*, vol. I.

<sup>59</sup> The officers’ oaths are appended to the *Report of the Commissioners of Inquiry for the Isle of Man*, 1792, reprinted with editorial comment by Richard Sherwood, Douglas 1882.

ecclesiastics was sporadic,<sup>60</sup> and the contention characteristic of the episcopate of Thomas Wilson did not inspire Governors to invite the Bishop to join the Council on a regular basis. There was, consequently, some doubt as to the spiritual officers' entitlement following the Revestment of 1765. Additionally, it will be recalled that in our review of Manx constitutional history, we suggested that Revestment could be read as either a substitution of the holder of the continuing Lordship, or the abolition of the Lordship as the rights of which it was constituted were surrendered to the King. At the time, it was asserted that 1765 had made no constitutional change save that of substituting King George for the Murrays,<sup>61</sup> but if we favour the latter reading, arguments for involvement in Tynwald as of right would be seriously weakened. On this reading, Henry IV's grant of the Island as a fief, from which the inference was immediately drawn that the Island's 'barons' owed fealty to the Lord, had introduced a feudal pyramid at the heart of Manx society and with it a series of legal concepts that were Anglo-Norman in origin, rather than Celto-Norse. Judicial rulings that the descent of the Lordship must follow English rules of inheritance<sup>62</sup> served to confirm this. Judged by common law principles, the regalities had been a parcel of the estate held of the Crown by the Percy, Stanley and Murray families. The surrender of any inferior feudal estate to the superior lord, whether or not consideration was paid, left the lord holding not his vassal's estate but his own, freed from the encumbrance of the inferior estate which thus terminated. The concession of the Council's and Keys' right to concur in legislation had not been made by the King, and it was far from clear that the King was bound by it. Whether future legislation for the Island would involve Tynwald, and if so how the Council should be constituted, was by this reasoning a matter for royal policy decision rather than a matter of law.

The first royal Governors in Castletown (Smith and Dawson), convening their fellow-Officers for executive business, sent no invitation to the ecclesiastics. In 1776 the decision was taken to hold a legislative session of Tynwald, and again the Bishop, Vicars-General and Archdeacon were not summoned. In 1784 Claudius Crigan was appointed to the See, and protested to the Home Department against the continued lack of any invitation to Council. The Secretary of State deferred any response pending the report of a Commission on the insular constitution, but in the meantime a new Governor (Shaw) reversed his predecessors' policy, giving as his reason the view that the summoning of ecclesiastics to Council had become an established practice that it was not for a Governor to alter without royal instructions.<sup>63</sup>

Legal submissions for and against the ecclesiastics' claim were made to the Commission, the Clerk of the Rolls supporting the claim and the Attorney-General opposing. The oaths of office mentioned above were advanced in favour of the claim, though it could be argued that the advice referred to applied only to executive business. Apart from the conflicting evidence of precedent, the Attorney, Wadsworth-Busk, deployed one new argument. This was the fact that since the Murrays' patronage of the episcopal See and the Archdeaconry had not been surrendered to the

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<sup>60</sup> *Report of the Commissioners of Inquiry for the Isle of Man, supra*, Appx C p.68 – Acts were signed by spiritual officers on 30.10.1643, 24.6.1664 and in 1665, 1703, 1704, 1705, 1706, 1711, 1712, 1714, 1726, 1738, 1739, 1742 and 1757.

<sup>61</sup> e.g. letter of Attorney-General Wadsworth Busk dated 13.10.1791 appended to the *Report of the Commissioners of Inquiry for the Isle of Man, supra*.

<sup>62</sup> *Countess of Derby's case* and *Earl of Derby's case*.

<sup>63</sup> See generally the *Report of the Commissioners of Inquiry for the Isle of Man, supra*.

Crown in 1765, their incumbents could now be considered as appointed ‘by a subject’. They were therefore no longer qualified to advise in what had to be considered the King’s Council.

Behind this argument lay both a contemporary theory of government and a consideration of insular power politics. The practical consideration is simply expressed: the Murrays, who remained feudal superiors of the Island and now exploited significant economic interests without any longer having a ruler’s concern for the islanders’ welfare, were widely disliked and there were those who welcomed any opportunity of diminishing their influence – for example by reducing the standing of the clergy whom they appointed. The theoretical issue is slightly more complicated. Across eighteenth-century Europe it was reasoned that state authority could have only one channel, usually the monarchy. This was typified in the ‘absolutist’ regimes of France and Prussia, rejecting alternative authority such as the rights of free cities or the *proprio vigore* claims of ecclesiastical hierarchies. The same reasoning had adherents in England, particularly in relation to Crown rights in the colonies; but it conflicted with the older English traditions of authority derived from the law, and the partnership of prince and people in lawmaking. If ‘the law’, written or unwritten, was to be seen as the product of the joint action of sovereign and subject,<sup>64</sup> and the monarch’s executive and judicial roles were in reality derived from it, then there was no reason why it should not bestow such roles directly upon others, even upon those whose position did not derive directly from the King.

The Isle of Man Commissioners avoided these issues. Their Report submitted in 1792 simply repeated the arguments as to the spiritual officers’ presence in the Council and declined to give a legal opinion. Nor is there any extant definitive ruling of the Home Department, which simply stood by its provisional approval in October 1791 of the Governor’s action in restoring the Bishop.<sup>65</sup> One must conclude, then, that the continued summons of ecclesiastics to Council was treated principally as a matter of policy, rather than as one of legal obligation.

So regarded, the decision to summon ecclesiastics to the legislature, and indeed to continue to put business to Tynwald, is explicable in the light of colonial experience elsewhere. The Isle of Man was, after all, not the only Crown possession to have been governed under a feudal grant to an individual with ‘regalities’. Henry IV’s expedient had been copied by later monarchs in relation to two of the Norman islands and several possessions in the Americas.<sup>66</sup> All of these (save Sark) had later been surrendered to the Crown and thereafter administered directly through a Governor; but wherever representative assemblies had come into being by concession of the Lord Proprietor, Crown policy had been to retain such assemblies as a useful

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<sup>64</sup> This assertion, contained in the preamble to the Ecclesiastical Licences Act 1533 (AP), has a good claim to be regarded as the single fundamental principle of the developed English constitution. It sees the legislative roles of both prince and people as primary and underived (save from God), but all executive and judicial government as secondary – derived from ‘the law’.

<sup>65</sup> Letter from the Home Secretary (Dundas) to Governor Shaw, 5.10.1791; MNH Archives 1988/12c

<sup>66</sup> Examples may be found in the grant of Sark to Hélier de Carteret in 1572, of Alderney to John Chamberlain in 1584, of Avalon (Newfoundland) to Sir George Calvert in 1623, of Carloliola (West Indies) to the Earl of Carlisle in 1627, of Maryland to Calvert in 1632, and of Pennsylvania to William Penn in 1681.

part of the mechanism of colonial government.<sup>67</sup> If the balance between Governor and assembly were held correctly, this compromise could produce contented inhabitants without seriously jeopardising the royal prerogative. By 1765 the Governor-Council-Assembly pattern was tried and trusted, and there was no reason to suppose that comparable institutions would not be allowed to operate in the Isle of Man.

By 1791, however, opinion had changed in Whitehall as to the value of a colonial episcopate. The lost colonies in southern North America had existed (like the Isle of Man) with few restrictions on alternative religion, but also without episcopal oversight of public religious provision, the King's ecclesiastical supremacy being exercised directly through his governors. With hindsight this was seen as misguided; a Crown-appointed bishop would have encouraged more wholehearted conformity to the public religion, and with religious conformity would have come political loyalty. The erection of the Sees of Nova Scotia and Quebec in 1787 and 1793 was a mark of determination not to repeat the error; but it was of course central to the new policy that these bishops should take a prominent part in government, and the first incumbents of the new Sees were active members of their respective colonial Councils.<sup>68</sup>

The Isle of Man was an overseas possession of the Crown, claimed to have been acquired by conquest, royal authority over which was exercised by the advice of the Privy Council, and which was from 1782 among the responsibilities of the new Home Department. Each of these statements was equally applicable in the 1790s to the Canadian colonies; it was not until 1801 that responsibility for the remoter colonies was transferred from the Home Department to the Secretary of State for War. It is therefore possible that when the constitutional Commissioners' Report was received, Whitehall may have made the same link between loyalty and an episcopally-led conformity in the Manx context (where no new See was necessary, but only the confirmation of the Bishop's place in Council) as it was making in relation to Crown possessions further afield.

#### ***II.4 The removal of the inferior Spiritual Officers.***

Throughout the nineteenth century the Bishop, Vicars-General and Archdeacon remained relatively secure in their Council positions. An attempt to exclude the Vicars-General in 1816 was seen by Bishop Murray, who defeated it, as part of a general plan to lessen the Duke of Atholl's influence, as it was assumed that clerical members of the Council would naturally support him.<sup>69</sup> Accordingly, the positions of the Bishop and Archdeacon were strengthened in 1826 when the last Murray Lord surrendered his patronage of the See and Archdeaconry to the Crown (again for a substantial consideration). The argument could no longer be advanced that these were the 'delegates of a subject'; though the Vicars-General, whom the Bishop appointed, remained precisely that.

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<sup>67</sup> Charles Andrews, 'The Government of the Empire 1660-1763' in *Cambridge History of the British Empire*, vol. I, Cambridge 1929, 409, 425.

<sup>68</sup> See Judith Fingard, *The Anglican Design in Loyalist Nova Scotia 1783-1816*, London 1972; Andrew Porter, 'Religion, Missionary Enthusiasm & Empire' in Andrew Porter, ed., *The Oxford History of the British Empire – The Nineteenth Century*, Oxford 1999, 226.

<sup>69</sup> Letter from Bishop Murray to Duke of Atholl, Atholl Papers 117/22/21, 16 November 1816.

The passing at Westminster of the Ecclesiastical Commissioners Act 1836, authorising the union of the Sees of the Isle of Man and Carlisle by Order in Council, appears to have taken minimal account of the implications of the proposed change for Tynwald. In strict law, there would have been no necessary change: the Bishop of Carlisle would also have been Bishop of the Isle of Man, and entitled as such to sit in both the Council and the Lords. In earlier centuries there had been pluralist Manx bishops residing in the area of their English preferments, even though those preferments had not been episcopal Sees. In reality, however, the proposal would have confined the Bishop to Cumbria, with its greater numbers of clergy and people, for most of the year. Bishop Ward, a vehement opponent of the scheme, wrote to the Archbishop of Canterbury: “For above half a century, two-thirds of the people at least have been left without churches or chapels, and the clergy suffered to slumber. Consequently the busy Methodists of England, finding the coast clear, ... have covered the Island with Methodist chapels. ... [They are] now working with double diligence against the Church and striving to retain the children in their meeting-houses. ... Remove the Bishop, and the Isle of Man will instantly become the hotbed of Dissent.”<sup>70</sup>

The legislative role of the Bishop was not central to the central argument against union,<sup>71</sup> as can be seen from the six principal reasons the Bishop put forward for retention of the Diocese: antiquity; geographical position; the entitlement of the Manx as a distinct people to their ancient privileges; “the constant presence of the Bishop is necessary as head of the Council, the principal branch of the legislature of the Island, and as leading trustee of all insular charities; these are duties which cannot be exercised by an Archdeacon, or any other deputy”;<sup>72</sup> the Bishop knows the Manx but can move in powerful English circles: and, finally, a resident Bishop is a great moral influence and maintainer of religious interests. It was, however, a concern of Archdeacon Philpot, who noted that Tynwald “can pass laws (without perhaps exciting the attention of the King in Council) materially affecting the welfare of the insular Church. Over those laws the Bishop exercises a very considerable check, and in this respect his removal to Carlisle might, I think, be attended with some danger.” The Archdeacon conceded, however, that he could himself, in some measure, exert the same restraining influence in Council as the Bishop.<sup>73</sup>

With powerful English allies, opposition to the union scheme succeeded in procuring the repeal of the enabling provision before it could be acted upon.<sup>74</sup> The success of the union movement to the point where positive legislation was required to avert union made a powerful impact, however, and the 1836 debate was referred to later in the century, when the future of the Diocese was again under discussion.<sup>75</sup> To

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<sup>70</sup> Letter of 31.5.1836; Church of England Record Centre, Bermondsey, Ecclesiastical Commissioners’ file 1232

<sup>71</sup> See Ripon, Annexation of the Bishopric of Sodor and Man to that of Carlisle, Speech of the Earl of Ripon in the House of Lords, (M.M.A. F22/12, 1837).

<sup>72</sup> Memorial of the Bishop of Sodor and Man to the Commissioners appointed to consider the state of the Established Church with reference to Ecclesiastical duties and revenues, (Colchester: John Taylor, 1837) at 5.

<sup>73</sup> Evidence to the Royal Commission on the state of the Established Church with regard to Ecclesiastical Duties & Revenues, 8.6.1836; *ibid.*

<sup>74</sup> Sodor and Man Act 1838 (AP)

<sup>75</sup> For an extreme example, see C. Ward, Sixty years ago – how the Diocese of Sodor and Man was saved, (M.M.A. F22.12, 1896).

depart briefly from our chronological account, it may be useful to briefly discuss later moves to abolish the separate Diocese, none of which were so successful.

In 1875, the Governor considered that since the 1836 legislation, “the question of amalgamating this with an English diocese has more or less smouldered”.<sup>76</sup> In contrast to the earlier debates, in 1875 the primary concerns were fiscal - how could the financial position of the Manx church best be safeguarded. While prepared to accept union with Liverpool, one of the Governor’s essentials in any negotiation was for “the Bishop to remain a member of the Council and to reside for not less than a certain fixed period annually in the Isle of Man”. This seems to have arisen from a desire to retain their legislative role. Although a slight contrast with the balance of arguments in 1836, this does not mark a permanent emphasis on the legislative role of the Bishop when discussing the future of the Diocese. This attempt, too, failed, despite the persistent support of the Bishop for such amalgamation, primarily due to opposition in Tynwald.<sup>77</sup> A quickly terminated attempt to open up the future of the Diocese in 1937 provoked a vigorous response by the Vicar General, R.G. Johnson. The Vicar General discussed at length the impact of abolition of the Diocese, and at the end of the piece, which was concerned primarily with financial issues, he listed seven objections, including broader issues such as the loss of an ancient See, and a shift in the role of the Archdeacon.<sup>78</sup> The impact on Tynwald was not mentioned. The link between the future of the Diocese and the legislative role of the Bishop has, however, been a recurring theme in the legislative debates since 1961.

Returning to our chronological account, the spread of Dissent was not halted by the rejection of Union and as the century progressed, an increasingly Methodist House of Keys, directly-elected from 1866, succeeded in procuring reforms separating the public institutions of the Island from what they regarded as sectional institutions of the Established Church. The pace of such legislation was only slightly slower than that in England. One such reform concerned the historic jurisdiction of the ecclesiastical courts, which had been unaffected by the 1857 English re-allocation of testamentary and matrimonial business. It was not until 1874 that the jurisdiction of the Archdeacon’s Court in these respects was merged with that of the Bishop, and only ten years after that that the Manx High Court took over probate, matrimonial remedies and guardianship.<sup>79</sup> These reforms left the post of the Archdeacon’s Official (who had occasionally assisted at executive business of the Council) a virtual sinecure, and reduced considerably the workload of the Vicar-General. It had already been agreed to appoint only one Vicar-General instead of two; in common with other judges, the former payment by fees had been commuted for a salary from the public revenues of £400<sup>80</sup> (later raised to £500 but reduced in 1884 to £230). But the Dissenting population had come to question any public contribution, and by the turn

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<sup>76</sup> Statement of the Governor to Tynwald, 26 January 1875.

<sup>77</sup> See *Brown’s Directory*, 1882.

<sup>78</sup> R.G. Johnson, “Mr Alcock and the Manx Church”, (1937) *Isle of Man Examiner* 3 December.

<sup>79</sup> Ecclesiastical Courts Act 1874, Ecclesiastical Civil Judicature (Transfer) Act 1884 (AT). Bastardy continued as an ecclesiastical cause until the Isle of Man Judicature (Amendment) Act 1921, and the actual dissolution of marriage remained a matter for private Acts of Tynwald until the Judicature (Matrimonial Causes) Act 1938 (AT).

<sup>80</sup> The single appointment and £400 salary were agreed between Bishop Vowler Short and Home Secretary Sir James Graham in 1846.

of the century the Vicar-General's salary had become a matter of contention inextricable from the question of his legislative seat.<sup>81</sup>

Although the Island's religious plurality was one factor behind the Council reform proposals of the early 1900s, the driving impetus was the desire to reduce the 'official' and hence Whitehall-oriented character of the upper Branch of Tynwald. The Council could not only veto any legislation but also, by its votes in the joint session known as Tynwald Court, sway the outcome of any executive policy decision within Tynwald's power (such as the budgetary control enjoyed since 1866). Recent Governors such as Henry Loch had argued strongly, gaining a modicum of Whitehall support, for the obligation of Council members to support gubernatorial policy with their votes, and indeed it had been extremely rare for this not to happen.<sup>82</sup>

In 1903 the Keys resolved to seek the removal of both Vicar-General and Archdeacon from the Council.<sup>83</sup> This demand was repeated in October 1905<sup>84</sup> coupled with the cessation of the former's public salary. Bishop Norman Straton appealed to the Governor, Lord Raglan, to advise against any change, and the Home Secretary (Gladstone) duly indicated that the Keys' plan was unacceptable.<sup>85</sup> The Bishop's arguments were expanded following a more wide-ranging Keys' reform petition in 1907.<sup>86</sup>

According to Straton, there were a number of practical reasons for retention of the lesser ecclesiastics in the Council, and for continuing a financial arrangement that would encourage advocates of high calibre to accept the Vicar-Generalship. The Vicar-General was in the Bishop's view uniquely qualified to watch legislation affecting the religious Establishment and ecclesiastical patronage (most of which was vested in the Crown and so a matter of legitimate Whitehall interest). The

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<sup>81</sup> At this date the Bishop still lived from commuted tithe income and the revenues of the baronial estates, while the Archdeacon, who received no stipend as such, was traditionally appointed to the Island's richest benefice (that of Andreas). The Water-Bailiff had lost his Council seat in 1885, when his admiralty jurisdiction had passed to the High Court.

<sup>82</sup> The correspondence (Letter from Governor Loch to Home Secretary 30.4.1881, letters in reply 11.8. and 19.9.1881, Governor's minute to Council members 27.12.1881, Vicar-General Jebb's reply 4.1.1882, Letter Loch to Home Secretary March 1882; MNH Archive D154/4X/13-14) was not made public, so the Keys could not know that Governor had accepted that the Bishop and Archdeacon should retain a free vote, nor that the Vicar-General considered any restraint on his legislative independence "would permanently corrupt and poison the Manx constitution, and render it unworthy of being maintained at all".

<sup>83</sup> *Debates in the Manx Legislature (Hansard)*, HK 21.7.1903. For the history of constitutional reform proposals from this date onwards, this survey is generally indebted to the account in David G. Kermode, *Offshore Island Politics – The Constitutional and Political Development of the Isle of Man in the Twentieth Century*, Liverpool 2001; though the bishop's role is an important factor that Kermode appears wholly to overlook.

<sup>84</sup> HK 24.10.1905

<sup>85</sup> Copy letters Straton to Raglan, 27.10.1905; Chalmers (Home Office) to Raglan, 21.2.1906 (MNH Archive Accession No. 9309, filed with papers on the 1931 appointment of Vicar-General Johnson)

<sup>86</sup> HK 19.2.1907; Confidential observations for the Governor dated 27.2.1907 (MNH Archive Accession No. 9309)

Archdeacon's contribution was different from the Bishop's, in that the latter needed experience gained from "larger and more active spheres of ecclesiastical life and work in England", while the Archdeacon should be trained "in close connection with the life and customs of the Manx Church" and be always in a position to brief an incoming Bishop on insular laws, needs and feelings. The Archdeaconry, with its Council seat, was "the one prize to which the Manx clergy attain". The current Archdeacon had given good service as a member of Tynwald on the still relatively new Council of Education. Both officers benefited from their independence of the electorate: "the Secretary of State might feel that Island interests are better-served by a Council free from undue outside pressure". If both were removed, the Bishop 'would be left alone to grapple with Bills injurious to the Church'. He referred with approval to the eight rectors sitting in the States of Guernsey and twelve in Jersey.<sup>87</sup> The Keys' petition, Straton concluded, appeared in reality to be aimed at reducing the representation of the clergy,<sup>88</sup> and "dictated by a desire to humiliate the Established Church and to cripple it in the discharge of its work and administration".

A personal approach to Home Secretary Churchill resulted in the Keys' 1907 petition being referred four years later to a departmental Committee under Lord MacDonnell. Evidence was taken from Bishop Thomas Drury, who was – contrary to Straton's expectations – a Manxman, and whose support for the *status quo* was expressed in less denominationally defensive terms than that of his predecessor: "I quite agree, as far as the Church of England is concerned, that the Bishop is a sufficient representative. It is not the vote of the Archdeacon that I care for; it is the value of the Archdeacon as a man on the legislative Council."<sup>89</sup> According to Drury, it had never been suggested that other Christian bodies were disadvantaged by the ecclesiastics' Council presence.<sup>90</sup> The Archdeacon represented the Manx clergy in a way that the Bishop did not; no Manxman had occupied the See for centuries until Drury's appointment. The Archdeacon should continue to perform this role if the clergy were to be represented at all; it was not advisable to allow them to stand for the Keys. While Drury was not prepared to defend in abstract the Vicar-General's *ex officio* seat, he considered "mere constitutional theory" insufficient to justify changing an established fact.

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<sup>87</sup> The Guernsey figure of eight did, however, already represent an artificial maximum imposed on the clerical presence by a reform of 1844; Richard Hocart, *An Island Assembly – The Development of the States of Guernsey 1700-1949*, St Peter Port 1988. For Jersey developments see R. G. le Hérissier, *The Development of the Government of Jersey 1771-1972*, St Helier 1972.

<sup>88</sup> Beneficed clergy had been disqualified from election to the Keys by the Act of 1866, borrowing with modifications the provision of the House of Commons (Clergy Disqualification) Act 1801. There was no exclusion of Methodist ministers or local preachers, the latter being represented in the Keys in substantial numbers (one-third of the House in 1907).

<sup>89</sup> Report of the Departmental Committee on the Constitution, &c., of the Isle of Man, London 31.8.1911, vol. II (Minutes of Evidence), 136, 140. Vicar-General Hughes-Games was also examined, but exclusively (and tellingly) in his role as Chairman of the Highway Board. The Archdeacon was too ill to testify.

<sup>90</sup> The evidence of David Inglis, Chairman of the Isle of Man Free Church Council (*ibid.* 225), suggested otherwise, calling for the removal of both officers and the Bishop on the ground of religious equality.

The Committee concluded that the case for the inferior ecclesiastics had not been made out. The Bishop himself should remain, however, on account of “his traditional place, the ecclesiastical interests committed to his charge, and his respected and authoritative personality”.<sup>91</sup> Home Office instructions to the Governor indicated approval of the MacDonnell recommendations in this area, and the Council therefore co-operated in the passage, immediately after the War, of an Act removing the inferior ecclesiastics from *ex officio* membership, and prohibiting the Governor from including the recipients of Crown salaries, hence the Vicar-General, amongst his Council nominees.<sup>92</sup> In 1921, upon relinquishing bastardy suits to the High Court, the Vicar-General reverted to payment by fees for his judicial work<sup>93</sup>, and for some time thereafter holders of that office retained a connection with the Legislature through concurrent appointment as its Clerk.<sup>94</sup>

### ***II.5 Changes in the role, and the reform of Tynwald, 1921-1961.***

The year of the MacDonnell Council reforms was also that in which Parliament approved the constitution of the English Church Assembly and facilitated religious lawmaking by a streamlined procedure allowing the Houses’ consent to enactments framed by the Assembly to be expressed in simple resolutions.<sup>95</sup> The vernacular that referred to the clerical convocations as ‘the church’ was extended to encompass the Assembly, while Parliament itself became increasingly thought of as a ‘secular’ legislature. The decline in active churchgoing, faster in England than on the Isle of Man, lent urgency to the drive for reconciliation amongst Christian denominations. Free Churches, which had vigorously opposed the idea that bishops should, as of right, personify the nation’s Christianity in the Legislature, found themselves more willing to consider that the bishops’ seats might (perhaps alongside others) express a ‘national recognition of religion’, and have a practical value in defending their threatened common interests.

Even in defending the common Christian interest, though, a new note was being struck in episcopal utterances. Divorce law reform provided the best example: alongside conservative bishops who believed that Christian principle forbade divorce and therefore the law should do the same, and liberal bishops who believed that the law could permit divorce because Christian principle did so, a third group was gaining strength in favour of a dual morality. These considered that while a rigid line could be taken amongst active churchgoers, Christians in public life could properly witness to a lesser standard applicable to believer and unbeliever alike, which religion would inform without labelling it ‘religious’.<sup>96</sup> The ability to argue for this standard was, for this group, among the chief contributions that the lords spiritual could make in Parliament.

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<sup>91</sup> Report of the Departmental Committee on the Constitution, &c., of the Isle of Man, London 31.8.1911, vol. I, 22

<sup>92</sup> Isle of Man Constitution (Amendment) Act 1919 (AT)

<sup>93</sup> Isle of Man Judicature (Amendment) Act 1921 (AT)

<sup>94</sup> See further P.W.S. Farrant, “Some observations on the history of and the role and duties of the Manx Vicar General, Chancellor and Official Principal”, (1995) 3 Ecclesiastical Law Journal 410.

<sup>95</sup> Church of England Assembly (Powers) Act 1919 (AP)

<sup>96</sup> All three standpoints are well illustrated in the House of Lords debates preceding the enactment of the Matrimonial Causes Act 1937 (AP).

This approach to public debate can also be found in the Isle of Man. Bishop William Jones, for instance, reflected this dual morality during the Council's Second Reading debate on the Bill that was finally to permit judicial divorce on the Isle of Man: "I am bound to consider [the Bill] from the Christian point of view; but I can't take that hard and rigid ecclesiastical view that some people take. ... [The Church of England] can and does make the highest claim upon its own members; but I think we are bound to have in mind those people who don't accept the Christian standard."<sup>97</sup>

While the nature of the episcopal contribution to general legislative debate altered subtly in line with this shift, the Church Assembly – and on the Island, the Diocesan Conference – became a forum for more specifically ecclesiastical concerns. Diocesan conferences of ministers and lay people had come into being informally during the 1880s, the Manx one supplementing an insular clerical convocation that had met regularly since 1703. But parliament's 1919 approval of the provincial convocations' rules for election to the Church Assembly gave these conferences legal status.

After the Crown's rejection of Tynwald's attempt to make a variant provision for such elections, a Manx Act of 1925 supplemented the Imperial structures and allowed for the automatic introduction into Tynwald of religious Bills framed in the Island's Conference. A Tynwald Ecclesiastical Committee was created to examine and report on such Bills before introduction, with the intention of reducing to a minimum the time spent in religious debate by the increasingly reluctant Branches.<sup>98</sup>

Bishop Straton's fears that Tynwald would spend its time meddling with the Crown's ecclesiastical patronage if the Vicar-General were not there to guard the royal interest proved unfounded. On occasion members' enthusiasms concerning aspects of the life of the religious Establishment did still come to light on the floor of the Branches or of Tynwald Court; but as a rule the Diocesan Conference now became the forum for detailed debate of 'the ecclesiastical interests committed to [the Bishop's] charge' while the Branch consideration of 'Church Bills' grew steadily more perfunctory. Elections to the Ecclesiastical Committee were seldom contested, the genuinely interested sitting alongside those who accepted membership as one of the burdens inseparable from legislative office. One of the Bishop's chief concerns was to secure at least one member on the Committee competent to steer Bills through the Keys.

The fact that the Bishop was now unsupported by other ecclesiastics in the Legislature meant that there was no prospect of emulating the English bishops' reduced attendance in the House of Lords. Standing orders and universal expectation continued to demand the presence of all members in the Branches and in Tynwald Court, unless they excused themselves for good cause. Tynwald Court standing orders (though not those of the Council) also required that all members present at a division record their votes for or against the motion; withdrawal from the chamber before the

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<sup>97</sup> LC 1.2.1938 [Judicature (Matrimonial Causes) Bill]

<sup>98</sup> The Church Assembly Act 1925 (AT) required the Committee to report to Tynwald Court on the expediency of the Bill framed by the Conference, after which a resolution of the Court was required for the matter to proceed. Once the resolution was passed, the Governor was required to introduce the Bill into the Branches, which implied that it would normally begin its journey in the Council. The procedure was slightly modified in 1971, and supplemented in 1979 by the Diocesan Synod Measure procedure which, from 1993, wholly replaced it; see section II.5 (ix)

division was accepted as a method of abstention, but was expected to be sparingly invoked.

It was recognised that the Bishop might have unavoidable commitments elsewhere rather more often than other members. As well as the York convocation and bishops' meetings, this now included the Church Assembly and certain of its committees. The Manx bishop served on fewer of these than most of his brethren, and was not (unlike them) an English Church Commissioner. There were, of course insular church bodies demanding his time which had no English diocesan counterpart (like the Manx Church Commissioners established in 1880), but local distances were shorter and he did have a very much lighter workload in terms of parishes and clergy.

This was fortunate, because as the importance of Boards of Tynwald grew, so did the expectation that all members would take their share of Board work. The Deemsters were an exception, but the Bishop was not; by the later part of the twentieth century there were two Boards (Social Services and Education) on which he served with some regularity. It was of course not difficult to see the relevance of these areas to individual bishops' past and present ministry and *vice versa*, and these provided additional subject areas in which an episcopal contribution to legislative debate might be expected.

One incumbent of the See seemed nevertheless keen to take on additional public responsibilities. John Taylor was consecrated Bishop in 1943, and fifteen months later the *Sunday Times* carried a learned correspondence on the question of his eligibility for a seat in the House of Lords at Westminster.<sup>99</sup> Research revealed a past courtesy of allowing the Manx Bishop to sit, but not vote, in the Lords' Chamber, together with isolated seventeenth and eighteenth century opinions that he was entitled to a vote, or would be if his barony were held of the King, rather than of the Stanley or Murray Lord. The Lords' Committee of Privileges had apparently planned to consider the question in relation to the family's last appointee, George Murray, but not pursued the matter. In 1951 Taylor became the senior bishop of England and the Isle of Man outside the Lords, and enquired of the Crown Office whether a writ of summons should not be issued to him. The advice tendered to the Lord Chancellor, however, took it as conclusive that the Isle of Man was not 'a See in England', which the statutes now regulating the summons of lords spiritual required.<sup>100</sup> The Bishop declining the offer of a Committee of Privileges hearing, the issue was once more allowed to drop.<sup>101</sup>

Taylor was by then running against a trend – or perhaps seeking a larger arena for the Manx Bishop's contribution in case the insular one should be closed to his successors. Samuel Norris, the campaigner claiming much of the credit for past

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<sup>99</sup> See particularly letter of Sir Claud Schuster to the *Sunday Times*, 14.5.1944, and notes by P.W. Caine in MNH Archive MS 1353A. The opinions in favour of a seat by right (subject to direct holding of the Crown) were those of the Laudian Peter Heylyn and of Bishop Wilson's late eighteenth century biographer C.C. Crutwell. It had been asserted that "[t]he Bishop of Sodor and Man can take his seat, but has no vote, in the House of Lords" (T. Seppings, *The Sees of England, Wales, Ireland and the Colonies*, (London: Simpkin Marshall and Co., 1835) at 19.

<sup>100</sup> Ecclesiastical Commissioners Act 1847 as amended by the Welsh Church Act 1914 (AP)

<sup>101</sup> R.P. Cave, "House of Lords – Claim of the Bishop of Sodor and Man to a Writ of Summons" in (1951) 19 *Journal of the Society of Clerks at the Table in Empire Parliaments* 127.

constitutional reform, had inaugurated in 1942 a drive for further change, achieving the establishment of a Keys' reform committee and making no secret of his personal desire to see the 'official' dominance of the Council ended and the Deemsters removed.<sup>102</sup> In Guernsey, where very similar wishes prevailed, the 1948 removal of the Jurats from the States of Deliberation was accompanied by that of the parish Rectors whose legislative role Bishop Straton had once used as a parallel.<sup>103</sup>

Though Council reform (despite Norris's views) had for some time taken second place to the adjustment of relations with Westminster and Whitehall, in 1958 it joined the subject of executive government at the centre of the Keys' agenda, which formally resolved to remove the Bishop from the Council, although he could be appointed by the Governor as one of four appointees. Norris' views were now taken up in submissions to a new constitutional Commission, whose appointment had been secured on the proposal of a new member of the Keys, Clifford Irving. The Keys' proposal entailed the abolition of *ex officio* seats other than the Governor's; the Governor should appoint four Council members rather than two, which might include the Bishop and Attorney-General (though not the Deemsters). The total number of unelected members being reduced by two, indirect election by the Keys should account for six of the Council instead of four.<sup>104</sup> This would swing the balance of Council voting strength towards the elected members and ensure (it was hoped) a greater willingness to allow the Keys' wishes to prevail.

The Commission, chaired by Lord MacDermott, Chief Justice of Northern Ireland, adopted the MacDonnell reasoning for retaining the Bishop's *ex officio* seat. Denominational resentments were less than they had been in 1911,<sup>105</sup> and occasional invidious situations could be avoided by allowing the Bishop to abstain in divisions.<sup>106</sup> Removals from the upper Branch should be confined to the Governor (lessening his workload and allowing a more impartial presidency of Tynwald Court) and one of the Deemsters (again in the interest of impartiality, in case a constitutional confrontation should occasion litigation). The legal expertise of the other Deemster should be retained, but his voting capacity modified by placing him in the chair. The only change as regards the Bishop should be to relieve him of the standing order obligation to vote on every issue in Tynwald Court. This proposal perhaps reflected the view of some witnesses that it was primarily on "moral issues" that he had a useful contribution to make, and that entanglement in other politically controversial topics could only damage his standing.<sup>107</sup>

The Council did not accept the Commission's arguments for these removals, and the only initial change to its composition was the addition of one extra Keys' appointee.<sup>108</sup> In the debate on the first post-MacDermott Constitution Bill, the Keys accepted this, but only in order to secure a reform that would ultimately give them everything else they wanted – the power to override a Council legislative veto.

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<sup>102</sup> HK 1.12.1942

<sup>103</sup> Reform (Guernsey) Law 1948. Rectors would keep their vote in the election of *conseillers* until 1976, and remain entitled today, after one year's residence on the Island, to participate in the election of Jurats.

<sup>104</sup> *Report of the Commission on the Isle of Man Constitution*, Douglas 1959, vol. II, 141. The Council's submissions appear at p. 85.

<sup>105</sup> *Ibid*, para.28.

<sup>106</sup> *ibid*, para. 29.

<sup>107</sup> *Report of the Commission on the Isle of Man Constitution*, vol. I, paras 21-43

<sup>108</sup> Isle of Man Constitution Act 1961 (AT)

Having won this trump card, the repeated threat of its use over the next two decades enabled them to ensure the removal of both Deemsters, the Governor's nominees, the Attorney-General as a voting member and finally the Governor himself.<sup>109</sup> Ten years after the Governor ceased to preside in Council, a President of Tynwald in whose election both Keys and Council participated also replaced him in Tynwald Court.<sup>110</sup> The result was to convert the unelected membership of the Council from a 7:4 majority in 1961 to a 1:9 minority by 1990. The surviving unelected member was the Bishop.

## ***II.6 Consideration of the Bishop's role after 1961.***

The Bishop was an 'official', but an official with a difference. The Crown made his appointment not on the basis of advice from the Privy Council or Home Secretary but from the First Lord of the Treasury. Though this was still an 'English' appointment, it was free from the connotations of the normal Imperial channels; and throughout the twentieth century it had been accepted that very different criteria prevailed. Consultation with the Archbishops first supplemented and then replaced the political considerations colouring other Crown appointments. When in 1976 James Callaghan, as First Lord, announced an intention to co-operate with a new recommendatory mechanism set up by the English General Synod,<sup>111</sup> the procedures were tacitly extended to vacancies in the Manx See, with the result that Diocesan Synod representatives from the Island could take a significant share in the definition of diocesan needs and consideration of possible names.

Once appointed, the Bishop's freehold made him resistant to political pressure both from within the Island and from the United Kingdom; though most incumbents sought to allay suspicion that their votes would be cast either capriciously or – far more controversially – in automatic support of the executive. It nevertheless remained rare for bishops to be Manx-born. The Island produced few ordinands and many of its parishes were coming to be served by Englishmen. The increasing scope for active laymen to share in church government meant that the knowledge of local conditions, for which Bishops Straton and Drury had expected to look to the Archdeacon, could be gained from the laity; and it became not uncommon for Archdeacons also to be Englishmen, albeit with long Manx parish experience. The difficulty of new bishops appearing as outsiders in Tynwald could not, therefore, be wholly surmounted, however earnestly they might seek to identify with the Island after arrival. Like Governors, they came from the United Kingdom, might potentially be translated back again, and would – in most cases – move away upon retirement. The best that could be done in reply was to make a virtue of this fact, stressing the breadth of experience that many bishops and Governors brought to the direction of Island affairs. It was partly as 'Englishmen', therefore, but still primarily as non-elected legislators that the presence of Bishops in the Council was a matter of debate in the later twentieth century. The other factor raised in evidence to MacDonnell, religious equality, also remained an issue, but denominational rivalries were to some extent overshadowed by the larger question whether the Isle of Man remained a Christian country in whose government any Christian religious office-bearer should properly share.

The first post-1961 Bill to remove the Second Deemster from the Council was rejected by that Branch in June 1963. When its architect Spencer Kelly moved for a

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<sup>109</sup> Isle of Man Constitution Acts 1961, 1965, 1969, 1971, 1975 and 1980 (AT)

<sup>110</sup> Constitution Act 1990 (AT)

<sup>111</sup> [1976] 909 *Parliamentary Debates (Hansard)* cols. 940-1036

fuller study of the Council's composition, another Labour MHK, Albert Corkish, asked if there were any constraint to retain the Bishop or the Attorney. The Speaker explained that the motion would allow all Council membership to be scrutinised.<sup>112</sup> At the second reading of the re-introduced Bill, Callister looked forward to a day when the whole Council save the Governor would be elected by the Keys.<sup>113</sup> After the Branches had reached an *impasse* over Council amendments, Kelly remarked that Pollard 'might well be the last [Bishop] to sit', and Callister observed that 'he is merely there because he was a baron in some dark and distant past'.<sup>114</sup> When introduced the third time, the Bill to remove the Second Deemster was carried in the Council by a casting vote. As Callister pressed ahead with another Bill to remove the Governor, Kelly repeated his wish to see the Bishop removed; but Callister's tactics were to take one change at a time. In any event, this particular Bill was defeated before it left the Keys.<sup>115</sup>

Late in 1965, two more MHKs spoke in favour of the Bishop's removal. For J.H. Quirk the Bishop was a remnant of the 'feudalistic methods' in the government of the Island that he sought to extirpate. While Victor Kneale, a member since 1962 who was destined to become the bishops' most dogged challenger, agreed, he felt (as did others) that there were still items higher on the constitutional agenda.<sup>116</sup>

Before the General Election of 1966, the Constitutional Committee of the House of Keys issued a report which included recommendations on the future of the Legislative Council.<sup>117</sup> They recommended that the Bishop should remain as an *ex officio* member of the Council, but without a right to vote. They considered the example of the Dean of Jersey, who although not subject to any statutory restriction on his right to speak, "is expected to intervene only when a debate touches matters with which the Church is concerned". Drawing on this, they considered: "In the past, the Bishops of Sodor and Man have, on the whole, in legislative matters, displayed a spirit of independence and impartiality; and we feel sure that Bishop Gordon, as a member of the Legislative Council, will wish to restrict his intervention in debate to those debates which touch 'matters with which the Church is concerned' – giving that expression a wide interpretation. We recommend that the Lord Bishop should remain as an *ex officio* member of the Council, but without the right to vote".

Eric Gordon arrived as Bishop in 1966 almost simultaneously with a new Governor, Sir Peter Stallard. Welcoming him, Stallard suggested that attacks on the non-elected element in the Council were confusing *ex officio* and hereditary principles. Gordon responded that he stood for "the good traditions of our land" and that the "ancient link between church and state" could be of value to the whole community.<sup>118</sup> Eight months on, Robert Creer recognised that "for the first time in a

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<sup>112</sup> HK 25.6.63

<sup>113</sup> HK 29.10.63

<sup>114</sup> HK 30.6.64. Although we have suggested earlier why this is not the case, this justification has been an influential one. In 1997, Professor St.J.N.Bates, then both Clerk to Tynwald and a member of the Diocesan Synod, wrote that "the Lord Bishop of Sodor and Man – admittedly as the last Baron on the Island – sits and speaks in the Legislative Council and in Tynwald" (T. St.J.N. Bates, "Are you cynical about politics?", (1997) Isle of Man Church Leader 7).

<sup>115</sup> HK 26.10.65

<sup>116</sup> HK 2.11.65

<sup>117</sup> *Report of the Constitutional Committee of the House of Keys, 1966.*

<sup>118</sup> LC 15.11.66

good number of years, we have a good man in the Bishop"; but thought it was still time for him to go.<sup>119</sup>

The Keys' reformers nonetheless stuck to the Callister policy of one target at a time. When removal of the Governor's nominees was under debate in 1969, H.D.C. MacLeod expressed the hope that the Bishop would soon follow.<sup>120</sup> In 1970 the Attorney-General's voting rights were the topic, and it was Clifford Irving (a later executive council Chairman) who recalled the Council "stranglehold" that had existed before 1961, adding "No doubt we shall see the removal of the Bishop and the First Deemster too".<sup>121</sup>

The Keys' long-serving Speaker, Charles Kerruish, was not always even-handed over such prognostications for the future. When the Bill to remove the First Deemster was read in 1974, it was apparently legitimate to refer to it as "one of many matters still wanting attention", including the Bishop's position; but another speaker, seeking to support a slippery slope argument by giving reasons why the Bishop's seat should not go, was directed to keep to the point.<sup>122</sup>

The uncontroversial episcopate of Bishop Gordon, respected for the high standard of his legislative contribution until the illness of his later years, was followed by an incumbent who was controversial even before his arrival on the Island. Vernon Nicholls, who had accepted his appointment before seeing the ancient episcopal residence, announced in mid-1974 that it was not a building in which he or his wife could live, and the Manx Church Commissioners sought Tynwald's leave for a sale (the condition of a 1948 enabling statute). Kerruish responded firmly that the Island's Bishop was expected to live at Bishops court, had known this when appointed, and if unwilling to do so "can go back whence he came".<sup>123</sup> The Speaker's repetition of this remark to the Bishop's face a year later<sup>124</sup> was bound to place future episcopal participation in the joint session (Tynwald Court) under strain.

In 1977 Edward Kermeen, a former Clerk of Tynwald now himself elected to the Keys, moved for the reduction of the Council's delaying power over Bills from the two years allowed in 1961 to one year. Kermeen was a sophisticated constitutional theorist as well as an active conformist to the Established religion, but a high churchman in the Tractarian mould for whom ecclesiastical and civil government were naturally distinct.<sup>125</sup> During the third reading of his Bill he expressed his support for the Bishop's place in the Legislature, but also floated the idea that this might be a non-voting place comparable to that of the Attorney-General.<sup>126</sup>

A further constitutional change was also heavily indebted to Kermeen's energy and expertise. This was a procedure under which religious legislation framed for the Island in the Diocesan Synod (the former Conference), which under a modified re-enactment of the Church Assembly Act 1925<sup>127</sup> might be considered by the

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<sup>119</sup> HK 28.2.67

<sup>120</sup> HK 25.2.69

<sup>121</sup> HK 14.4.70

<sup>122</sup> HK 5.3.74 (Crellin), 12.3.74 (Thornton-Duesbury)

<sup>123</sup> TC 18.6.74

<sup>124</sup> TC 8.7.75

<sup>125</sup> Distinct, but intimately related; on another occasion Kermeen said he would introduce a Bill "to disestablish the Church of England in the Isle of Man at the same time as a Bill to unscramble an omelette"; HK 4.3.80.

<sup>126</sup> HK 28.6.77

<sup>127</sup> Church (Miscellaneous Provisions) Act 1971 (AT)

Ecclesiastical Committee and, if approved in principle by a Tynwald Court resolution, entitled to automatic introduction into the Branches, could instead go forward on the strength of the approving resolution for immediate royal assent. The so-called ‘Manx Measures’, though not to be called Acts, and exempted from the need for promulgation, would still be enactments of the monarch by Tynwald’s advice and consent. They would have the same force as, and be able to repeal, other Acts that had passed through the traditional Branch reading procedure. But in practice it was inevitable that the attention they received on the floor of Tynwald Court would be cursory, and their status reduced in the perception of all but specialists. The scope (and arguably the need) for the Bishop to influence “the ecclesiastical interests committed to his charge”, per the McDonnell Report, would be significantly reduced as a result of the Kermeen Bill. Recognising this in 1976, the Home Office had counselled the restriction of the new procedure to the most routine cases – where the Diocesan Synod framed legislation in identical terms to those of a General Synod Measure already law in England. Amendments following this advice<sup>128</sup> were incorporated before the Kermeen Bill became law in 1979. But Kermeen’s procedure would be extended in 1993 to all matters affecting the Island’s religious Establishment.<sup>129</sup>

The removal of the Governor from the chair of the Council in 1980 left the Bishop as its last unelected voting member. It was inevitable that his position would come under scrutiny once more, even if the controversies of his episcopate had not already subjected him to an unusual degree of Tynwald attention. Two members took initiatives that sought to affect his legislative vote, most of these explicable by the general drive for election to all places in Tynwald, though one possibly by the tense relationship between Nicholls and the Speaker of the Keys.

In June 1981 Victor Kneale failed to secure passage through Tynwald Court of a declaratory motion calling for direct election to the Council and the end of the episcopal vote.<sup>130</sup> A general election, however, opened the way to a fresh attempt, and the following May he gained a second reading for his Constitution (Legislative Council) Bill. Kneale (and several of his colleagues) had reached the conviction that direct election was the key to democratic legitimacy, and he had himself recently resigned from the Council to seek a fresh mandate in the Keys. His Bill divided the Island into broader constituencies for direct elections to the Council, and placed the Bishop on the same non-voting footing as the Attorney-General: “Over the years, there have been many moves to remove the Bishop, and some members still think this is right. But I am strongly against. I believe, if we do that, it will encourage those in the Anglican Church who have been trying for generations to get rid of the Diocese of Sodor and Man to press more strongly.” It was, however, “quite wrong” that the Bishop should sometimes have what amounted to a casting vote.<sup>131</sup>

Kneale’s second reading speech typified two aspects of the later discussion of the episcopal legislative role. First, the Bishop was no longer attacked chiefly as an official government supporter, nor as an Englishman, nor as a representative of

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<sup>128</sup> LC 19.10.76; HK 1.11.77

<sup>129</sup> Church (Application of General Synod Measures) Act 1979 (AP); Church Legislation Procedure Act 1993 (AT). See further K.F.W. Gumbley, “Church legislation in the Isle of Man”, (1994) 3 Ecclesiastical Law Journal 240.

<sup>130</sup> TC 16.6.81. Kermode, *op. cit.* 279, explains this by reference to the newly-elected Keys’ desire to retain their superior “democratic legitimacy”.

<sup>131</sup> HK 4.5.82

denominational privilege (as in the Free Church evidence to MacDonnell), nor for his personal actions (Nicholls) nor his politics (Pollard). His vote was simply a casualty of the widespread thinking linking legislative legitimacy to popular election, and at least in some eyes this did not necessitate depriving him of the right to sit and speak. Secondly, the voice of caution invoked the reappearing spectre of diocesan union, and assumed general concurrence that this would be an undesirable outcome. As we have noted above, since 1836 there had indeed been several proposals to unite oversight of the Island with some part of northern England, commonly with north Merseyside since this was most readily accessible and, as a recent urban ecclesiastical unit, would complement the ancient rural churches of the Isle of Man. Proposals in the 1870s and 1930s had in fact won support from voices within the Island, recognising that the financial position of the Manx Church was precarious and that greater English integration would almost certainly bring material improvements. More recently, influential voices (such as that of Bishop Gordon<sup>132</sup>) had begun to link the continuance of the diocese directly to the Bishop's legislative role. By the 1980s the initiative on this came again firmly from the United Kingdom – rational deployment of scarce clergy and resources was the watchword in Westminster, and the Dioceses Measure 1978 (an Imperial enactment extending to the Island) had recently provided a procedure whereby mergers could be achieved without involving Parliament. The consent of the bishops and diocesan synods affected was nevertheless a requirement, even under this Measure, and a real threat would only exist if Westminster felt strongly enough to coerce the insular organs through financial and moral pressure, or to resort to separate Imperial legislation.

The fate of Kneale's 1982 Bill and its sequels owed at least as much to the general constitutional context as to the single issue of the Bishop's vote. As originally introduced, the Bill would have created a second chamber with strong claims to demand the restoration of full parity in legislation. The Keys would be under pressure to relinquish their cherished final control, and to many this prospect was unappealing. Surviving by one vote at second reading in May, the Bill went to a select committee from which it emerged unrecognisable in June. It now provided for what might be called 'the Norwegian solution': that Tynwald Court, like the *Storting* in Oslo, should be elected as one body, and should subsequently divide itself into drafting and revising chambers. The redrawing of the Bill did not affect its implications for Bishop and Attorney-General, both of whom were still to be accorded non-voting seats in the revising chamber.<sup>133</sup>

The Keys were less hostile to the committee's version of Kneale's Bill than to the original. It appeared that, to them at least, the general constitutional objections to this June version were not fatal. At this point the threat to the Bishop's vote began to seem real, and this issue assumed a steadily higher profile as the Bills progressed.

The infrequent meeting of the Diocesan Synod meant that despite urging from Kneale for an early submission, the 1982 Bill's implications were not considered in the Synod until December, when opposition was registered and a paper on the issue commissioned from a Synod committee led by former Deemster Eason and Tom Kermeen.<sup>134</sup> Kermeen had already given evidence to the Keys' committee on the Bill,

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<sup>132</sup> *Isle of Man Examiner* 24.7.1970. Archdeacon David Willoughby made the same point during the next vacancy, in the editorial of the *Sodor and Man Diocesan News* for September 1983.

<sup>133</sup> HK 22.6.82

<sup>134</sup> HK 25.1.83

stating that with reference to the remainder of the Bill it would be difficult to defend the voting right of the Bishop.<sup>135</sup> A week later, Speaker Kerruish focussed attention on the issue by calling, quite independently of the Kneale proposals, for legislation to replace the Bishop by one more indirectly-elected seat. Following Callister, Kerruish argued that the bishop sat merely as a baron, and that the threat to the separate diocese (invoked this time by executive council Chairman Percy Radcliffe, in rejecting the call) was probably a myth – a point on which Kermeen agreed.<sup>136</sup>

In January 1983 the Synod committee's paper appeared.<sup>137</sup> After an historical introduction, this asserted that the Manx "were and continue to be deeply religious, especially in the practical sense". While admitting that this might be seen exemplified primarily in the growth of Methodism, the paper drew the teeth of such an admission by praising the Island's lack of religious intolerance in contrast with Ireland. A consistent episcopal record of service to Manx popular interests was claimed, Barrow and Wilson mentioned by name. Such service in the legislature was aided by the security that allowed bishops "to gather experience and exercise foresight" without fearing possible loss of their seat.

Having stressed the contentious nature of Kneale's proposals and the threat to the separate See, the paper went on to the offensive against the notion that direct election was the only basis upon which public officers could be representative. It praised the "obvious advantages of what may be described as a meritocracy" in the Westminster House of Lords, in particular the contribution of the Lords Spiritual; and referred to the need for continuity and stability in the membership of Tynwald. Rather than make no proposal for change at all, the paper concluded by endorsing the MacDermott suggestion of a standing order amendment allowing the Bishop to abstain.

This paper was circulated to members of the Keys, where the Bishop's vote now took a much higher profile in consideration of the 1982 Bill's revised proposals. Edgar Mann, a Synod member also in the Keys, while sympathetic to the democratic principle and so wanting the size of the Keys increased, opposed the self-splitting Tynwald and advocated a Council enriched by the contribution of able non-politicians: a basis on which the Bishop's voting presence – as representative of the Island's Christian community, not merely of the Establishment – was much easier to justify.

Charles Cain did not find it necessary to ascribe the same interdenominational role to the Bishop as did Mann, nor to distinguish a finite Christian community from the rest of the population. For him the Bishop stood in Tynwald for the Christianity: "so deeply interwoven in the fabric of our community that we do not notice it is there". The Bishop was the appropriate person to do this, so long as Manx law established a hierarchically-ordered church. David Cannan took up this last point, suggesting that the Bishop represented not only the generality of the Christian

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<sup>135</sup> Written evidence of T.E. Kermeen to the Committee of the House of Keys on the Constitution (Legislative Council) Bill, circulated 6.8.1982. The proviso was often ignored by Kneale and other opponents of the Bishop's vote; without it, Kermeen would appear to be conceding the case for the Bishop's exclusion.

<sup>136</sup> TC 14.12.82; oral evidence of T.E. Kermeen to the above, 13.10.82 (cited in *Isle of Man Times*, 6.9.1983). Kerruish's call took the form of a question to Radcliffe, so there was no vote.

<sup>137</sup> The paper is dated 18.1.83 and a copy is annexed to the memorial of the Diocesan Synod Standing Committee dated 3.11.83, mentioned below.

community, but more specifically the clerical interest, in view of the benefited clergy's exclusion from the House of Keys. To the Roman Catholic Dominic Delaney, however, a pastor's standing was jeopardised in the political arena: "he should be left on a heavenly plane so he can give us his views on the Christian aspect of legislation, and not vote". The principle of the Kneale reforms was approved by over two-thirds of the House.<sup>138</sup>

Vernon Nicholls retired in May 1983 and the Island See remained vacant throughout the summer. In September 1983 the Diocesan newsletter identified a change in the Bishop's position in the legislature with the eventual demise of the Diocese, and called upon readers to "fight for our heritage, our right to have a Bishop in Tynwald".<sup>139</sup> By the introduction in the autumn of a new Bill which combined Kneale's Council proposals with Keys constituency alterations, some 2700 signatures were obtained by Roger Harper, an accountant converted to the Established Church from a nonconformist background and increasingly involved with the diocesan finances, to a petition against the removal of the Bishop's vote, and a lively debate took place in the insular press. The petition was circulated to ministers of all denominations and left out in churches for signature, on the basis that a Christian presence in the legislature was valuable, and that its removal would endanger the separate See.

In November 1983 supporters in the Keys also stressed the first argument, where the episcopal role was described as "interdenominational", "non-political", "a part of the Manx heritage".<sup>140</sup> As well as the petition, the Keys in November had a Memorial before them from the Diocesan Synod Standing Committee. Eason and Kermeen had carried another resolution through the Synod in July, to the effect that "the retention of the Lord Bishop's vote in Tynwald is in the best religious and public interests of the Island". The Memorial had the paper of January 1983 annexed and broadly restated its arguments.<sup>141</sup> Kneale pointed out that the petition's 2724 signatures (which included 1646 declared conformists, 355 declared nonconformists and 723 of undeclared allegiance) represented far from overwhelming support from those on church electoral rolls, much less from the public at large. They compared with 7628 on a petition against a chairlift to Douglas Head and 30,479 on another in support of the birch. They comprised, according to Kneale, United Kingdom signatures, repeated signatures, proxy signatures and those of an eight-year-old and a five-year-old. The petition failed to sway the Keys, where the clause admitting Bishop and Attorney to Tynwald on a non-voting basis was carried 15-9, as was (with a larger majority) another restoring the right of clergy to stand for the House.<sup>142</sup> These decisions were virtually simultaneous with the arrival of Arthur Attwell as Nicholls' successor<sup>143</sup>, the Governor noting in Tynwald Court how the Bishop "touched his seat somewhat gingerly before taking it".<sup>144</sup>

Interestingly, though, Kneale himself admitted at third reading the next month that the episcopal vote was a minor matter, and he would not fight over it if the result

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<sup>138</sup> HK 25.1.83

<sup>139</sup> *Letter from the Archdeacon*, 1983, Sodor and Man Diocesan News, 81,1.

<sup>140</sup> HK 8.11.83

<sup>141</sup> Memorial to the House of Keys praying to be heard by Counsel, 3.11.83

<sup>142</sup> HK 8.11.83

<sup>143</sup> Attwell had been consecrated Bishop on 14th September, in time to sign the Standing Committee's Memorial.

<sup>144</sup> TC 15.11.83

would be to put the higher principles of his Bill at risk.<sup>145</sup> But the Council's decision to excise all references to itself from the Bill, leaving it as a simple revision of Keys constituencies<sup>146</sup>, freed him from any such dilemma. He decided against reintroducing this Bill the next year, feeling he would still not have, even in the Keys, quite the support that would ultimately be necessary to override the Council veto.<sup>147</sup>

When Victor Kneale returned to the fray once more in 1985, his proposal was a much more modest one. It was targeted solely at the Bishop, but instead of removing his vote it permitted him to abstain and stipulated that his vote should be disregarded if it created a tie. This would have meant that the Bishop's vote could not rescue an otherwise failing Bill by allowing the Council President to cast his vote in favour. It would not have stopped the Bishop's vote from being decisive, though, where other Council members were equally divided. This was not appreciated by certain members, who thought it was allowing the vote to count only where it made no real difference. The steam appeared to have gone out of the campaign, however, and the 1985 Bill failed to obtain a second reading.<sup>148</sup> Kneale's proposal to allow beneficed clergy to stand for the Keys was never revived.

The debates on the Kneale Bills in the first part of Arthur Attwell's episcopate could be seen (like the ending of the Castletown Church saga) as the ripples of something started under Nicholls. Though the new Bishop surprised some members early on, when he supported the permanence of the Douglas Casino concession, saying "no moral theologian or philosopher of any standing" would hold gambling sinful in itself<sup>149</sup>, there was no attack on the episcopal role in Tynwald that could really be attributed to his person. Further Kneale Bills for a directly elected Council affected the Bishop only consequentially, and failed on other grounds to get beyond the Keys.<sup>150</sup>

By August 1989 the Island's second Bishop Jones of the century had been enthroned in St German's Cathedral. He arrived as a new area of controversy was opening in the Island, following the decision that the Northern Irish law criminalizing sex between adult men infringed human rights guaranteed by the European Convention of 1950. Miles Walker, the recently-elected Chief Minister, had already indicated his intention to use a pending Sexual Offences Bill to amend the law of the Isle of Man,<sup>151</sup> and a lobby hostile to change was gathering strength amongst islanders.

Seeking to pre-empt a legislative proposal by Ministers, Edgar Quine called in April 1990 for a referendum. The Bishop's maiden speech in Tynwald Court

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<sup>145</sup> HK 6.12.83

<sup>146</sup> LC 15.6.84. See also the *Report of the Special Committee of the Council on the Representation of the People Bill* dated 12.6.1984 and the annexed Memorandum of Evidence from the former Deemster Eason.

<sup>147</sup> HK 5.2.85

<sup>148</sup> HK 5.2.85

<sup>149</sup> TC 16.11.83

<sup>150</sup> HK 29.3.88 (defeated 12-9 following arguments that executive changes were too recent to risk altering the legislature as well, and that any alteration should also consider a unicameral alternative); HK 8.5.1990 (13-8 for second reading, but this Bill was lost by the dissolution of Tynwald and Kneale's retirement). See generally Kneale's evidence at Appendix A of the *Report of the Select Committee on the Legislative Council*, June 1999.

<sup>151</sup> HK 24.3.87

supported the idea of legalisation, despite the view of many Christians including himself that same-sex activity was sinful. It was, Jones suggested, counter-productive to treat all sin as crime: driving activity underground would not cure it. He joined the majority against a referendum.<sup>152</sup>

In April 1991 the Bill received a second reading in the Keys, but only after a 14-8 majority had voted to delete the legalisation clauses.<sup>153</sup> In May the Bishop supported (without speaking) Clifford Irving's attempt to restore the clauses in the Council; but this attempt still failed by one vote.<sup>154</sup> Other amendments, however, required the Bill to return to the Keys, and at this point a general election intervened.

The controversy featured largely in election campaigning. Six of those re-elected made legalisation a part of their campaign platform, without apparently suffering for it. When the Sexual Offences Bill was again considered, a Keys' majority was now found for restoration of the contentious clauses. In May 1992 the Bill returned to the Council where feelings still ran high; though the electorate had shown itself less hostile to legalisation than expected, sympathy amongst Council members was minimal. The majority was swayed only by consideration of the Island's European Convention obligations and by the clear threat of possibly more liberal Imperial legislation if Tynwald failed to act.<sup>155</sup>

Jones now spoke in debate. He deplored the polarisation of language in the Island-wide discussion, but restated his conviction that same-sex activity was not to be seen as a legitimate alternative sexuality. While his feelings remained unchanged since 1990, though, his voting intentions were different: "A cross-section of Christians of all denominations has reminded me that in our deliberations here the Bishop represents as wide a range of Christian opinion as possible ... I would neglect my duty if I did not draw attention to the deep feeling from the majority of Christians that this change is unwelcome." On this basis, Jones supported the proposal of Ian Anderson that the Council reject the clauses re-inserted by the Keys and seek a conference; and when this failed, he voted against acceptance of the Keys' amendments. In both divisions, however, he now found himself in a 3-6 minority; and the decriminalisation of sex between men over 21 eventually became law.

Despite the Council's acceptance of the Keys' amendments, the fact that it was so clearly out of step with the directly-elected House – and arguably with modern Island opinion – on this issue was bound to fuel demands for a fresh look at its composition and powers. This compounded the fact that the Constitution Act 1990, in ending the Governor's presidency of Tynwald Court, had left the Bishop even more obviously the only unelected voting member of the Legislature. Thirdly, the advent of the ministerial system in the 1980s had transferred considerable political power to the executive, and there was a school of thought that held the time was ripe for redressing the balance by improving the democratic credentials of the legislative wing of government. A final development had been Bishop Jones's 1990 decision to resign from the Department of Education, in which he had served – at the request, perhaps ironically, of Minister Victor Kneale – but found the multiplication of meetings difficult to reconcile with his other commitments. So ended the long tradition of ecclesiastics involvement in executive government, and the argument (pressed in

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<sup>152</sup> TC 11.4.90

<sup>153</sup> HK 30.4.91

<sup>154</sup> LC 28.5.91

<sup>155</sup> LC 26.5.92

debate by Miles Walker) that the Department would be disadvantaged in presenting policy to Tynwald if its episcopal member had no vote.

James Cain, the new Speaker of the Keys, had campaigned for re-election in 1991 with a pledge to seek a directly-elected second chamber. In October 1992 he secured Tynwald Court's appointment of a Select Committee to consider the Council's functions and election mechanism.<sup>156</sup> Bishop Jones gave both written and oral evidence to the committee, and in July 1994 summed up his views on his own position in a major speech. The committee proposals were less drastic than those of the Kneale Bills ten years earlier: the Bishop was to lose his vote in Tynwald Court but not in the Council, where it was preferable for his vote to resolve deadlock, rather than that of the President of Tynwald. Together with the Attorney-General, though, he should also lose his right to move motions. Cain's platform of direct election had been abandoned to avoid re-awakening Branch rivalry; instead, a further reduction on the Council's delaying and elective powers was proposed.<sup>157</sup>

Jones described his Tynwald presence as "representative, not advisory", and repudiated any analogy with the non-voting Attorney. He was a representative, however, not of an English church but "because of his involvement in the Established Church of this Island". The first role of government was "to advance the Kingdom of God in a Christian country", and the Manx public was already concerned at the erosion of Christian principles. No debate lay outside his interest as Bishop, and the security of his position enabled him to participate with an open mind. His contact with a wide cross-section of society enabled his vote to reflect something of their concern.

Keys members voted narrowly in favour of the Cain proposals, but the motion was lost, with all but one of the Council voting against. A further debate was called for under the 1961 Constitution Act, but when this took place in November only twelve members of the joint session supported Cain and the first challenge to Jones's legislative role came to an end.<sup>158</sup>

In 1997, another general election over, it was the turn of Transport Minister Tony Brown to move (this time in the Keys) for a select committee on the Council's role and constitution. Brown himself said little about the Bishop's vote, except to point out that the Church Legislation Procedure Act 1993 had extended the 1979 Kermeen procedure to all ecclesiastical legislation.<sup>159</sup> Though it did not follow, as Brown alleged, that Tynwald no longer legislated for the religious Establishment, it was quite true that in practice the Branches' input in the regulation of public religion would be further reduced.

Eighteen months passed, however, and the committee produced no proposals to reform the Council's composition. Geoffrey Cannell, who had included such reform among his manifesto pledges, moved in October 1998 to request Ministers to introduce reforming legislation. Cannell suggested a novel approach to the bishop's democratic legitimacy: at each Tynwald election, the electorate should be asked as a whole whether or not to accord the bishop voting rights; 51% support would suffice.<sup>160</sup>

Edgar Quine, however, successfully secured the adjournment of Cannell's debate in October 1998 and again the following April. As Chairman of the Keys'

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<sup>156</sup> TC 22.10.92

<sup>157</sup> TC 13.7.94

<sup>158</sup> TC 15.11.94

<sup>159</sup> HK 22.4.97

<sup>160</sup> TC 21.10.98

committee still considering the role of the Council, he felt that discussion of its membership was logically premature. His committee reported in October 1999, offering two alternatives: a further restriction in the existing Council's role (the Bishop losing his vote), or a change to direct election (in which any role at all for the Bishop would need to be added in subsequently). A large majority now supported the second option, and Ministers were asked to prepare legislation.

At this point an initiative from within the Council itself sought to pre-empt both Cannell's adjourned motion and any Bill that might result from the Quine Report. Edmund Lowey introduced legislation to provide for direct elections to the Council, while keeping a separate voting role for the Bishop. Though frequently opposed to the episcopal position on issues in the past, Lowey now argued on grounds of history, the valuable episcopal contribution addressing members' minds "to social and spiritual things", and the lack of significant popular opposition to his role, that the Bishop should stay.<sup>161</sup>

The Keys, however, did not appreciate the Council's intervention. Lowey's Bill received its first reading at 10 a.m. on 16th November. Shortly before lunchtime the Branches met in Tynwald Court and Cannell was told by the President (Kerruish) that his adjourned policy motion could still not be considered, since it now covered the subject-matter of pending legislation. Submitting under protest to Kerruish's ruling, the Keys lost no time in discharging the Lowey Bill when it came before them for second reading at the start of February.<sup>162</sup> The insular press supported them in this attitude, staging a campaign that Kerruish later alleged was aimed at "destroying the Council's image by manipulation of the truth, disregard of facts and biased satirical reference".<sup>163</sup>

The debate for which Cannell had been pressing for seventeen months finally took place in March 2000, and he now had no difficulty in carrying his motion for the direct election principle. Bishop Jones himself supported the call, though without prejudice to his own voting rights, for which he claimed to "have rather more constituents than perhaps others up here".

It was now nearly eighteen months since the Quine Report had been approved by the Keys and Ministers asked to prepare legislation. Soon after the ministerial committee had set to work, Victor Kneale (retired from Tynwald since 1991 but still keenly interested in constitutional issues) had offered Chief Minister Gelling the draft of a Bill for his colleagues to consider. Gelling had been sympathetic to the thrust of Kneale's Bill, but found it difficult to convince colleagues, and had finally suggested that Kneale might have more success in persuading a private member to take his proposals forward.<sup>164</sup> It was an open secret that the Constitution Bill that Geoffrey Cannell introduced into the Keys in May 2000, following his Tynwald Court success in March, was largely of Kneale's drafting.

The new Bill followed the 'self-splitting Tynwald' principle approved by the Keys in November 1983. 33 members of Tynwald were to be chosen by the electorate, and would then select nine of themselves to be the President of Tynwald and voting members of a revising chamber. Bishop and Attorney would join this chamber with rights to speak but not vote.

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<sup>161</sup> LC 23.11.99

<sup>162</sup> LC 16.11.99, TC 16.11.99, HK 1.2.00

<sup>163</sup> TC 21.3.00

<sup>164</sup> This information comes from an interview kindly afforded to Dr Pearce by Mr Kneale on 14.1.02.

The first serious debate of the Cannell Bill was at second reading in the Keys in June 2000. Once again it was clear that the episcopal vote would be an issue in its own right, but at the same time intimately bound up with the wider question of Tynwald's future shape. 'Modernising' and 'democratising' arguments were answered by former Chief Minister Walker's warning against tampering with an historic and workable system and jeopardising the Island's independent See. A new champion of religious representation, broadly understood, came forward in the person of Leonard Singer, one of the Island's small Jewish community, who believed it right that the Island should hear religious views and that a member without a vote would have no real incentive to attend Tynwald at all.<sup>165</sup>

Despite Singer's arguments the Bill received a second reading, and once again the episcopal vote appeared under serious threat. Extra-parliamentary resistance fell once more to Richard Harper, who since 1983 had become Chairman of the Diocesan Board of Finance and also been ordained. But he now had as valuable colleagues his sister Clare Faulds, the Island's Vicar-General, who had spoken strongly in favour of the Bishop's vote at a Diocesan Synod debate in May, and her husband Ian Faulds, a newspaper proprietor who published *inter alia* the organ of the religious Establishment, the *Isle of Man Church Leader*.

Since 1983 churchgoing in the Island had dropped significantly, perhaps 1000 fewer adults attending the parish churches. Another Island-wide petition was thought likely to be counter-productive, in the event that fewer signatures were obtained in 2000 than previously. Instead it was resolved to rely on a campaign in the *Leader*, individual lobbying of members of the Keys and the circulation of a reasoned argument (in two versions tailored to their anticipated readership). The *Leader* campaign got under way in July, eagerly answered by the prolific pen of Victor Kneale; while preparation of the reasoned paper was entrusted chiefly to Vicar-General Faulds.<sup>166</sup>

The introduction of Cannell's Bill did not, at least officially, relieve Ministers of their own obligation to consider the Council's future. At the end of July the Chief Minister called for the views of all members of Tynwald, Bishop Jones included, on the Quine Committee's recommendations.<sup>167</sup> The Bishop offered an oral contribution, but placed his main reliance upon the Vicar-General's paper, which appeared in its final form in September and was copied to the Ministerial committee.<sup>168</sup> The paper made a number of substantial points. The Bishop was historically entitled to sit in Tynwald as a baron. The Bishop's vote had not hindered the evolution of Manx government into its modern form. The relationship between the Island and its national church, expressed in the Bishop's Tynwald presence, was a longstanding and inextricable one. As a non-voting member the Bishop would have less incentive to take his seat, and the value of his contributions would be reduced. Appointed after wide consultation, with a representative rather than advisory role, and with no salary from general public funds, no analogy could be drawn between the Bishop and the

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<sup>165</sup> HK 27.6.00

<sup>166</sup> Information supplied by Mr Harper in an interview kindly afforded to Dr Pearce on 29.1.02.

<sup>167</sup> Letter, Gelling to Jones, 27.7.00

<sup>168</sup> Letter, Faulds V-G to Chief Minister's Office, 29.9.00. The main arguments had been canvassed in a letter to the *Isle of Man Church Leader* signed by Faulds and Harper, with the Chairmen of the Diocesan Synod Houses of Clergy and Laity and published in the August 2000 issue.

Attorney-General. Freedom from the political pressures of regular re-election enabled the Bishop to “be a voice for religious belief, ... articulate the philosophical, moral and spiritual viewpoint, ... bring an independent and permanent view ... give a spiritual perspective to government that would otherwise be lost”. Though others would also bring their convictions to bear, the Bishop represented ‘a continuity of moral and spiritual tradition ... of immense importance in a rapidly changing secular society’. The specific proposals of the Cannell Bill had never been put to the electorate in a general election. Evidence to the Quine Committee had shown no significant majority of witnesses in favour of reform. The Bishop’s ecumenical contacts enabled him to represent the wider Christian community. The Bishop’s position assured Tynwald of a highly-educated, trained and experienced member “with proven management ability”. With a reduced public function attaching to the episcopal office, future candidates for the See might be of reduced calibre. The same argument might jeopardise the future of the Island as a separate diocese altogether, with adverse effects on access to the Bishop, synodical representation of Manx interests, numbers of churches and clergy.

In October, in response to a letter from Kneale, Lambeth Palace entered the debate by referring to the Bishop’s role as witnessing to the importance of spiritual values in the life of the Island; and noting that downgrading this role seemed curious in the context of UK reforms which recommended continuing religious representation.<sup>169</sup> The Archbishop of Canterbury did not wish to speculate about the response of the Church of England if the role were changed, but noted that the legislative role had been important in deciding to appoint Bishop Jones, and “[l]ike any other organisation, the Church would be bound to look carefully at the implications of any diminution of the Bishop’s public role and to weigh their consequences for future ecclesiastical arrangements in the Island”.

In the same month, more time was given to the island-wide debate by the Keys’ reference of Cannell’s Bill to a committee of five chaired by David Cretney.<sup>170</sup> The committee did not consider its function to include comment on the policy of the Bill, but merely drafted a list of amendments to meet technical points and minor concerns raised in debate. Its report was received in December, which cleared the way for the all-important clauses stage to be taken on 23rd January 2001.

Clause 2 of the Bill dealt with the composition of Tynwald, the first sub-clause containing the fundamental principle of direct election. Sub-clause (2) then added the Bishop and Attorney to the revising chamber as non-voting members. An amendment tabled by Leonard Singer to sub-clause (2) would permit the Bishop to vote in this chamber as hitherto. Cannell voiced surprise that “one relatively minor provision appears to have attracted more attention than all other clauses put together”. He assured the House that under his proposals the Bishop would remain welcome to contribute to debate, and that the religious Establishment in the Island would not be affected. Church influence did not, however, demand the automatic right to vote in a democratic legislature, and Christianity could be expressed as well by other members. The Bishop’s appointment process could not be compared to a choice by the Manx electorate; nor was it any use “pretending that the Christian congregations of the Isle of Man represent the majority of the people of the Island any more”. Singer supported his amendment by reference to the “many attempts to remove religious guidance from our lives”, and the erosion of previously accepted standards of behaviour and the

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<sup>169</sup> Letter from J. Harris to G.V.H. Kneale, 10 October 2000.

<sup>170</sup> HK 24.10.00

importance of family. His information suggested a higher level of interdenominational confidence in the Bishop than Cannell's, and a greater likelihood than Cannell anticipated that a merger of oversight would follow any diminution in the Bishop's Tynwald role.

Cannell's closing remarks indicated pessimism about the future of his own proposals. Not only was sub-clause (2) on the Bishop's vote under attack; but also the 'self-splitting' Tynwald of sub-clause (1) still did not appear to command the support in the House for which he had hoped. In this he was proved correct. The Singer amendment was carried 18-5, and clause 2 as a whole was then defeated 8-15. At the Speaker's invitation, Cannell withdrew his Bill.

Contributions to the debate, and the views expressed at other times by those who voted for the Singer amendment, nevertheless suggest that other factors than support for the Bishop played their part in this outcome. Allan Bell and Walter Gilbey, for example, were concerned to see the Constitution Bill off the Keys' agenda so that more urgent legislation could be progressed before the dissolution of the Keys that autumn. The wish for Cannell to withdraw the Bill may explain their support for an amendment striking at the root of his campaign. Miles Walker and Peter Karran, on the other hand, not objecting to the Bishop's vote, opposed the amendment through hostility to Cannell's entire project – Walker believing in the *status quo*, Karran in unicameralism – presumably hoping the provision on the Bishop would taint the Bill as a whole and cause its failure at a later stage.

## **II.7 Developments since 2001.**

The qualitative fieldwork forming the core of this project ends in May 2001. Where debates to June 2003 are relevant to the earlier discussion we have referred to them, generally in the footnotes. Three events merit specific discussion here.

Firstly, the role of the Ecclesiastical Committee came under review. Following the general elections to the Keys, Tynwald Court needed to elect seven members to form the Committee. In introducing the ballot Bishop Jones observed that this was an excessive number, and asked for it to be looked at for the future.<sup>171</sup> Singer, a Jewish member of Tynwald, was proposed for the Committee. He saw this as "revolution rather than evolution", but Crowe thought it would be "very sensible for ecumenical relationships". He was not elected. Later in 2002 a Select Committee recommended that the Ecclesiastical Committee should be reduced to three members, and that it confer with the Bishop and Government in order to report on its future existence and remit. The principal reason given for change was the development in ecclesiastical legislation in the preceding decade.<sup>172</sup> This is yet to be implemented.

Secondly, in June 2002 Edgar Quine received leave to introduce a Bill to the Keys.<sup>173</sup> It provided for a Legislative Council consisting of the President of Tynwald, the Bishop, the Attorney General, and eight directly elected members. Neither the Bishop nor the Attorney were to have a vote, or count towards a quorum. At the time of writing, the Bill is still under consideration. On 1 April 2003 a Select Committee was formed to report on the Bill, with a remit focussing on election to the Council.

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<sup>171</sup> *Election of Members of the Ecclesiastical Committee*, TC 17.1.2002.

<sup>172</sup> *Standing Committees: Report of the Select Committee on the Reduction of their Numbers*, TC 11.12.2002.

<sup>173</sup> Constitution (Legislative Council) Bill 2003.

The Committee will report before April 2004, and is currently taking evidence from the public.

Thirdly, on 30 April 2003 Bishop Noel Jones retired from the See. His successor, the Very Reverend Graeme Knowles, Dean of Carlisle, has yet to be consecrated and take his seat in the Council. The Lord Bishop-designate stated that his voting role in Tynwald would be very important – “It’s a rich inheritance to have representing both the Church of England and other Christians. I put a great deal of stress on my time commitment in Tynwald. The Church must be involved in politics and the way we live – because the voice of the Christian community needs to be heard”<sup>174</sup>.

## **II.8 Conclusions.**

Although unquestioned ecclesiastical representation in the Council came late to the Isle of Man, during the nineteenth century a significant proportion of the Branch were officers of the Manx Church sitting *ex officio*. Most of these officers were removed at the start of the twentieth century, as the Council began to become less a body of officials due to the introduction of indirectly elected and appointed members. As the Manx constitution developed in the twentieth century, the Bishop became more unusual, finally being left as the only voting member of the Council who sat *ex officio*.

Debates over the role of the Bishop have, inevitably, occurred primarily as a result of broader constitutional controversy. The Bishop was uncontroversial in a branch of English officers – but attempts to discard an English Council in opposition to a Manx Keys, an official Council in opposition to a directly elected Keys, inevitably threatened his position.

As the Bishop survived these reforms, however, the debate changed. He could be – and often was – seen as unfinished business from both these reforms; or as an anomaly that should not be allowed to detract from a vision of democracy based on direct or indirect election by the Manx. Most contributions to the debates after 1980, however, accept that the Bishop had a distinctive place in the Council. His removal might be seen as the eradication of the last vestiges of feudalism, or as a threat to the survival of the Diocese, or the silencing of a vital spiritual voice. In any of these examples, however, it was assumed that the Bishop mattered - this his legislative role was special.

In the following chapter we discuss at length how successive Bishops performed and represented this role, and detail how other members of Tynwald saw the Bishop’s legislative role.

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<sup>174</sup> *Isle of Man Church Leader* (2003) September 1, 18.

### **III: The debates of Tynwald, 1961-2001.**

This chapter focuses on how the Bishop functioned in Tynwald during the period under study. As this discussion is based upon a qualitative analysis of the debates of Tynwald, a necessary preliminary is a discussion of our methodological choices. We then move to consider those debates where the vote of the Bishop was decisive, and the problems with a focus on those debates. A better approach is to analyse all debates where the Bishop took part, or his role was alluded to. Our analysis of these debates indicates two different types of issues. Firstly, subjects where Bishops have, or were expected to have, made a substantial contribution. In this section we also include a narrative of the key debates which are referred to later. Secondly, modes of contribution expected of the Bishops – that is, expectations of appropriate conduct by this legislator. The chapter concludes by unpacking “the Bishop” into the five men who held this office during the period in question.

#### ***III.1. Methodology.***

In analysing the role of the Bishop, we draw only upon reports of Tynwald debates since March 1961. This date marks a significant change in the powers of the Council, with the loss of the absolute veto over legislation.<sup>175</sup> Due to time constraints, not all Tynwald debates within this period are analysed. We have considered every debate where the Bishop was legally entitled to exercise a role. Thus, all debates of the Council and Tynwald Court are analysed. In relation to the other Branch of Tynwald, the Keys, once we have identified a measure involving explicit discussion of the Bishop’s constitutional position relevant debates have been analysed. We have not, however, examined debates on unrelated topics in the Keys in search of discussion of the Bishop’s role. The use of Tynwald debates to understand the role of the Bishop may be subject to two fundamental criticisms - firstly, the political actors whose views are identified; secondly, the mode of expression which is drawn upon.

On the first point, our analysis is based upon the assumption that the views of members of Tynwald are especially significant. This significance can be found in the formal, and informal, power of these actors in relation to the exercise of the Bishop’s legislative role. In formal terms, a coercive change to the role would require the agreement of sufficient members to proceed with an Act of Tynwald. More informally, members of Tynwald act as opinion formers, particularly on constitutional matters concerning the composition of Tynwald, making their expressions of opinion particularly significant. As well as this national role, the views of those legislators involved in legislative debate with the Bishop - that is, fellow members of the Council or of Tynwald Court - are an immediate, and intimate, source of influence upon the Bishop in his constitutional functions. To take a hypothetical, if we found members of the Council repeatedly and consistently deferring to the Bishop on matters of religious education, but asserting that he had no role in broader matters of scientific and artistic education, this would be significant whether the Bishop acquiesced in this construction of his role or rejected the views of the other members of the Council. Similarly, if the Bishop indicated explicitly, or implicitly through a number of interventions, that he had a particular expertise or interest in a specific area, this could be significant.

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<sup>175</sup> Isle of Man Constitution Act 1961 s.10.

While the significance of these constitutional actors may be relatively unproblematic, by taking legislative debates as our source for their opinions, we are limiting the range of our data. Although we have supplemented our analysis with interviews with current and former constitutional actors, and with extra-legislative sources, we could not, given our period, have done so exhaustively. Instead, we have taken the contributions to the debates of Tynwald as our central resource. This decision has three advantages for our study. Firstly, given that the study seeks to explore developments since 1961, use of these sources allows us to accommodate constitutional actors who are now deceased, and discussion of legislative patterns that may, in an interview narrative, be overlaid by more recent developments. Secondly, our interest is less in the bare opinion of these constitutional actors than in the influence they may exercise upon the collective expectations of the legislature. It may be interesting to learn that a particular legislator, for instance, privately opposed the involvement of any professional clerics in the legislative process. If this opinion was never expressed in the public forum of the legislature, however, that in itself may indicate that it fell outside the collective expectations of the legislature as to acceptable differences of opinion. Thus, we look to the individual contributions to put together a multifaceted, often conflicted, collective view of the role of the Bishop. Finally, by focusing on Tynwald debates, we deal with a source that our constitutional actors will have known was a matter of public record. As well as avoiding ethical issues arising from the use of other forms of data, by using a source where our actors were speaking for the record we might expect to find a degree of development of their ideas, and a level of gravitas which might be absent from less formal fora.

There are, nonetheless, three important restrictions inherent in basing this study on the use of Tynwald debates, which may be usefully summarised here.

Firstly, individual personalities are of considerable significance, particularly in a legislature such as Tynwald, which consists of less than forty members. As will become apparent in the discussion that follows, particular personalities play an important role in the debates. So, for instance, it is possible to trace consistent approaches by Eddie Lowey and by Sir Charles Kerruish. The personality of individual Bishops is also of considerable significance. As mentioned above, however, we seek to draw out that part of Tynwald's civic philosophy that deals with the Bishop. Although this must emerge from the contributions of individual members, the views of the individuals are of secondary importance. Nonetheless, it can become seriously misleading to refer to "the Bishop" or "members of Tynwald". This concern is partly addressed by reference to contributors by name throughout this chapter, sometimes at the expense of elegance and brevity; and our consideration of each Bishop in a section near the end of the chapter. Nonetheless, our conclusions must be tentative, as we seek to draw broader generalisations from particular social interactions between particular legislators.

Secondly, there are developments and changes over time. To some extent we have approached the period 1961-2001 as a single unit, looking for patterns across the available data. Not only do the individual personalities change as the composition of Tynwald fluctuates, however, but broader social and political changes in the Isle of Man since 1961 must have had some impact. Where we find common themes, for instance the involvement of a number of Bishops over a number of decades with Sunday trading laws, their significance is strengthened by this proviso. It may also be, however, that particular generalisations we make about the role of the Bishop were not evidenced for the entire period by a number of instances, but only for the period in which those instances occur. This is particularly the case where debates do not show a

consistent approach towards the role - rather than seeing evidence of different views of “the” approach by different legislators, we may actually be seeing views of different, because chronologically distinct, approaches. This concern is partly addressed by reference to all debates by date throughout this paper.

Thirdly, the coverage of issues and topics emerges as a result of pressures upon the legislative agenda. In the discussion that follows, we suggest that some Bishops have played a particularly prominent role in some subject areas. Although the Bishop has the power to introduce topics to Tynwald, this will not necessarily be used simply because he has an interest in that topic. Rather, an active involvement by the Bishop would seem to require a coincidence between a topic before Tynwald because of the pressure of events, or as part of a broader legislative programme, and the willingness of the Bishop to participate. A Bishop may choose not to make an intervention not only because he considers it would be inappropriate, but also because he feels that the points he considers important have already been made. This is an important limitation on our data, and to some extent justifies our decision to look for patterns across the entire period, rather than engage in a chronologically sensitive study of the debates.

Within the confines of our sources, as discussed above, we approached the task of analysis by a comprehensive analysis of the voting record of Tynwald to determine motions where the vote of the Bishop was decisive. As discussed below, this would never have given an accurate view of the interactions in Tynwald. It provided a relatively small number of debates for us to develop working practices with before exploring all debates. Each debate was summarised, and tabulated for key work or speaker searches. Analysis was by a quasi-judicial method, with recursive sorting and resorting of the data to identify common themes across multiple episcopacies.

### **III.2. The decisive votes.**

A survey of the voting records of Tynwald Court and of the Council during our period makes it possible to identify instances when the vote of the Bishop was decisive. As we will see from the discussion of the debates that follows, the business of Tynwald was not narrowly legislative, particularly before the development of the Council of Ministers as the central executive body of the Island. Much of this non-legislative business was resolved in Tynwald Court, which included members of both Branches of Tynwald. In the legislative role, the Bishop’s most important function was as a member, with full voting rights, of the smaller Council. Given the Manx legislative process, which allows the Keys to dispense with the consent of the Council to legislation, but not vice versa, it is arguable that the vote of the Bishop, and indeed the rest of the Council, has never been decisive – if the Keys are insistent on passing a Bill then, in most cases, they can do so. Nonetheless, the extra effort needed to do so, and the failure of every Bill rejected by the Council to become law regardless, suggests that it is appropriate to view the Bishop’s contribution to a majority of one in the Council, or to a tie requiring a casting vote, as decisive.

Within the Council, we can identify a number of instances where the Bishop’s vote led to a tie requiring the casting vote of the President. In a number of these, the casting vote was exercised against the Bishop, leading to the same result as if he had not voted.<sup>176</sup> In 1977, however, a Bill to remove wide ranging powers intended to encourage new industry reached the Council, where a 4:4 tie at the First Reading led

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<sup>176</sup> *Civil Service Bill*, LC 28.11.89; *Road Transport Bill*, LC 8.5.01.

to the Governor casting his vote in favour of the Bill, and in line with Bishop Nicholls, in order to keep the debate moving and keep in line with the Keys.<sup>177</sup>

Additionally, there have been a number of instances where the Bishop's vote led to a majority of one, avoiding a tie.<sup>178</sup> In 1979 Bishop Nicholls defeated an amendment to a jury Bill that would have allowed women without children to be excused as of right.<sup>179</sup> In the same year he defeated the central clause of a Bill to allow more Sunday opening by licensed premises,<sup>180</sup> although it became law the following year by the consent of the Keys alone. In 1981 an amendment to limit sales of the national lottery to the summer season was carried by his vote.<sup>181</sup> In 1982 he was a substantial force behind the drive to establish a Manx Heritage Foundation, and his vote was decisive in the passing of the Bill to do so through the Keys.<sup>182</sup> In 1985 an amendment to reduce the notice period for an extension to an alcohol license was defeated by Bishop Attwell,<sup>183</sup> a decision that was later accepted by the Keys.<sup>184</sup> In the same year, at the instance of the Finance Committee of the relevant Board, he moved and carried an amendment to make the provision of school meals optional;<sup>185</sup> and carried an amendment allowing children over 16 to be served wine with a meal in a restaurant.<sup>186</sup> In 1990 Bishop Jones carried an amendment to allow voters to make their marks in Manx as well as in English.<sup>187</sup> In 1991, he defeated an amendment to place the Manx Water Authority under the control of the Highways Department, rather than the Department of Industry.<sup>188</sup> In 1993 he defeated an amendment to allow extra review of minister's refusals to provide licenses for services competing with the Manx Post Office.<sup>189</sup> In 2001 he proposed an amendment to an education provision requiring religious education to be "wholly or mainly of a broadly Christian character", seeking to delete "broadly". The amendment was carried by his vote,<sup>190</sup> but was rejected by the Keys, and after a conference between the Branches the Council agreed to withdraw the amendment.<sup>191</sup>

Turning to Tynwald Court, the making of a casting vote against the Bishop has on a number of occasions led to his vote being irrelevant to the final outcome.<sup>192</sup> On a

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<sup>177</sup> *General Development Act 1964 (Repeal) Bill*, LC 7.12.77.

<sup>178</sup> In the text, we discuss only those votes which dealt with substantive matters. The Bishop's vote could also be decisive in relation to procedural issues – see *Road Traffic Bill*, LC 13.11.84. This is also true in Tynwald Court – see *Motion to adjourn business*, TC 10.4.90; *Disability Working Allowance*, TC 20.6.00.

<sup>179</sup> *Jury Bill*, LC 9.10.79.

<sup>180</sup> *Licensing (Sunday Opening) Bills*, LC 9.1.79.

<sup>181</sup> *Public Lotteries Bill*, LC 9.6.81.

<sup>182</sup> *Manx Heritage Foundation Bill*, LC 12.1.82.

<sup>183</sup> *Licensing Amendment Bill*, LC 22.1.85.

<sup>184</sup> *Licensing Amendment Bill*, HK 5.2.85.

<sup>185</sup> *Statue Law Review Bill*, LC 11.6.85.

<sup>186</sup> *Licensing (Amendment) Bill*, LC 3.12.85.

<sup>187</sup> *Representation of the People Bill*, LC 1.5.90.

<sup>188</sup> *Water Bill*, LC 14.5.91.

<sup>189</sup> *Pose Office Bill*, LC 29.6.93.

<sup>190</sup> *Education Bill*, LC 3.4.01.

<sup>191</sup> *Education Bill*, LC 29.5.01.

<sup>192</sup> *Motion to approve Casino Regulations*, TC 19.3.63; *Emergency Motion on Seamen's Strike*, TC 6.12.66; *Betting Shops*, TC 21.2.67; *Motion on funding of houses for first time buyers*, TC 15.5.99.

substantial number of occasions, however, the Bishop's vote has been decisive in causing the Council to support the Keys:<sup>193</sup> Bishop Pollard exempting public transport undertakings from the removal of fuel subsidies (1963),<sup>194</sup> extending British food hygiene standards (1964),<sup>195</sup> and delaying development of redundancy payment legislation (1965);<sup>196</sup> Bishop Gordon limiting the opening hours of betting shops (1970),<sup>197</sup> restricting the terms of an inquiry into development leases (1970),<sup>198</sup> authorising the appointment of a senior marketing officer to the Tourist Board (1970),<sup>199</sup> and authorising the creation of a panel to review the working of the residence control scheme (1973);<sup>200</sup> Bishop Nicholls giving a landowner time to seek legal advice before authorising compulsory purchase (1978),<sup>201</sup> making support for the Central Abattoir dependent upon it reaching European standards (1979),<sup>202</sup> creating a single Board of Consumer Affairs (1979),<sup>203</sup> endorsing the principle of equal representation for all inhabitants of the Island in Manx elections (1979),<sup>204</sup> allowing borrowing by Peel Town Commissioners to fund a housing project (1980),<sup>205</sup> establishing fifteen-yearly reviews of boundaries for electoral purposes (1980),<sup>206</sup> and authorizing an emergency debate on British Telecom officers, rather than Manx officials, operating against CB radio possessors in the Island (1980),<sup>207</sup> authorising expenditure on building a shop and annexed house in Jurby (1981),<sup>208</sup> authorising expenditure on extra beds at Ballamona Hospital (1981);<sup>209</sup> and supporting action to change the constitutional position of the Island in the wake of a decision of the European Court of Human Rights prohibiting judicial corporal punishment, and affirming the desire of the Island to retain this sanction (1981);<sup>210</sup> Bishop Attwell merging all government telecommunications into a single authority (1984),<sup>211</sup>

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<sup>193</sup> It would have been decisive in *Ramsey Yacht Village*, TC 21.10.69, had the Governor not chose to exercise his casting vote against concurrence with the Keys, due to pressure on the legislative timetable.

<sup>194</sup> *Motion on Isle of Man Public Transport*, TC 21.5.63.

<sup>195</sup> *Food Hygiene (General) Regulations*, TC 22.1.64.

<sup>196</sup> *Legislation for redundancy payments*, TC 13.7.65.

<sup>197</sup> *Betting Shops*, TC 20.1.70.

<sup>198</sup> *Inquiry into grant of leases of government property*, TC 22.4.70.

<sup>199</sup> *Tourist Board*, TC 20.10.70.

<sup>200</sup> *Report of Select Committee on Population Changes*, TC 16.5.73.

<sup>201</sup> *Compulsory Purchase of Land for Sulby Reservoir*, TC 16.5.78.

<sup>202</sup> *Central Abattoir*, TC 15.5.79.

<sup>203</sup> *Recommendations of First Interim Report of the Select Committee on Constitutional Issues*, TC 19.6.79.

<sup>204</sup> *Commission on Electoral Reform*, TC 20.6.79.

<sup>205</sup> *Peel Town Commissioners*, TC 28.5.80.

<sup>206</sup> *Boundaries Review*, TC 17.6.80.

<sup>207</sup> *Citizens Band Radio*, TC 9.12.80.

<sup>208</sup> *Local Government Board*, TC 16.6.81.

<sup>209</sup> *Ballamona Hospital*, TC 14.10.81.

<sup>210</sup> *Withdrawal of the Isle of Man from the European Convention on Human Rights*, TC 14.10.81.

<sup>211</sup> *New transmitter buildings*, TC 10.7.84. The same issue resulted in a decisive vote in line with the Keys to delay reception of an official report – see *Home Affairs Board Report*, TC 15.1.85.

establishing the procedure for election to the Home Affairs Board (1984),<sup>212</sup> authorizing reconsideration of fishing regulations (1985),<sup>213</sup> and forming a Select Committee to consider trade union regulation (1985);<sup>214</sup> and Bishop Jones commissioning an official investigation into the collapse of the Savings and Investment Bank (1990),<sup>215</sup> giving the relevant Department the choice as to the form of the school year (1993),<sup>216</sup> receiving the government report on local government (1994),<sup>217</sup> directed the Select Committee on Standing Orders to take account of issues raised in debate (1995),<sup>218</sup> setting up a Select Committee to consider a Tynwald Day grievance concerning battery hens (1998),<sup>219</sup> expressing a belief in consensus government with collective responsibility and confidence in the current Ministers (1998),<sup>220</sup> discussing transfer of responsibility for medicines and poisons between Departments (1999),<sup>221</sup> rejecting exceptions to the principal of collective responsibility within the Council of Ministers (2000),<sup>222</sup> welcoming a government commitment on CO2 emissions (2000),<sup>223</sup> criticising the Tynwald Management Committee's filling of a vacancy in the Deputy Clerkship of Tynwald (2001),<sup>224</sup> and changing a commitment to buy and staff a piece of medical equipment to a commitment to consult on such a purchase (2001).<sup>225</sup>

Although the effect of the Bishop's decisive votes in Tynwald Court have generally been to support the Keys, there are important exceptions. On a number of occasions, the Council voted against the Keys because of his vote: a motion to explore the advantages of terminating the Common Purse Agreement was lost (Pollard in 1965),<sup>226</sup> as was a proposal to increase the Manx rebate on UK fuel taxes (Gordon in 1968).<sup>227</sup> The Bishop's vote was decisive in retaining a proposed constitution for the Isle of Man Arts Council (Jones in 1991).<sup>228</sup> In 1993 the question arose as to whether Tynwald should appoint a new Select Committee on Advocate's fees, the former Committee having served its term, even though a new Bill was likely to eliminate the need for the Committee. The Keys were in favour of making the new appointments in any case, but Bishop Jones disagreed, resulting in a tie in the Council that – exceptionally – the President resolved by casting his vote against the Keys.<sup>229</sup> Bishop Jones opposed approval of an order to increase Sunday trading by sports and clothing

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<sup>212</sup> *Election to Home Affairs Board*, TC 12.12.84.

<sup>213</sup> *Inland Fisheries (Amendment) Regulations*, TC 15.1.85.

<sup>214</sup> *Select Committee to consider Trade Union regulations*, TC 19.11.85.

<sup>215</sup> *Savings and Investment Bank*, TC 15.5.90.

<sup>216</sup> *School Holidays*, TC 15.6.93.

<sup>217</sup> *Council of Minister's Report on the Structure of Local Government*, TC 22.6.94.

<sup>218</sup> *Recommendations by the Standing Orders Committee*, TC 12.4.95.

<sup>219</sup> *Tynwald Day Grievance*, TC 20.1.98.

<sup>220</sup> *Council of Ministers*, TC 12.12.98.

<sup>221</sup> *Adjournment*, TC 12.12.99.

<sup>222</sup> *Council of Ministers*, TC 17.5.00.

<sup>223</sup> *Carbon Dioxide Emissions*, TC 16.1.01.

<sup>224</sup> *Motion to appoint Deputy Clerk to Tynwald*, TC 22.2.01.

<sup>225</sup> *Provision of a Hyperbaric Chamber*, TC 16.5.01.

<sup>226</sup> *Examination of 1957 Common Purse Agreement*, TC 13.7.65.

<sup>227</sup> *Common Purse Agreement*, TC 11.12.68.

<sup>228</sup> *Isle of Man Arts Council*, TC 16.10.91.

<sup>229</sup> *Select Committee on Advocate's Fees*, TC 20.10.93.

shops, eventually requiring the Keys to bypass the Council (1995).<sup>230</sup> He was crucial in supporting an original timetable for tree-planting (1993),<sup>231</sup> and in rejecting a proposal of the Keys to introduce a 3 year evaluation programme for a national speed limit, in order to bring the limit into effect immediately, although he failed in this aim (1998).<sup>232</sup> In the same year he voted in favour of an amendment mentioning compensation in response to a Tynwald Day petition.<sup>233</sup> In 2000 an amendment calling for immediate coastal defences at Kirk Michael passed in the Council because of Bishop Jones, but was defeated in the Keys.<sup>234</sup> In 2000 a motion was under discussion that would ask the Council of Ministers to discuss means of making ex gratia payments to Islanders who had been prisoners of war in Japanese hands. A motion to change this to a consideration of whether such payments should be made in principle commanded the support of the Keys, although it was lost in the Council because of Bishop Jones, leading to the original motion passing without a division.<sup>235</sup>

	<b>Decisions in Council.</b>	<b>In Tynwald (with Keys).</b>	<b>In Tynwald (against Keys).</b>
<b>Pollard</b>	-	3	1
<b>Gordon</b>	-	4	1
<b>Nicholls</b>	5	10	-
<b>Attwell</b>	3	4	-
<b>Jones</b>	4	11	7

It is possible, as above, to show these decisive votes in numeric form. Even with the added detail of the text, the list of subjects and dates where the Bishop's vote was decisive is of limited value. The primary importance of this data is to show that the vote of the Bishop in the legislature has had an identifiable impact upon particular items of business before Tynwald. It may be possible to argue the relative importance of these items in the agenda as a whole, with Sir Miles Walker for instance arguing in 2001 that in his twenty four years in the legislature the Bishop's vote had never decided an important issue,<sup>236</sup> but it is clear that some motions were passed only because of the Bishop's vote, while others failed for the same reason. This gives at least an indication of the practical importance of the Bishop's role, which is necessary for his vote, in the legislature.

One supporter of the Bishop's vote has argued that their legislative records suggest support for the directly elected Keys.<sup>237</sup> The decisive votes of the Bishops in Tynwald Court would seem to provide some support for this, particularly for Bishops Nicholls and Attwell. Ultimately, however, consideration of the decisive votes provides us with little guidance on more profound issues. This is because of two problems that arise from a focus on the voting, rather than the proceedings, of Tynwald.

<sup>230</sup> *Sunday Trading Order*, TC 11.4.94, 16.5.95.

<sup>231</sup> *Tree-planting at Ballaskella*, TC 22.1.97.

<sup>232</sup> *Speed limit*, TC 16.6.98.

<sup>233</sup> *Select Committee Report on Tynwald Day Petition*, TC 29.4.98.

<sup>234</sup> *Consultations on coastal erosion defences*, TC 16.2.00.

<sup>235</sup> *Ex gratia payments to Manx Prisoners of War*, TC 16.2.00.

<sup>236</sup> *Constitution Bill*, HK 23.1.01.

<sup>237</sup> *Second Report of Select Committee on Representation of the People and Constitution (Legislative Council) Bills*, HK 25.1.83, Quinney.

Firstly, the Bishop can never bring about a decisive vote by himself. If other members of the relevant body choose to vote with him in sufficient numbers, then his vote will not be decisive; and similar for the situation where the Bishop is in a clear minority. A focus on decisive votes limits us to closely contested votes, which are unlikely to be a representative sample of debates as a whole.

Secondly, an emphasis on his vote may distract from the Bishop's voice in the legislature. As we have seen in the previous chapter, a substantial number of legislators have seriously considered removing the Bishop's vote while allowing him to retain his seat in the Council and Tynwald Court. This suggests that, to these legislators at least, his impact and role can go beyond his vote. The work of Tynwald follows a form common to deliberative bodies, where individuals are invited to debate the point to be decided before moving to a vote. In mechanistic terms, a persuasive (or even alienating) Bishop may convert what would otherwise be a close vote to a clear one – removing it from the category of votes we have considered so far. More significantly, it is in this interplay, in this debate within a deliberative body, that we are most likely to find evidence of what the role of the Bishop is, and is seen to be. In this emphasis on the deliberative process as requiring detailed analysis we depart from the primarily quantitative approach of Brown, who in his useful study of the Lords Spiritual agrees that “‘influence’ cannot be assessed simply on the broad quantitative basis” of decisive votes.<sup>238</sup>

Accordingly, having briefly shown that the Bishop's vote has in some instances been decisive, in the next sections we move to consider in detail the debates of the Council, and of Tynwald Court, in order to explore more fully his role. There is a useful distinction between substance and style – that is between the subjects where Bishops have been particularly active contributors to debate, and their modes of argumentation.

### **III.3. Subjects discussed.**

The matters upon which an individual Bishop makes a contribution to debates should not be regarded as, on an individual basis, indicative of the appropriate field of operation of the Bishop. It would be misleading to see the Bishop simply as a specialist member of the legislature, even as one with a varying specialism depending upon the background and interests of the holder of the office. Bishops have sometimes been drawn into extended discussion on issues unrelated to their office, role, or aptitudes. A vivid example is the debate on the *Public Lavatories (Turnstiles) Bill*,<sup>239</sup> where Bishop Pollard became involved in a detailed discussion on the timetable for removal of turnstiles, a comparison with the position in Blackpool and, as the Attorney-General put it, whether removal of turnstiles would leave the public toilets places which ladies would care to frequent. Similarly, Bishops may speak on a topic they see as far away from their normal field. Bishop Gordon provides a concrete example. When discussing the development of the Manx airport,<sup>240</sup> he analysed the proper length of the runway, noting that “this is not my usual field of speaking”.<sup>241</sup>

<sup>238</sup> F. Brown, “Influencing the House of Lords: The role of the Lords Spiritual, 1979-1987”, (1994) 42 *Political Studies* 105 at 110.

<sup>239</sup> *Public Lavatories (Turnstiles) Bill*, LC 3.3.64

<sup>240</sup> *Airports Board Estimates*, TC 25.3.69.

<sup>241</sup> But the effective running of airtravel to the Isle of Man later concerned, at a similar level of expertise, one of his successors - see Bishop Attwell in *Resolution to approve published policy of Isle of Man Airports Board*, TC 21.11.84.

Nonetheless, it is possible to identify a number of subjects where the contribution of the Bishops was very substantial, called upon by other members, or a recurring theme across a number of episcopacies.

### **(i) Constitutional reforms involving the role of the Bishop.**

The first subject grouping we will discuss is unusual, as its significant to the study is comparatively less in the interplay between members than in the content of their contributions. Some of the most explicit discussion of the role of the Bishop has emerged from debates on constitutional reform. We have already discussed the substance of proposals to change the role of the Bishop in Tynwald.<sup>242</sup> These proposals generally formed part of a broader project of constitutional reform so that, even when individual members of Tynwald thought reforms to the Bishop's role would be premature, it is not unusual to find a reference to the position of the Bishop even when no change is being considered. In particular, we see this in relation to the change in composition of the Council, and the demise of the official members.

In 1963, following a vacancy in the post,<sup>243</sup> Tynwald discussed a proposal to remove the Second Deemster from the Council. During discussion in the Council Nivison briefly touched on the role of the Bishop. Responding to a comment by Attorney-General Moore, Nivison recalled, incorrectly, that one recommendation of the MacDonnell Report had been for the Bishop to vote only on moral issues.<sup>244</sup> Current Standing Orders required the Bishop to vote, and Nivison suggested that both the Bishop and Attorney-General might be relieved of the general duty to vote.<sup>245</sup> The Council rejected the Bill, and as a result the Keys directed a Committee to look into the constitution of the Council. During the debates, Corkish asked whether there was any constraint to keep Attorney-General Moore and Bishop Pollard in the Council,<sup>246</sup> and Callister looked forward to a position where the Keys appointed the entire Council, except for the Lieutenant-Governor.<sup>247</sup> Later, Kelly suggested that there had been a revolution in the way in which people thought, and that Bishop Pollard might be the last to sit in the Council,<sup>248</sup> a view endorsed more firmly by Callister who repeated his aspirations for a purely appointed Council. In particular, the position of the Bishop was seen as part of the "feudalistic and archaic set-up which we call the Council", with him sitting merely because his office had "been a baron in some dark and distant past".<sup>249</sup> The Bill continued to fail to find approval on its merits in the Council,<sup>250</sup> but was eventually accepted in 1965 in order to avoid the exercise of the 1961 Act.<sup>251</sup>

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<sup>242</sup> See p.23.

<sup>243</sup> *Isle of Man Constitution Bill*, HK 26.3.63, Simcocks.

<sup>244</sup> There was a recommendation of a House of Keys Committee that the Bishop should intervene only on matters in which the Church was concerned – see p.33.

<sup>245</sup> *Isle of Man Constitution Bill*, LC 19.6.63, Nivison.

<sup>246</sup> *Motion for Keys Finance and Consultative Committee*, HK 25.6.63, Corkish.

<sup>247</sup> *Isle of Man Constitution Amendment Bill*, HK 29.10.63, Callister. Callister repeated this aspiration during debate of a Bill to reduce the powers of the Council to delay measures passed by the Keys - *Isle of Man Constitution Amendment (no.2) Bill*, HK 29.10.63, Callister.

<sup>248</sup> *Isle of Man Constitution Amendment Bill*, HK 30.6.64, Kelly.

<sup>249</sup> *Isle of Man Constitution Amendment Bill*, HK 30.6.64, Callister.

<sup>250</sup> *Isle of Man Constitution Amendment Bill*, LC 3.11.64, LC 1.12.64, LC 29.3.65,

<sup>251</sup> *Isle of Man Constitution Amendment Bill*, TC 13.4.65.

During the passage of this Bill, it had been suggested that the Lieutenant-Governor should be removed from the Council, and in 1965 a Bill was introduced into the Keys by Callister to do this.<sup>252</sup> The proposal was criticized in the Keys as not going far enough. In particular, Kelly thought the Council should be reformed more broadly, with the Bishop leaving the Council, perhaps becoming Chaplain to Tynwald Court.<sup>253</sup> Callister felt it was dangerous to combine discussion of the Bishop's place with that of the Lieutenant-Governor, but the Bill was defeated in any case. Also in 1965, a measure to reduce the delaying powers of the Council was reintroduced into the Keys.<sup>254</sup> Kneale looked forward to the eventual removal of all officials from the Council, while Quirk described the ultimate goal of the constitutional reforms as giving power to the people, entailing the removal of "feudalistic methods" from the government of the Isle of Man - the role of the Bishop being a remnant of this feudalism.<sup>255</sup>

In 1969, the Keys adopted a report by the Constitutional Development Committee on the Council. Although the position of Bishop Gordon was not to be affected, a number of MHKs indicated that the removal of the Bishop should come in time.<sup>256</sup> In particular, in the second reading of a Bill intended to implement these recommendations, Irving saw them as part of a process of eliminating officials from the Council, including the Bishop, Deemster, and Lieutenant-Governor.<sup>257</sup> In 1970, with the introduction of a Bill to remove the right of the Attorney-General to vote in Tynwald, Irving anticipated the eventual removal of the Bishop and the First Deemster too.<sup>258</sup>

In 1974 the removal of the First Deemster from the Council was proposed in the Keys.<sup>259</sup> At the Second Reading, the reform of the Council, including the role of the Bishop, was again identified by Crellin as unfinished business.<sup>260</sup> Cowin disagreed, seeing rather the need to conserve traditions. In particular, if the role of the Bishop was reduced, there was a danger that Manx affairs would then fall to the Archbishop of York, and so to the United Kingdom.<sup>261</sup> Thornton-Duesbury suggested that removal of the Bishop could well lead to the end of the ancient diocese as a separate entity, although the Speaker, Kerruish, and Kneale stressed to her that this was not something currently before the Keys.<sup>262</sup> In the Council not only was it argued that the legislative process would lose out by the removal of the Deemster, but also that the process of constitutional reform was a continuous pressure,<sup>263</sup> and was taking

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<sup>252</sup> *Isle of Man Constitution Amendment (no.3) Bill*, HK 26.10.65.

<sup>253</sup> *Isle of Man Constitution Amendment (no.3) Bill*, HK 26.10.65, Kelly.

<sup>254</sup> *Isle of Man Constitution Amendment (no.2) Bill*, HK 2.11.65.

<sup>255</sup> *Isle of Man Constitution Amendment (no.2) Bill*, HK 2.11.65. The Bill eventually failed - see *Isle of Man Constitution Amendment (no.2) Bill*, HK 7.11.65.

<sup>256</sup> *Resolution to adopt recommendations of Constitutional Development Committee*, HK 28.1.69, Kelly; *Isle of Man Constitution Bill*, HK 25.2.69, McLeod.

<sup>257</sup> *Isle of Man Constitution Bill*, HK 25.2.69, Irving.

<sup>258</sup> *Isle of Man Constitution Bill*, HK 14.4.70, Irving. See also *Isle of Man Constitution Bill*, LC 12.5.70, LC 2.6.70, LC 1.12.70, LC 9.2.71,

<sup>259</sup> *Isle of Man Constitution Amendment Bill*, HK 26.2.74.

<sup>260</sup> *Isle of Man Constitution Amendment Bill*, HK 5.3.74, Crellin.

<sup>261</sup> *Isle of Man Constitution Amendment Bill*, HK 5.3.74, Cowin.

<sup>262</sup> *Isle of Man Constitution Amendment Bill*, HK 12.3.74.

<sup>263</sup> *Isle of Man Constitution Amendment Bill*, LC 19.11.74, Bolton.

away all that made the Manx legislature unique.<sup>264</sup> The measure failed in the Council, but was reintroduced in the Keys.<sup>265</sup> Although opposition to the principle continued, notably with the reforms being seen as an expression of the desire of the Keys to dominate the Council,<sup>266</sup> the Bill was finally accepted in the Council.<sup>267</sup>

In 1977, during passage through the Keys of a Bill to alter the term of office for members of the Council, Kermeen was eager to stress that it would not affect Bishop Nicholls, although controversy continued over whether he should sit in Tynwald, as the Island had little say in nominating to a vacancy in the See.<sup>268</sup> Delaney took the opportunity to advocate removal of the Bishop's right to vote, although allowing him to sit as representative of the Established Church. Delaney was particularly concerned that the Bishop could vote as soon as he took up office, although he would not have Island interests at heart, or sufficient experience of the Island. In the same year, Kermeen noted that he was not in favour of the removal of Bishop Gordon, but considered whether he should be in the same position as the Attorney-General, able to speak but not vote.<sup>269</sup>

We have already discussed the progress, since the 1980s, of specific proposals for reform of the position of the Bishop in the Council.<sup>270</sup> The previous discussion primarily focused upon the history of the proposals. It is useful to re-examine the debates of those proposals specifically to assess the visions of the Bishops role that emerge.

In 1982, during the second reading of a Bill to reform the Council,<sup>271</sup> Kneale argued that the Council needed to be elected, if Manx claims to be a democracy were to be vindicated. Although he thought the Bishop should not have a vote on an otherwise directly elected Council, he did not agree with those who wished to remove the Bishop, as it would encourage those within the Church of England who had been seeking the abolition of the Diocese "for generations". Anderson disagreed, partly because of fears over a clash between the Keys and a newly legitimate Council, but also because he valued the contribution of appointed and ex officio members who did not have to worry about the reaction of an electorate to their decisions.

Also in 1982, the Speaker, Sir Charles Kerruish, tabled a question for the Executive Council on whether a Bill would be introduced to replace the Bishop with an additional House of Keys nominee.<sup>272</sup> Sir Charles argued that the Bishop had, until the statutory reform of the Council in 1919, sat in the Council not in his spiritual capacity but as a Baron. His continued contribution to the legislative process was incompatible with democratic principles. Radcliffe stressed the value of the Bishop's contributions to debates "on matters where the Christian churches' voice should be heard", and noted that in the previous 5 years, the Bishop had voted with the majority of the Keys 92% of the time. He feared that removal of the Bishop could lead to the

<sup>264</sup> *Isle of Man Constitution Amendment Bill*, LC 19.11.74, Radcliffe.

<sup>265</sup> *Isle of Man Constitution Amendment Bill*, HK 22.10.74, HK 29.10.74.

<sup>266</sup> *Isle of Man Constitution Amendment Bill*, LC 7.1.75, Eason.

<sup>267</sup> *Isle of Man Constitution Amendment Bill*, LC 7.1.75, LC 4.2.75,

<sup>268</sup> *Constitution (Amendment) Bill*, HK 14.6.77.

<sup>269</sup> *Constitution (Amendment) Bill, Report of Committee*, HK 28.6.77.

<sup>270</sup> See p.35.

<sup>271</sup> *Constitution (Legislative Council) Bill*, HK 4.5.82. A view supported by Payne in *Resolution to adopt First Report of Select Committee on Representation of the People (Redistribution of Seats) Bill and Constitution (Legislative Council) Bills*, HK 22.6.82

<sup>272</sup> *Question to the Executive Council*, TC 14.12.82.

abolition of the Diocese, on financial grounds, and thought that those committed to greater Manx independence would not wish to see the loss of the Isle of Man Council of Churches and the Diocesan Synod, removal of budgetary and property control, and a possible drop in the number of Manx clergy from 22 to 5-6. Sir Charles dismissed the link between the legislative role of the Bishop and the survival of the Diocese as “the 1907 arguments”, and groundless. Delaney thought that freedom from electoral control was as true of dictatorships, and that the Bishop should act as a guide on matters of conscience and religion.

In early 1983 a report on constitutional reform was debated in the Keys.<sup>273</sup> Kneale introduced the report with a description of the process by which public observations had been received, and the reaction of the Diocesan Synod to the proposals to alter the role of the Bishop. Mann was unconvinced by arguments for a directly elected Council, and spoke in support of the Bishop’s role. He favoured retaining the Bishop, not only for his ancient rights, but also as a representative of all denominations as “a leader of the Christian community”. Cain also spoke in support. He saw a problem in trying to reconcile a democratic Tynwald with a hierarchical Church. He felt that, because the Isle of Man was a Christian nation, the Church must be represented in the supreme legislature. As the Established Church, the Manx Church needed to be represented, which because of its hierarchical structures meant the Bishop should sit. If this were no longer considered appropriate, an alternative would be to allow churches on the Island to appoint a non-voting representative in rotation. To some extent, he saw this representation as a quid pro quo for the exclusion of some clergy from elected places in Tynwald. Delaney spoke as “a not very good Christian”, and argued that the role of the clergy was to comment on what was proper, decent, and Christian; not to vote on it. If the Bishop entered the political arena, he would be dealt with accordingly - his place was “on a heavenly plane so he can give us his views on the Christian aspects of legislation and not vote”. Removal of the vote would not effect the unique, Established, position of the Manx Church. Quirk saw the Bishop as the only independent member of the Council, who therefore would approach issues without bias. Callin argued that the Bishop should retain his place, and feared that the publicity also arising from the proposals might have endangered the continued existence of the Diocese. Cannan brought up Mann’s reference to the disenfranchised clergy, and argued that either the Bishop should be seen as representative of all Christian people, and particular those clergy; or those clergy should be given full political rights. Radcliffe repeated the position of the Bishop as speaking for all Christian denominations. Quinney referred to the early figures on the Bishop’s agreement with the Keys, and noted that this was a good record; while Ward stressed that the Bishop’s record depended on the individual’s personality. Delaney stressed his objections to the Bishop in a way that brings out the differences between the Lord Bishop and the Lords Spiritual in Parliament. Delaney considered that: “to be elected by someone else outside of the Isle of Man and then have 1/33 of the power over the Island is something that went out with the druids”.<sup>274</sup>

In 1994, reform of the Council was debated in Tynwald Court.<sup>275</sup> As part of a proposal to reduce the power of the Council, it was suggested that the Bishop should

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<sup>273</sup> *Resolution to adopt Second Report of Select Committee on Representation of the People (Redistribution of Seats) and Constitution (Legislative Council) Bill*, HK 25.1.83.

<sup>274</sup> *Constitution (Legislative Council) Bill*, HK 5.2.85.

<sup>275</sup> *Report on Reform of the Legislative Council*, TC 13.7.94.

lose his right to move motions, and to vote in Tynwald - although he would retain his vote in the Council itself. Lowey criticized the proposals for neutering the Bishop politically - he was the Bishop of everyone on the Island, regardless of their faith. He also feared that the change would endanger the future of the Diocese. Downie too supported the role of the Bishop, praising his in-depth knowledge of the community. Bishop Jones himself made the most important speech. The Bishop distinguished his role from that of the Attorney General, who was a non-voting member. The Attorney General acted in an advisory capacity; the Bishop in a representative one. The Bishop was not representative of the Church of England, nor appointed by it. Instead, the Lord of Mann appointed the Bishop to serve her people in that part of the Church that is in the Isle of Man, and to represent that Church to the Church of England in, for instance, General Synod. Given that the concept of a Christian voice had been accepted, why should it be weakened by removing the vote? He met and ministered to a considerable cross-section of society, and so was able to portray their concerns through his voting. Unlike other members, he had no constituents expecting him to contribute on every subject, and so he could avoid adding to the debate repetitively. The Bishop, in his own view, showed what a democratic parliamentary system stood for - he had mind open to debate, no whip, and no axe to grind. He had now been on the Island for long enough to know its people well. Finally, he saw the proposal as an unnecessary unravelling of the Church/State relationship, which would benefit neither, especially when the public were concerned over the erosion of Christian principles. Gilbey noted that the Bishop represented all Christian denominations. Delaney welcomed the Bishop's speech, but reiterated that Tynwald should be a parliament of elected persons. This was also the principle concern of Corkill. Although Corkill welcomed the Bishop's moral guidance, for instance in the abortion debate, the vote was unacceptable in an elected legislature. The implications to the Manx position within the Church of England were something that he felt should be accepted in the interests of democracy.

In 1999 the House of Keys endorsed the principle of direct election to the Council, and the removal of the vote of the Bishop.<sup>276</sup> At the first reading of the resulting Constitution Bill, Lowey moved the Bill noting that it retained the independent status of the Attorney General and the historic role and position of the Bishop.<sup>277</sup> At the second reading in the Council, he stressed that the Bishop was detached from political motives, and helped the Council to address social and spiritual matters. The Bishop said that, since the matter had been raised in 1998, he had received more positive comments than criticisms on his role. Although there were some suggestions that he sat simply as a Baron, those he spoke to saw him much more as acting as a Christian representative of the people of the Island. He stressed that he did not act simply as a Church representative, and that his interdenominational view was an important element in "what is, after all, a Christian council; and until we lose that element I think we would do well to say that there is a place for that here". Lowey supported the Bishop's view, and noted that he rarely came across anti-clericalism.

In 2000, during the continued progress of the proposals to reform the Council, direct reference was made to the proposals for reform of the House of Lords in the United Kingdom.<sup>278</sup> Karran observed that Parliament had much greater democratic problems than Tynwald; while the Bishop indicated that the proposals recognized the

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<sup>276</sup> *Report of Select Committee on the Legislative Council*, HK 26.10.99.

<sup>277</sup> *Constitution Bill*, LC 16.11.9..

<sup>278</sup> *Motion to Council of Ministers*, TC 21.3.00.

value of the Lords Spiritual. The second reading of the Bill to replace Tynwald with a wholly elected body<sup>279</sup> began with Cannell relying upon the need to remove votes of unelected persons from a democratic body to justify change. Singer thought the position of the Bishop was important. He was not analogous to the Attorney General, as he was not an adviser to the government; nor was he intended to act as a spiritual leader. Instead, he was appointed on behalf of the people, by a democratic process, to speak for all Christian denominations on the Island and to give the wider Church view. A Bishop, when appointed, understood he was to exercise a role in Tynwald, particularly on matters of conscience. He consulted with other denominations before he did so. Weakening the position of the Bishop could endanger the future of the Diocese, which would be contrary to broader developments in Manx autonomy.

This drive for reform came to an end in an important debate in 2001.<sup>280</sup> Cannell moved the clause dealing with the position of Bishop with the observation that it was strange that one relatively minor clause in the Bill had attracted more attention than the rest of the Bill. There was no intention to deprive the Island of the other functions performed by the Bishop, and he would continue to take part in legislative debates; more broadly, the importance of the spiritual work of the Bishop and the Established Church was clear. But this did not mean that the Bishop should have an automatic right to vote in a democratic government. The Bishop's appointment had little to do with any genuine Manx electorate. There was no more reason for the Bishop to vote than the leader of any other religious faction, and the notion that other churches were content to abide by the Bishop's leadership was wide of the mark. Cannell thought that removal of the Bishop's vote might have no impact on the future of the Diocese, and that removal of the vote would increase Manx autonomy in any case. Quine recognized the value of an advocate of a broadly Christian viewpoint in Tynwald, but could not accept the compromise of democratic principles involved in accompanying this with voting powers, and doubted whether removal of the vote would affect the survival of the Diocese. Singer spoke in opposition to Cannell - he thought that there had been considerable public support for retention of the Bishop's vote, and that most denominations of the Island wanted the Bishop to speak for them, especially in relation to moral issues. Singer thought it impractical to limit the Bishop's power to vote to moral issues and ones directly affecting the Church, since only the Bishop could make that judgment at the time of the debate. He also referred to an "authoritative source" who had indicated that removal of the vote would lead to a reduction in the influence of the Bishop, and endanger the survival of the Diocese. An amalgamation with an English Diocese would remove the Manx ability to influence the appointment. He also saw the removal as an example of a broader trend of secularisation, which would ultimately damage Manx culture. Sir Miles Walker thought that removal of the Bishop's vote would lead to the end of the Diocese; and that in 24 years the Bishop's vote had not decided an important issue.<sup>281</sup> He also reported that, when Bishop Attwell had been due to retire, representatives of the Church had visited him to discuss what sort of person should be appointed to the vacancy. Hannan disagreed with Sir Miles Walker that the Bishop had never had a decisive impact on voting. She also saw the Bishop as a force for conservatism, and criticized his failure to give a lead on the abolition of hanging and birching. Brown argued that the Bishop represented those ministers who

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<sup>279</sup> *Constitution Bill*, HK 27.6.00.

<sup>280</sup> *Constitution Bill*, HK 23.1.01.

<sup>281</sup> See p.49.

could not be elected to Tynwald. As a closing contribution to the debate, Cannell remained unconvinced that the Bishop was not analogous to the Attorney General, and rejected arguments based on Baronial status as outmoded. Everyone needed to be accountable. He also thought that the Christian congregations of the Island no longer represented the majority of the Manx people; and that legislators had not been morally swayed by the Bishop in debates. He noted that Christianity was not the exclusive preserve of the Lord Bishop, and that members were just as Christian in their approach, albeit without a “purple frock and dog collar”.

The debates on constitutional reform implicating the Bishop provide important evidence on how both the Bishops, and their fellow legislators construct the role of the Bishop. A number of points may usefully be stressed here, as they recur throughout the discussion that follows. Firstly, the importance, and uncertainty, of a theoretical basis for the place of the Bishop. Does he sit as a Baron, and so a remnant of a largely defunct feudal system; or as a technical expert on matters religious and spiritual; or as a representative of a Church, a faith community, or religion generally? Secondly, the perceived interconnectedness between his legislative and ecclesiastical role, with repeated suggestions that abolition of the legislative role could endanger the very future of the diocese. We see this also during discussion of a Church Bill in 1968, where Bishop Gordon indicated that the same jurisdiction in both England and the Island would be desirable, because of movement of clergy between the Island and England.<sup>282</sup> The Lieutenant-Governor sought reassurance that this was not, as suggested in a recent newspaper report, the first steps to abolish the Diocese. The Bishop said that the Isle of Man might have to watch its interest in relation to some other Church legislation, but not in this instance. Thirdly, the continuation of concerns over how the Bishop is appointed, particularly by those members who sought to remodel Tynwald into an exclusively directly elected body on the basis that this is more truly democratic. Fourthly the recognition, even by some members otherwise committed to the removal of official members of the Council, that there is something distinctive about the Bishop which may justify his retention, perhaps as non-voting member.

## **(ii) Church legislation.**

Debates on church legislation are significant both because of the way in which this legislation is seen as belonging primarily to the Bishop, and for the broader reflections on Church/State relations which emerge from the aversion of many members of Tynwald for such legislative business.

In 1968, Bishop Gordon introduced debate on a Church Bill by explaining its clauses.<sup>283</sup> Bolton thought that for himself, and for many others, “the internal government of the Church of England has nothing whatever to do with us people who belong to other Churches”. Accordingly, if the representatives of the Church were themselves happy with the measure, time should not be spent debating its details in the Council. The Attorney-General agreed, pointing out that the measure had been very well drafted and querying “who am I to say what the Church should or shouldn’t do. It’s really almost like the rules of a club”. Stevenson thought that neither the Council nor the Keys had any real knowledge of the area, and should leave the measure as it was. Bishop Gordon, who had been sworn in at the end of 1966, sought the guidance of the Lieutenant-Governor: “I had acted on the assumption that the

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<sup>282</sup> *Church Bill*, LC 7.5.68.

<sup>283</sup> *Church Bill*, LC 2.7.68.

Council would want to be treated as thoughtful and responsible people who would have this thing explained to them before passing it. Am I wrong in assuming that Church legislation is dealt with in this manner? Is it customary for a committee to deal with it and then for us to be rubberstamps at this point”? Bolton explained that this was peculiar to the Church of England. Similar questions affecting the Methodist Church would be of no concern to the Council. The Lieutenant-Governor suggested, jocularly, that as a good Methodist Bolton had a duty to ensure that the Church of England did not get away with anything. After the second reading and clauses of the measure had been passed, the Lieutenant-Governor suggested suspension of Standing Orders so that “we can get on with this and never see it again”. Bishop Gordon was not, however, alone in seeing a role for the Council. Nivison thought it was very necessary to have proper Church law. The Church had always taken a prominent part in the life of the community, so that it was important to have courts whereby they may discipline themselves. It was quite wrong for the Council to say that they were satisfied simply because the committee was satisfied - rather, “we should pass it because we think it is good law”.

In 1970, in relation to two different Church measures presented together, the Keys too initially expressed reservations at the role of Tynwald in Church legislation.<sup>284</sup> Callister was utterly opposed to the Bills - the Church of England could manage its own affairs like any other Church, and the discussion was a complete waste of time. Irving thought the discussion anachronistic and, although a member of the Church of England, hoped that it would soon deal with domestic affairs like any other denomination. He could, however, understand the need for laws if the Church of England was to be given extra privileges or responsibilities to the community. Despite these reservations, there was some debate on the content, and a number of votes, including one that caused a clause of one Bill to be lost.

The first measure debated, concerning Synodical government, was passed without a division.<sup>285</sup> Sugden presented the measure as giving the legislature a complete say in how the Church in the Island was to be governed. This disturbed Irving, who thought freedom for a religious denomination to run its own affairs outside of the political arena was very important. MacDonald agreed with the importance of avoiding political interference with the Church, but saw much room for reform. Sugden also agreed with Irving, but thought that the issues were best resolved by the Ecclesiastical Committee. Bell agreed too, but felt that since the Keys had been “invited to pass comment on this” there were two matters that were “quite contrary to the principles we would wish to have embodied in legislation”. Simcocks, however, saw the role of Tynwald in Church measures as flowing from a broader Church/State relationship: “So long as the Sovereign is Defender of the Faith and that faith is that of the Established Church of England, she is bound to take the advice of Tynwald on how that church conducts its affairs.”

The second measure debated had a much more turbulent passage through the Keys.<sup>286</sup> The drafting was criticized by the Speaker, Kerruish, who indicated that public Bills needed to be properly, and consistently, drafted if they were to proceed. MacDonald queried the composition of the Diocesan Synod, which included members appointed by the Bishop, as anachronistic. He also characterised the Church of

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<sup>284</sup> *Church (Synod Government) Bill and Church (Miscellaneous Provisions) Bill*, HK 14.4.70.

<sup>285</sup> *Church (Synod Government) Bill*, HK 5.5.70.

<sup>286</sup> *Church (Miscellaneous Provisions) Bill*, HK 5.5.70.

England as “very much a minority Church”. Callister criticized much that the Church had done in the Isle of Man, and suggested that Sugden was more willing to follow English models in relation to Church matters than other areas of policy. The generally contentious parts of the Measure, however, concerned the interaction of the Church with Tynwald. Clause 20 of the Bill gave a power to withdraw a Bill from Tynwald. Spittal observed that there were 24 Christian members in the Keys (prompting Bell to interject that he should not libel the Keys), but that if there were 24 atheists, a Church bill could be so badly mangled that the promoter should have the opportunity to withdraw it. The clause was lost.

In the Council, the Synod measure was passed after amendments suggested by the Home Office and discussed fully by the Attorney-General, Bishop Gordon, and the original draftsman.<sup>287</sup> Once again, the other measure was more controversial. Bishop Gordon hoped that the deleted Clause 20 would be restored, as he believed (wrongly) that a similar provision existed in relation to Acts of Parliament.<sup>288</sup> McFee, on the other hand, believed the Keys had taken the right approach: “[s]o long as the Church is a State Church it has got to conform to the unpleasant as well as the pleasant side”. At the second reading in the Council there was some disagreement as to the proper place of the State legislature in relation to Church measures.<sup>289</sup> The Bishop indicated that he was worried that the State might wish to control every detail of how the Church conducted its affairs. He put forward an unusual view of why Tynwald was involved in Church measures: “[the] Church of England like other private bodies is of such importance that the State wishes to keep a very large eye on it and that is why all our legislation has to come before the State”. The Council accepted without division the reintroduction of Clause 20, with an amendment limiting its exercise to where the Bill had been amended in the Keys or Council.<sup>290</sup>

The Keys rejected the amended clause. Irving said that the Church had to trust the Keys: “if the Church does not like us as sole authority in passage of legislation through this House, it is time it thought about disestablishment”. Kneale suggested that in the Isle of Man, unlike England, the Church of England was not an established Church. Thornton-Duesbury said that the Church was endangered if the right to withdraw was not conceded. Simcocks made perhaps the clearest contribution: “From whom does the right protect the Church? From the legislature of the Island? As a churchwarden of some standing, I say if the Church of England is the established Church it must be prepared to take the horn with the hide. The right of withdrawal suggest the established Church of this Island is not really an established Church at all, but only a semi-established Church”.

The measure returned to the Council.<sup>291</sup> Bishop Gordon defended the clause as serving as a protection against malicious distortion of a measure. The Church did not commence legislation unless the measure was much desired, so would not withdraw a measure capriciously. In the Isle of Man, the legislature had no authority over matters of doctrine, worship, or reunion, but was more concerned with measures concerning finance and organisation. Here the task of the legislature was to ensure that the welfare of the nation as a whole was not impaired by what the Church did. Thus,

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<sup>287</sup> *Church (Synod Government) Bill*, LC 10.11.70. These were accepted without division by the Keys, HK 26.1.71.

<sup>288</sup> *Church (Miscellaneous Provisions) Bill*, LC 2.6.70.

<sup>289</sup> *Church (Miscellaneous Provisions) Bill*, LC 10.11.70.

<sup>290</sup> *Church (Miscellaneous Provisions) Bill*, LC 1.12.70.

<sup>291</sup> *Church (Miscellaneous Provisions) Bill*, LC 9.2.71.

Tynwald had a veto, but was not really concerned with details. Church Bills had a democratic process behind them, and were discussed with Tynwald's Ecclesiastical Committee. Bishop Gordon also reflected on the broader relationship between the Church and State, including his legislative role. Society and the Church were not as similar in membership as in the past. Many leaders of the Roman Catholic and Free Churches saw the established position of the Church of England as a national recognition of religion rather than of one particular denomination. In particular, "[f]rom my contacts with other church leaders, when the Bishop speaks in Tynwald he is thought of as speaking for Christians as a whole rather than for Anglicans".

In 1976, Tynwald Court approved a report from the Ecclesiastical Committee to allow Tynwald to approve by resolution only the extension of General Synod measures that had been passed by Diocesan Synod without amendment.<sup>292</sup> The second report of the Ecclesiastical Committee on the Bill came before Tynwald in 1977.<sup>293</sup> In Tynwald Court Kermeen sympathized with the reservations of MacDonald and Anderson, both Methodists, who were embarrassed to discuss the internal government of the Church of England. As a high Anglican, he would feel the same if faced with Methodist internal government, but given the history of the Island and the Diocese, such consideration was inevitable. The report was approved without division. The measure was raised in the Keys again in 1979.<sup>294</sup> Although passed by the Keys without division, some members were concerned at the reduction in scrutiny of Church measures by Tynwald. Cringle saw the current procedure as conducive to openness, felt Tynwald had not had to deal with an excess of Church legislation in the preceding four years, and was concerned that, as the Church of England was the established Church, the move might weaken that establishment. Quayle also saw the matter in establishment terms - she wondered whether "[i]t is honest still to have an Established Church? Many belong to other persuasions or have no church connection at all". Mann saw the measure explicitly in terms of the independence of Manx institutions. He noted that the sponsor of the measure, Kermeen had been working hard to prevent United Kingdom legislation being applied to the Island, but that this measure would do just the opposite. It was in the area of ecclesiastical legislation that the rights of the Island were probably at their strongest. He also noted the importance of the Church in a small community, and the subsequent need for elected members to have a chance to have a say about automatic approval of United Kingdom legislation. Kermeen responded that the new procedure would apply only to measures that had been scrutinized at the top level in the United Kingdom, that Tynwald was under pressure because of ecclesiastical legislation, and that other mechanisms existed to ensure that members of Tynwald who wished could be involved in the formulation of ecclesiastical law.<sup>295</sup>

More specific church legislation was debated in 1978. During the passage of the Church Bill through the Keys,<sup>296</sup> although a number of points of detail were made, and some changes made to the Bill itself, a number of members indicated that they were not appropriate persons to change this type of legislation. Anderson saw such legislation as a matter for the Church, rather than something that should take up legislative time, and in particular objected to scrutiny at a detailed level. Kermeen,

<sup>292</sup> *Church (General Synod Measures) Bill*, TC 19.10.76.

<sup>293</sup> *Church (General Synod Measures) Bill*, TC 19.10.77.

<sup>294</sup> *Church (Application of General Synod Measures) Bill*, HK 13.3.79.

<sup>295</sup> The measure was passed without division by the Council, LC 22.5.79.

<sup>296</sup> *Church Bill*, HK 28.11.78.

although he accepted the merits of one proposed change to the Bill, thought the Synod rather than Tynwald should make it. Radcliffe thought it was wrong to amend what Church officials had put before Tynwald. Irving looked forward to “the day when the Church of England like any other church established in the Isle of Man will be able to go about its internal business without requiring approval of political bodies”. He particularly disliked the idea of changing church legislation put before Tynwald, unless it conflicted with “certain principles we are sent here to uphold”. In Tynwald Court, Kermeen indicated that the Church authorities had no objections to the changes to the Bill, and it passed without a division.<sup>297</sup>

In 1979 the Council discussed a Bill to amend the law relating to glebe lands.<sup>298</sup> After a discussion of the merits of the measure, Bishop Nicholls thanked the Council for its generous dealing with church legislation, adding that he thought a period was coming when Tynwald would not be worried with church legislation. The Governor indicated that the Council shared this hope, to general laughter.<sup>299</sup> In 1980, during a debate on a Manx Cathedral,<sup>300</sup> Lowey expressed the view, as a dissenter, that too much ecclesiastical legislation was coming before Tynwald - in particular, he was concerned that this measure had been debated before a Bill to address the needs of disabled persons. In his view, disestablishment was the solution, although Kermeen thought that a Bill to disestablish the Manx Church was as practical as a Bill to unscramble an omelette. In 1981, Lowey repeated his concerns, in particular he worried about who paid for the introduction of Church legislation, and suggested that legislative time was better spent on the “real problems of the world”, rather than “putting the church to rights”.<sup>301</sup>

In 1991 Bishop Jones was steering a Bill dealing with a variety of issues, including Church financial structures.<sup>302</sup> Irving reiterated his regret that Tynwald had to deal with such matters, although he recognized that the Established Church was in a special position compared with other Christian denominations, with responsibilities towards the community in general. Barton and Callin suggested that a simple approval procedure could be substituted for the current detailed discussion. Quirk stressed that the public, who were all possible members of the Church of England, would feel something was wrong if the Church was not subject to scrutiny the same as everyone else. This Bill could affect non-Church members, for instance contributors to charitable funds. The Attorney General saw the Bill as a major step towards removing the “enormous burden” of Tynwald legislation from the Church of England, and noted that other non-governmental bodies were subject to Tynwald legislation, giving the Acts passed dealing with Methodism as an example. The Bishop thought that the Church had a tremendous legal system, with strong checks and balances. He was not averse to everybody knowing what the workings of the Church were.

Reform to the procedure for ecclesiastical legislation was carried out without much substantive debate in 1992.<sup>303</sup> In 1995, WA Gilbey was nominated for

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<sup>297</sup> *Church Bill*, TC 5.12.78.

<sup>298</sup> *Glebe Lands Amendment Bill*, LC 3.7.79.

<sup>299</sup> See also *Church (Suspension of Presentation) Bill*, HK 29.4.80, HK 6.5.80; *Cathedral Church Bill*, LC 6.5.80.

<sup>300</sup> *Cathedral Church Bill*, HK 4.3.80.

<sup>301</sup> *Church Bill*, HK 26.10.82. See also Lowey in *Resolution to approve Ecclesiastical Committee Report on Castletown Church Bill*, TC 17.1.84.

<sup>302</sup> *Church Bill*, LC 3.12.91.

<sup>303</sup> See *Church Legislation Procedure Bill*, LC 24.11.92.

membership of the Ecclesiastical Committee.<sup>304</sup> He thought that this must be a joke, as he belonged to another denomination, and thought a member of the Church of England should be nominated. Barton reassured him that all denominations were present on the Committee. In 1997, during debate on reform of the Legislative Council, Brown noted that ecclesiastical legislation had recently been removed from Tynwald, becoming a matter for the Church themselves to legislate for themselves.<sup>305</sup>

A number of interesting themes emerge from the debates over Church legislation. Firstly, and most importantly, is the construction of the Bishop as the specialist on Church legislation who would be in a position to guide, or perhaps even direct, an ignorant legislature. Secondly, we again see the concern over Manx autonomy, this time presented primarily as Church autonomy impacting on national autonomy, rather than vice versa. Thirdly, we see the importance of “Establishment”, as a cohesive relationship with both burdens and privileges, to some members of the legislature.

### **(iii) State ceremonials.** <sup>306</sup>

In 1967 Tynwald Court accepted a report by the Standing Committee on Tynwald Day, the annual, formal gathering of Tynwald at Tynwald Hill.<sup>307</sup> Bishop Gordon generally approved of the Report. He saw every reason to keep a good relationship between the Church and State, and saw any disagreements as best resolved by friendship, consideration and courtesy, rather than argument over rights, privileges and traditions. He had some reservations about moving the Archdeacon and Vicar-General from their position in the procession with the members of the Council to the body of the clergy. Although their position had not changed with their removal from the Council, he approved of keeping any changes to a minimum. Given his view of Tynwald Day as an occasion for both the Church and the State, he found an emphasis on Tynwald Day as essentially a State occasion as unhelpful - rather, it was a national occasion when all taking part in the life of the Island were naturally invited. Callister had a radically different view. He saw the ceremony as “a pantomime and a farcical show”, reflecting a historical position where Tynwald Court was the Lord’s executive, in which the Church had great power. Today’s legislative body was not Tynwald Court, although it was useful to keep the ceremony as a remembrance of “the barbaric days in which this legislature commenced. As the march of time goes on, one by one these high-ups, the upper-deck who dominated the Island for so long ... will be disposed of, until the Council will be a body of experienced politicians and legislators, elected to reconsider and examine legislation passed here. The First Deemster will be out, and the Bishop”.<sup>308</sup> Later, Tynwald Court officially described Tynwald Day as a national occasion, rather than a state or legislative occasion.<sup>309</sup>

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<sup>304</sup> *Nomination to Ecclesiastical Committee*, TC 20.6.95.

<sup>305</sup> *Appointment of Select Committee on the Legislative Council’s role, constitution and election*, HK 22.4.97. For later developments see *Election of Members of the Ecclesiastical Committee*, TC 17.1.02; *Standing Committees of Tynwald*, TC 11.12.02.

<sup>306</sup> See also *Statement by the Chairman of the Millenium Committee*, TC 9.7.96.

<sup>307</sup> *Recommendations of Standing Committee on Tynwald Day Arrangements*, TC 19.4.67.

<sup>308</sup> *ibid*, Callister.

<sup>309</sup> See *Resolution to approve report of Tynwald (Ceremony) Arrangements Committee*, TC 18.5.76.

Tynwald Day was also the subject of discussion in 2000. Tynwald Court was debating a proposal to invite the Chairmen of the Village Commissioners to be invited to sit on Tynwald Hill during the ceremony.<sup>310</sup> Gilbey noted that he could not see why members of the clergy from the parishes, along with the Bishop and the Archdeacon, should attend when the Church of England represented only a small proportion of the population. Parish representatives truly represented the people of their area. Bishop Jones felt he had to respond to this “misrepresentation”, and insisted that the clergy were there as members of the national Church. There was an ancient tradition that they be called because, as educated people, they could then return to their parishes to disseminate the law.

In 1972 Bishop Gordon briefly hijacked a Litter Bill to raise a ceremonial point.<sup>311</sup> He described as “litter” the duplicated copy of “Prayers for the Opening of the Council” which had been provided him: “[w]e usually have beautifully printed ones ... Someone seems to be economising in a rather unwise way ... When you consider the extraordinary things that this government does put into print” they could at least print the prayers. The Lieutenant-Governor promised to look into the matter.

The discussion of state ceremonials again stresses the position of the Manx Church as having a unique relationship with the Manx State, the different meanings that “representative” can bear in a legislative or constitutional context, and the implications of identifying the Bishop’s place in Tynwald as primarily a function of ancient structures of governance.

#### **(iv) Church property.**

On a number of occasions, important interventions have arisen in debates on Church property, most notably on the traditional official residence of the Bishop, Bishops court. In 1963, a Bill to allocate part of the income of the See to the maintenance of Bishops court was uncontentious in the Council, but Nivison suggested that Bishop Pollard needed to be controlled, as his outbursts in Tynwald Court and during discharge of other public functions raised the question of whether Manx money should go to pay for “such a partisan Bishop”.<sup>312</sup> A more substantial, and sustained, discussion of Bishops court began in 1974.

In that year, Bishop Nicholls had been appointed as successor to Bishop Gordon. Before he had taken up office, the Isle of Man Church Commissioners reported on retention and maintenance of Bishops court. The Ecclesiastical Committee was directed by Tynwald Court to consider the report.<sup>313</sup> The Speaker stressed that the occupation of Bishops court raised strong feelings, that the new Bishop knew he would be expected to live at Bishops court, and that if he did not wish to do so “he can back when he came”.

By July 1975 Deemster Easton described the Bishops court controversy as becoming critical.<sup>314</sup> The Deemster reviewed the recent history of Bishops court, and made some interesting points concerning the future of the Diocese. He noted that a 1948 Act allowed the Bishop to sell Bishops court with the consent of the Lieutenant-Governor, and that the Diocesan Synod and the Church Commissioners Synod had

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<sup>310</sup> *Resolution calling for Chairment of the Village Commissioners to be invited to sit on the Hill on Tynwald Day*, TC 16.2.00.

<sup>311</sup> *Litter Bill*, LC 9.5.72.

<sup>312</sup> *Church Bill*, LC 28.5.63, Nivison.

<sup>313</sup> *Resolution*, TC 18.6.74.

<sup>314</sup> *Resolution*, TC 8.7.75.

decided that Bishops court should be sold in 1974, although consent had not been given for the sale. The Deemster thought that the Church Commissioners for England (CCE) were already making substantial contributions to the finances of the Manx Church (including between £20,000 and £25,000 towards clergy stipends, half the cost of new vicarages, and extensive support to the Bishops stipend), and would be very happy if there were no Diocese. He feared that if the CCE were not happy with any Bishops court proposal it could have an impact on the future of the Diocese, and reported Bishop Pollard as having told him that there would be no question of a Bishopric with 17 parishes and 50,000 people were it not the oldest in the United Kingdom.<sup>315</sup> The Speaker, a Church Commissioner ex officio, thought that Bishops court needed to be developed so that it became self-sufficient. The CCE would not always support the Isle of Man, and a failure to deal with the financial issues raised by Bishops court would “destroy the Bishopric”. Bishop Nicholls discussed his own experience at some length, concluding that even if Tynwald were prepared to provide financial support for him to live in Bishops court, he would be concerned that the Bishop would have to come to Tynwald every year for financial support, and would be “as I see it, for ever under the control of Tynwald”. Accordingly, he could not accept government money to live at Bishops court, as it would tie him and successors to an impossible site. MacDonald stressed that he was a Methodist rather than an Anglican, but was horrified that Bishop Nicholls had been treated with such discourtesy, and was concerned that Tynwald appeared to be heading towards a State/Church clash. He supported the view of the Bishop that financial support from the government contingent upon his living at Bishops court could damage the relationship between Church and State, and that if Tynwald wished to support the upkeep of Bishops court as part of the Manx heritage, it should do so whether or not the Bishop choose to live there. The amendment was carried, and the report received but not accepted.

Alternate uses for Bishops court were then considered,<sup>316</sup> and in 1976 Tynwald Court was asked to approve the sale of Bishops court to the Board of Social Security for £70,000.<sup>317</sup> Bishop Nicholls withdrew before the debate, the resolution being put by Nivison, the Chairman of the Board.<sup>318</sup> Anderson stressed that the Bishop should not be burdened with Bishops court, and that given the undesirable mixing of Church and State, it was for Tynwald to decide what should be done with it. Quayle saw the Bishops court, with its Pro-Cathedral, as an important focus for Manx spiritual life, and thought it important that the Bishop had a suitable residence. This was so not only for Anglicans, but also for Christians generally: “People think of our Bishop as the Bishop of the whole Isle of Man, not just the Anglican Church. Nicholls especially has disregarded ecumenical barriers, and embraced the whole Christian spectrum in his ministry”. Cringle, speaking as a Methodist, also saw Bishops court as connected to people by its connection with the Church. MacDonald, on the other hand, thought that the State should not get deeply involved with religion, and if this section of

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<sup>315</sup> Although whether this is an accurate description of the location of the Diocese of Sodor and Man is questionable.

<sup>316</sup> *Question by Speaker to Chairman of Local Government Board*, TC 16.3.76. The Bishop described the Speaker’s airing of Church Commissioners’ discussions on the matter before an official approach had been made to the LGB as discourteous.

<sup>317</sup> *Resolution*, TC 6.7.76.

<sup>318</sup> On his retirement, Bishop Nicholls recalled sitting outside Tynwald Court during the debate - see *Tribute to Bishop Nicholls on retirement*, LC 26.4.83.

Christianity were to be supported all others would be equally entitled. Following the debate, Bishops Court was purchased, and a committee established to decide how to develop it in the interests of the Manx nation, although eventually it was simply sold.<sup>319</sup>

The position of Church property also arose in relation to the Cathedral at Peel. In 1966 the Speaker, Kerruish, criticized a number of members for issuing a statement that any elevation of the parish church at Peel would require legislative authority, and that any cathedral should be in Douglas. The Speaker was concerned that the authority of the Keys may appear to have been claimed for a stance that had not yet been debated in the House.<sup>320</sup> During discussion of government estimates in 1967 Kelly paid tribute to Deemster Kneale as an authority on land ownership, who had provided that Peel Cathedral belonged to the people of the Isle of Man.<sup>321</sup> More generally, during debate of a burials bill Bishop Pollard supported the measure, commenting that many English churchyards were a disgrace;<sup>322</sup> while Bishop Jones queried the distinction between new churches and repairs to existing churches for the purposes of VAT.<sup>323</sup> Bishop Jones also led debate on a Bill dealing with a Church charity.<sup>324</sup>

These discussions of church property have a number of interesting features. Firstly, we can see that where the Bishop's non-legislative interests are too directly affected by legislative business, it may be considered appropriate for the Bishop to avoid contributing. Secondly, we again see members asserting the significance of the Bishop to the Manx community as a whole, not simply to members of the Manx Church. Finally, we see some members concerns at excessive entanglement between the State and a Church, even when that Church has a special, "established" status in the jurisdiction.

### **(v) Gaming.**

One of the subjects which has consistently engaged the attentions of the Bishops is that of gaming. It may be that this concern has arisen partly from the concern of the Bishops to deal with matters of concern to deal with Manx Christians generally, including the historically very significant Methodist community. The most significant feature of the gaming debates, however, arises from the construction of gaming as a moral question.

In 1962, during discussion of a Bill to establish a casino in the Island, a number of members of the Council indicated the role of a religious input into the process.<sup>325</sup> Nicholls argued that there was considerable popular opposition to the casino, citing Bishop Pollard as saying that the "majority of people of churches here have with one voice condemned the project". Farrant, although he did not consider gambling sinful by those who could afford it, defended the right of any spiritual leader

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<sup>319</sup> *Resolution to authorize expenditure on Phase 1 of Bishops Court Remedial Works*, TC 21.6.77; *Resolution to authorize Government Property Trustees to place Bishops Court on the open market*, TC 22.2.78, Bolton; *Resolution to approve Government Property Trustees sale of Bishops Court*, TC 10.4.79; *Resolution to adopt Final Report of the Select Committee on Rushen Abbey*, TC 17.2.98.

<sup>320</sup> *Isle of Man Constitution Amendment Bill*, HK 5.4.66, Kerruish.

<sup>321</sup> *Estimates*, TC 21.3.67, Kelly.

<sup>322</sup> *Burials Bill*, LC 12.6.62.

<sup>323</sup> *Value Added Tax Bill*, LC 14.11.95.

<sup>324</sup> *Bishop Barrow's Charity Acts (Repeal) Bill*, LC 26.3.91.

<sup>325</sup> *Casino (Isle of Man) Bill*, LC 6.3.1962.

to express a view on something he considered inimical to the welfare of the people, whether political or not, and condemned the hustings comments of Kelly, a member of the Keys. Moore deplored a suggestion by Kelly that the Church should not enter into politics. He saw all the reforms over the past century as having coming from the influence of the churches. He took the Christian view and, as a Christian, aimed as high as he could: “[a]nyone who professes to be a Christian can bring his religion into politics or business or anything else”. A heated exchange then followed between Moore and Nivison as to the relevance of his Christianity to the debate. Bishop Pollard did not condemn gambling as intrinsically sinful, but said that the casino was “a moral issue and we have the right quite definitely to enter into and deal with any form of moral issue that is before the public of the country and particularly in a place where we are chosen as leaders to serve that country”.<sup>326</sup>

His successor, Bishop Gordon, was also involved in controversy in relation to gambling. During a resolution concerning betting-shop legislation,<sup>327</sup> the Bishop thought the present Bill should be rejected. He thought that moral and social issues could not be avoided, and that it was the duty of a legislative body to concern itself with moral issues. Up to a certain point, the law should have nothing to do with wrong moral choices, but at a certain point moral decisions concerned the whole social health of the community. McLeod responded that he had never heard such rubbish in the Council, and quoted a Scots poem condemning a “holier-than-thou” approach. Bishop Gordon continued to oppose betting measures,<sup>328</sup> and in 1972 this again led to the Bishop enunciating the role of the Church, and being criticised for his stance. A call to extend betting office hours was before Tynwald Court.<sup>329</sup> Bishop Gordon argued that people varied in the strength and quality of their conscience, and that legislation could help the general populace to be their best.<sup>330</sup> Afternoon opening would increase the adverse impact of betting shops, and the independence of the Isle of Man gave them a chance to create and maintain a society more wholesome than “that over the water”. He stressed that this was a point of conscience, and a moral point of considerable importance. Irving, replying for the Tourist Board, indicated that the Board was not a missionary society, nor organising Sunday School picnics, and needed to respond to visitor’s wishes.

Afternoon opening for betting shops remained a contentious issue in 1978, when Tynwald Court considered an order extending opening hours.<sup>331</sup> Kermeen argued that Tynwald could not legislate for morals and ethics, nor correct individual faults, but only control them through legislation. Bishop Nicholls disagreed. He feared that the Church had been criticized for speaking out “against” society, but it could equally be criticized for failing in its responsibility to speak. Tynwald had to give moral judgment and leadership to the people of the Island.

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<sup>326</sup> The Bishop continued to play a significant role in this legislation - see *Gaming Betting and Lotteries (Casino) Amendment Bill*, LC 8.1.63.

<sup>327</sup> *Resolution for betting-shop legislation*, TC 21.2.67.

<sup>328</sup> See *Betting Bill*, LC 4.3.69. See also *Betting Bill*, LC 3.6.69; *Resolution calling for extension of betting office hours*, TC 23.3.71.

<sup>329</sup> *Call for extension of betting office hours*, TC 21.2.72.

<sup>330</sup> In a different debate, the Bishop opined that people were not yet good enough to live without restrictions, although this would be his ideal - *Douglas Corporation (Summerland) Bill*, LC 14.3.72.

<sup>331</sup> *Resolution to approve Licensed Betting Offices (Hours of Opening) Order*, TC 22.3.78.

Bishop Attwell, too, engaged with gambling and betting. In 1983 he made explicit an approach towards gambling that was in sharp contrast to, most notably, Bishop Gordon. During discussion of the Manx casino,<sup>332</sup> Bishop Attwell noted that he saw excesses of gambling as causing harm, but that he followed mainstream theology in finding that gambling itself was not wrong. He was more concerned with ensuring that the young were protected, and the casino's neighbours were not subjected to a nuisance. Radcliffe, who saw a strong difference between finding something morally wrong and an appropriate subject for prohibition, congratulated the Bishop on his approach. Payne, too, congratulated the Bishop for his "very enlightened remarks". Later, however, Bishop Attwell supported, "on moral grounds", an amendment to a casino bill, which would have allowed up to 2 casinos to be established, reducing the authorization to a single institution.<sup>333</sup>

The moral role of legislators was raised in relation to the national Manx lottery, established to celebrate the Millennium of Tynwald.<sup>334</sup> Bishop Nicholls was glad that money had been raised for the old and infirm, but was distressed that it had been raised through gambling. He feared that children had been given a "lust" for gambling, that the poor were spending more than they could afford, and that voluntary giving had fallen as a result of the lottery. He noted that the Isle of Man Council of Churches had passed a resolution against lotteries, and feared that old standards were being abandoned. Moore suggested that the Bishop needed to recognize a fact of life - that people needed incentives to give money, while Kermeen made a more direct attack on the Bishops mode of argumentation. While he agreed that Tynwald should not become involved in running lotteries, he argued that their role was as legislators rather than moralists - civilized states tolerated socially undesirable activities.

In 1981, during discussion of a Bill to allow a regular government lottery,<sup>335</sup> Bishop Nicholls opposed the measure. Crellin noted that this was a matter of great importance, over which he had no wish to confront the Keys. The Bishop agreed that he did not wish confrontation, but stressed that members of the Council had the right to express their own moral views and moral beliefs. In particular "some of us come here with Christian viewpoints, we have moral viewpoints, and I am not prepared to accept we have got to sacrifice these to prevent a confrontation with the other House". Bishop Nicholls' successor, Bishop Attwell, indicated that he was not keen to support the lottery, and would prefer charitable aid to come from direct donations, but was prepared to accept it.<sup>336</sup>

In the gaming debate, we see a number of Bishops developing a consistent opposition to the extension of gaming, while at the same time defending their right to speak on moral issues, even to provide moral leadership. This role has not been uncontested, nor has it been seen as limited only to the Bishops.

#### **(vi) Sunday trading.**

During the gaming debates, we have already seen a number of Bishops raise particular concerns over Sunday opening for betting shops. Sunday trading more

<sup>332</sup> *Resolution for legislation to make casino laws permanent*, TC 16.11.83.

<sup>333</sup> *Casino Bill*, LC 23.4.85.

<sup>334</sup> *Resolution noting success of Millenium Lottery and calling for legislation permitting lotteries for purposes approved by Tynwald*, TC 20.11.79.

<sup>335</sup> *Public Lotteries Bill*, LC 12.5.81.

<sup>336</sup> *Resolution to approve Public Lottery Regulations 1984*, TC 11.12.84.

broadly has been an ongoing concern, one with both moral and specifically Christian aspects.

During discussion of Sunday trading in 1970,<sup>337</sup> Bishop Gordon argued that the proposed Bill would further secularise Sunday, and that society as a whole could not afford to have it more secularised than it was already. The Church did not want to be an awkward body preventing enjoyment by others who did not observe Sunday in the Church's way, but the quietness of Sunday benefited the whole community, and provided protection for family life. In a later debate on the measure,<sup>338</sup> he recognised that Sunday trading affected churchgoing "but this is not my concern, and I think I am here with the rest of us to conserve the good of society as a whole". He stressed again that the measure would deprive the whole Island of the peace of Sunday, simply for "filthy lucre, as the Bible calls it".

Sunday trading also posed concerns for Bishop Atwell. During the passage of a Shops Bill through the Council in 1985,<sup>339</sup> he noted that, although he would not oppose the Bill, he was worried that it was the thin end of the wedge. He thought the Sabbath commandment was very wise, but there were sociological as well as religious reasons not to make Sunday just another day. In 1987, during consideration of an order to extend Sunday opening,<sup>340</sup> he considered that these fears had been justified. He argued that, in a nominally Christian country, Sunday was special. Allowing Sunday opening would make it more difficult for Christians to meet their religious obligations through Sunday worship. He supported these, predominantly religious, arguments with broader arguments based on the importance to family life of a time for families to get together; the need for a day of rest and repose; and the place in British tradition of Sunday meals. He also referred to a day of rest as not being a Christian peculiarity, referring to "Jewish, Muslim, indeed all other cultures". Other members of Tynwald Court contributed to this debate. Kermode suggested that the Bishop's arguments were quite emotive, and, jokingly, that he had an interest. He then moved on to argue that although the Bishop would like to see people in church, Jesus had preached on hillsides and streets, and that it was not necessary to go to church to believe in God. Kermode concluded that it was inappropriate to impose their will on those who chose to worship God in other ways. Karran, on the other hand, applauded the Bishop's speech as an example of his voicing the fears of the Christian community of which he was a leader.

Bishop Jones, too, was involved in a number of debates over Sunday trading. His initial contribution to the debate in 1992 took a novel approach to the claims of the Churches to a Christian Sabbath. During a debate on a Shops Act Order,<sup>341</sup> he argued that Tynwald helped almost all other market-traders on the Island, but never the churches, which were in the marketplace for people. Attracting people to go elsewhere on Sunday mornings took away possible income from the churches, which were already experiencing a drain of young people due to sporting activities and the like. Duggan responded that it was entirely appropriate for the Bishop to worry about the churches, but that Tynwald Court needed to consider shopkeepers. It was left to Gilbey to raise the more traditional argument, based on social need, for a day of rest.

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<sup>337</sup> *Shop Hours Bill*, LC 10.2.70.

<sup>338</sup> *Shop Hours Bill*, LC 10.3.70.

<sup>339</sup> *Shops Bill*, LC 25.6.85.

<sup>340</sup> *Resolution to approve Shops Act (Exempt Classes) Order*, TC 20.5.87.

<sup>341</sup> *Shops Act (Temporary Exemption) Order*, TC 15.4.92.

In early 1993,<sup>342</sup> Bishop Jones returned to Sunday trading in terms that suggest his novel contribution to the debate was tactical, rather than indicating a difference of opinion to his predecessors. Bishop Jones noted that there was something to be said for members rereading old arguments in Hansard each year instead of getting up to speak, but he had further arguments this year. Firstly, recent crime figures suggested the breakdown of society, and so the importance of family time. Secondly, recent unemployment figures suggested that workers would be under greater than ever pressure to comply with requests to work on Sundays. Duggan reiterated his earlier point, but rather more bluntly, noting that the Bishop “has got to do his little piece, we know. He is worried about his flock, but we have got to consider the visitors”.

In 1994, Bishop Jones expressly referred to the views of Bishop Attwell, who saw the 1985 Act as the beginning of erosion of the Sabbath. He dismissed arguments from tourism, noting that tourists came to the Isle of Man for reasons unconnected with the mainstream retail trade. More broadly, he was worried at decadence in society more generally, looking in dismay at leading citizens of neighbouring islands with their low personal morality. These citizens called for the Church to take a lead on morality and standards, but then undermined it by deregulating Sunday. He finished with an appeal to those who had some regard for, and connection with, the Church in the Island. Groves supported the comments of the Bishop, particularly on the broader issue of standards. He argued that the rest of the Council were elected to provide leadership within society, not just to improve the moral welfare and benefit of the people, but also to guide them. Kermode, after a snide comment on one of the Bishop’s more colourful rhetorical devices, argued that it was a matter of choice - if an individual opened their shop on a Sunday it did not make them any less of a Christian person.<sup>343</sup>

By 1996, Bishop Jones had shifted his arguments slightly. When discussing extension of licensing, he was prepared to argue that a particular period was “especially sacred”,<sup>344</sup> but in a debate the following day on Sunday opening, he argued that “Our concern must be for the retailers themselves - it is nothing to do with Sundays or the Church”.<sup>345</sup> In 1998,<sup>346</sup> his principal argument was based on quality of life, but his approach to religious views is interesting - he noted that some were inclined to ignore the feelings of churchgoers because they were a small group, but argued that true politics was concerned with the care of citizens, and this includes members of minorities. Crowe argued that Sunday trading would not prevent those who wished to go to Church from doing so.

In 1999, during debate of the Bill to repeal regulation of Sunday opening but prohibit Christmas day opening,<sup>347</sup> Bishop Jones acknowledged that there had been different views on Sunday observance within the Christian Church. He argued, however, that most people claimed to try to live by the Ten Commandments, and that little in the Bill met the Fourth Commandment. In a later debate on the Bill,<sup>348</sup>

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<sup>342</sup> *Shops Act (Temporary Exemption) Order*, TC 16.3.93. See also *Road Races (Amendment) Bill*, LC 8.3.94.

<sup>343</sup> This debate was effectively, and consciously, rerun in *Shops Act 1985 (Temporary Exemption) Order*, TC 11.4.95.

<sup>344</sup> *Resolution to approve Licensing (Permitted Hours) (no.2) Order*, TC 19.3.96.

<sup>345</sup> *Resolution to approve Shops Act (Temporary Exemption) Order*, TC 20.3.96.

<sup>346</sup> *Resolution to approve Shop Acts (Temporary Exemption) Order*, TC 17.3.98.

<sup>347</sup> *Shops Bill*, LC 7.12.99.

<sup>348</sup> *Shops Bill*, LC 25.1.00.

Kniveton supported individual choice, although he identified as a regular churchgoer with the Church of England. Bishop Jones argued that the churches wished to ensure that the future was fair, and queried how churches were to compete when seven days were to be given up to retail. He also sought assurances about fairness to those employees who sought to observe the Sabbath, and introduce a number of - unsuccessful - amendments to make the measure slightly more restrictive. At the third reading of the Bill in the Council,<sup>349</sup> Bishop Jones opposed the measure strongly. Kniveton had argued that the vast majority of the Island wanted the reform, and that the very small minority of churchgoers should not be able to determine what everyone did on a Sunday. The Bishop said that this was a very unhealthy argument: the majority view was not necessarily right, as the Biblical example of the crowd's choice between Jesus and Barabbas illustrated. In the millennium of Christ's birth the proposal would torpedo "one of the main gifts which he gave to mankind". Those who made a firm stand on Sabbath observance would fail to get employed, or would lose pay. He thought the legislature would regret not properly exploring biblical, economic, social and medical arguments for preserving Sunday observance. He felt he would be remiss if he did not conclude with a specifically Christian reference, but "because you might accuse me of being churchy at this point", he chose to cite a report from the Salvation Army, "if any group showed a down-to-earth no-nonsense approach to religion it is them".

A number of interesting issues arise from these debates, as we discuss below. Of particular note is the tension between the Bishop and other Christians, a fear that the Church could appear as sanctimonious in seeking to inform the legislative agenda with Christian teaching and traditional practice, and the willingness of Bishops to bring a variety of argumentative modes - not exclusively religious modes - to bear on the question.

### **(vii) Criminal law and human rights issues.**

In the preceding sections we have seen how the Bishops have been willing to speak, indeed to give a lead, on what were categorized as moral issues. The same role can be seen in relation to a small cluster of criminal law and human rights issues, most notably sex between men.

In 1977, Tynwald Court discussed the report of the European Commission of Human Rights on corporal punishment in the Isle of Man.<sup>350</sup> Bishop Nicholls thought that "the great majority of us are practicing Christians", but also tried to be responsible citizens. He spoke in the debate personally, and not for the Isle of Man Council of Churches which he chaired. He spoke in support of retention of the birch for violent crimes by young offenders. Callin cited an election visit where a voter had opted to support him because he backed the birch and respected the Sabbath. Nivison violently disagreed with the retention of the birch, not as a member of the Manx Labour Party but as a practicing Christian based on his own reading of the New Testament. He was "disappointed in the Bishop", as he thought that a church leader should give a lead on this. Later, the issue came again before Tynwald Court following a Tynwald day petition for a referendum on corporal punishment.<sup>351</sup> The

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<sup>349</sup> *Shops Bill*, LC 8.2.00.

<sup>350</sup> *Resolution to note European Commission of Human Rights Report in Tyrer Case*, TC 18.5.77.

<sup>351</sup> *Resolution to grant Tynwald Day petition of Margaret Irving and Others*, TC 21.11.78.

Bishop felt that he “must say something as a very privileged member in not having to submit myself to the electorate”. He had supported the birch some months earlier, but could not as a Christian bring himself to vote for a referendum which could involve dissociating the Island from the ECHR. In 2000, during debate on the Bill which formally abolished birching, Bishop Jones supported getting criminals to face their victims and carry out community service, which he saw as more useful than “standing around being thwacked around the buttocks”.<sup>352</sup>

In 1993, the Council discussed a Bill to formally abolish the death penalty,<sup>353</sup> although it had been defunct for some time. Radcliffe opposed abolition, sure that he was representing the views of majority of the Island, who believed in justice and retribution. Bishop Jones strongly dissociated himself from Radcliffe’s comments. In particular, he challenged the view that the Radcliffe spoke for the majority of the Manx people - “in this Christian country there would be a lot of challenge to that comment”. By a later point in the process, the Bishop was stressing that the Bill was intended to remove an unenforceable law from the statute books, and that nobody was voting for lawlessness or immorality or the loosening of standards.<sup>354</sup>

One of the first substantial debates facing Bishop Jones concerned the legalisation of sexual acts between men. During a debate on a referendum on whether the law should be changed,<sup>355</sup> Bishop Jones sought to speak more philosophically than politically. He valued the voices of the people and of the legislators, but in matters concerning personal sexual morality it was important to remember that there was a higher court and a more significant voice. The issues were between a man and God, and the Church was called to declare God’s law and work and to reconcile men with God. He considered that the Church could not hope to counsel a group who were driven underground, although the Churches position on homosexual acts, based on scripture, was clear. He had consulted with other Christian churches on this question, and they were all agreed that homosexual acts were sinful, although they differed on how the sinner should be treated. Although he personally found active and corrupting homosexual lifestyles to be abhorrent,<sup>356</sup> he did not wish to close the door on the reclamation of sinners. In relation to the specific question, if there was to be a referendum it should cover all factors harming society - such as adultery, divorce, drugs and pornography - rather than single out one handicapped group. Lowey did not wish to argue with the Bishop on morals or religion, but he thought many devout Christians were against a change in the law. Even if members of Tynwald were seeking to be Christian, it was important to keep religion and politics apart - homosexual crimes were a political issue just like theft, drugs, and murder. Quine, too, criticized the Bishop’s speech. He accused the Bishop of clearly following the line of “the Synod across the water”, and was concerned with what the Manx people thought.

It was clear that if Tynwald did not effect some change, the United Kingdom government would do so, and so a Bill was introduced which would legalise some

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<sup>352</sup> *Criminal Justice Bill*, LC 7.11.00.

<sup>353</sup> *Death Penalty Abolition Bill*, LC 2.2.93.

<sup>354</sup> *Death Penalty Abolition Bill*, LC 23.2.93.

<sup>355</sup> *Resolution for referendum whether law on homosexual acts should be changed*, TC 11.4.90. See further *Sexual Offences Bill*, LC 28.5.91; *Sexual Offences Bill*, LC 25.6.91.

<sup>356</sup> This appears to have underpinned his disapproval of the change in the age of consent for sexual acts between men to 18 - see *Criminal Justice Bill*, LC 24.10.00

sexual acts between men. During discussion of the Bill in the Council,<sup>357</sup> a number of the members conceded that, on constitutional grounds rather than the merits of reform, the Bill should be accepted. Barton felt that an imposed Act of Parliament would be worse than legalizing such acts, but felt that in saying this he let down many sincere Christian people who had written to give him support. Bishop Jones said he was saddened by the number of Christians who seemed to delight in the word “sodomite”, which they used in an abusive and menacing way; and by the abrasiveness of the gay lobby. He thought that scripture, tradition, and human experience made it impossible for the Church to conclude that homosexuality was an alternative form of human sexuality. Members of a number of denominations had reminded him that the Bishop represented as wide a range of Christian opinion as possible in Council debates. If he were speaking only for himself, he would be content to accept the legislation, but felt he would be neglecting his duty if he did not draw attention to the deep feeling of the majority of Christians that the change was unwelcome.

In 1994, Tynwald discussed an extension to the range of lawful abortions.<sup>358</sup> Bishop Jones disapproved, seeing abortion in the United Kingdom as disastrous, leading to the killing of children. Christianity viewed all life as a gift from God, which it was only acceptable to take away in exceptional circumstances. He then criticized the detail of the proposal. Speaker Cain and Kermode welcomed the Bishop’s speech as powerful and constructive, and Quine said that his contribution was very telling, and he found it useful for a member of the Council to offer his guidance and help. Luft, on the other hand, despite his great respect for the Bishop, felt he had misdirected himself on this occasion.

When the Council first considered the emerging Bill, Lowey regretted the absence of the Bishop “after his passionate intervention in Tynwald Court”.<sup>359</sup> The Bishop was present at the second reading, however, and again opposed the Bill.<sup>360</sup> He was particularly concerned that the Bill should not be accepted simply because of a vocal minority, and that the Council should have the courage to say the Bill was wrong and not what the Manx wanted. In this case the Council was “dealing with the sanctity of life, God’s creation”. By the discussion of the clauses he had shifted his opposition to individual points of detail, with a number of unsuccessful challenges to individual sections.<sup>361</sup> At the third reading, however, Bishop Jones returned to his overall objection.<sup>362</sup> God is the giver and taker of life, and life is sacred. Pro-abortionists would not be deterred by any statutory wording that could be liberally interpreted, and there was still time to look at the Bill again. Christian thought that everyone with Christian convictions would be disturbed at the passage of the Bill, and they had a job to do in imbuing others with their level of faith.

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<sup>357</sup> *Sexual Offences Bill*, LC 26.5.92.

<sup>358</sup> *Resolution to implement Council of Ministers Social Issues Committee recommendations for medical termination of pregnancy legislation*, TC 15.2.94.

<sup>359</sup> *Termination of Pregnancy (Medical Defences) Bill*, LC 4.4.95.

<sup>360</sup> *Termination of Pregnancy (Medical Defences) Bill*, LC 2.5.95.

<sup>361</sup> *Termination of Pregnancy (Medical Defences) Bill*, LC 9.5.95.

<sup>362</sup> *Termination of Pregnancy (Medical Defences) Bill*, LC 23.5.95.

**(viii) Subjects where the contribution of the Bishop is seen as particularly appropriate.**

The debates summarized above contain much that is of interest in terms of how the Bishop is expected to contribute to the business of Tynwald, which we return to at length below. They also indicate to us that there are two broad categories where the input of the Bishop is not simply seen as acceptable, but particularly appropriate, so that the Bishop is prepared to speak on the topic, and other members actively seek his contribution - moral issues, and technical issues concerning the Manx Church.

There are strong indicators, arising in relation to a number of Bishops, that the Bishop has a special role in relation to topics that are seen as involving moral issues. This arose particularly in relation to gaming. In a debate over the Casino,<sup>363</sup> Moore argued for legislators to bring their religious views into their work generally, but Bishop Pollard dealt with the point more narrowly - he identified the topic as a moral issue and indicated that “we” (although it is unclear who he meant by this) had a right to deal with any moral issue before Tynwald. Bishop Gordon, again in relation to gambling,<sup>364</sup> considered that moral issues would always come before a legislature, which could intervene when wrong moral choices impacted on the community. He returned to the point later,<sup>365</sup> arguing that the law could help people to be their best, and that this was a matter of particular moral importance. Bishop Nicholls, in his contribution to the ongoing gaming debate,<sup>366</sup> argued that the Church had a duty to speak on social issues, and Tynwald a duty to give moral leadership. Bishop Attwell, in his contribution to a Casino debate, supported one amendment explicitly on “moral grounds”.<sup>367</sup> Additionally, as we will see in our discussion of the individual Bishops, on a number of occasions, a departing Bishop has been commended in particular for his spiritual and moral guidance. Bishop Pollard received a commendation for his “spiritual” support and guidance upon his retirement.<sup>368</sup> Similarly, Bishop Attwood was thanked for his contributions on “heart and soul, and on morality in its greatest sense”.<sup>369</sup> Bishop Jones made substantial contributions, clearly based on his view of Christian morality, to the debates on the legalisation of sex between men,<sup>370</sup> abortion,<sup>371</sup> and Sunday trading.<sup>372</sup>

This “moral” role for the Bishop is not necessarily an argument for an expansive role in the legislature, nor is it necessarily uncontested. During the debate on the removal of the Second Deemster,<sup>373</sup> Nivison recalled, erroneously, a recommendation of the MacDonnell Report that the Bishop should vote only on moral issues, and suggested that he might be relieved of the duty to vote, although in 2001 Singer pointed out the difficulties with this approach.<sup>374</sup> On the second point, there are some indications, principally in the use of humour, that the special role of the Bishop

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<sup>363</sup> See p.70.

<sup>364</sup> See p.70.

<sup>365</sup> See p.70.

<sup>366</sup> See p.70.

<sup>367</sup> See p.71.

<sup>368</sup> See p.89.

<sup>369</sup> See p.96.

<sup>370</sup> See p.40.

<sup>371</sup> See p.76.

<sup>372</sup> See p.72.

<sup>373</sup> See p.32.

<sup>374</sup> See p.60.

as a moral guide may not always be taken very seriously.<sup>375</sup> In 1967, during a debate on the restriction of ‘pirate’ radio stations,<sup>376</sup> the Bishop argued for the legislation as the stations were operating “contrary to the spirit of the law”. The Lieutenant-Governor said: “[t]his is a question for the Attorney-General actually; he gives legal guidance, the Bishop moral”. This provoked laughter in the chamber, tying in with a regular tendency to treat explicit references to moral guidance from the Bishop as a source of levity.<sup>377</sup> The special status of the Bishop as a “man of God” has also led to more developed levity. During discussion of motor vehicle insurance the First Deemster gave an example of a hypothetical accident in which both the Attorney-General and he had been negligent.<sup>378</sup> The Lieutenant-Governor followed, beginning “If I am driving the Bishop about and a branch falls off a tree”, causing the Attorney-General to interject, to much hilarity, “An Act of God!”. The Lieutenant-Governor participated, agreeing that it was better to leave the Bishop “out of it”. In 1990,<sup>379</sup> Bishop Jones, perhaps imprudently, raised a question about attaching a token indicating a dog was licensed to its collar. Jokes concerning the Bishop’s collar and his flock followed. Also in 1990,<sup>380</sup> the President commented on the suitability of a Bill on driving instruction being taken through the Council by Bishop Jones, “who is usually in charge of giving directions in which one should travel”. In 1992 Barton moved an ecclesiastical Bill in the Council during the absence of the Bishop.<sup>381</sup> Anderson pondered whether, in his absence, the Council could include a clause to include women priests in the Isle of Man. Lowey replied, to general laughter, that the Council could try.

As well as levity, the ecclesiastical role of the Bishop has very occasionally been used in an abusive way, although it should be stressed that the anticlerical thread in the Manx debates is a thin one. During an education debate,<sup>382</sup> Bell shared an anecdote concerning schoolboys with Tynwald Court. The Bishop suggested that Bell should have spoken with the head teacher concerned, and carried on with “May I say to him ...”. Bell interjected with “You are not going to preach to me, please”. The Bishop responded that “I am not preaching to you. It would be a very good thing if I did, perhaps, but not this afternoon”. In discussion of Sunday trading in 1993, Duggan referred to the Bishop’s obligation to speak for his “flock” in a dismissive way,<sup>383</sup> while during discussion of the same topic in 1995 Kermode argued that some of the activities of clergy were responsible for a decline in churchgoing - “you can see it in the Sunday papers every week”.<sup>384</sup> In 2001, during the debate on the Bishop’s vote,<sup>385</sup> Cannell made the point that other members of Tynwald could speak with a Christian

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<sup>375</sup> See also the comment of Anderson to an apology for the Bishop’s absence - LC 4.6.85.

<sup>376</sup> *Marine Broadcasting Offences (Isle of Man) Bill*.

<sup>377</sup> This humour sometimes comes from the Bishop himself. See for instance the discussion of soiled cassocks in *Road Traffic Bill Second Reading*, LC 8.5.01.

<sup>378</sup> *Motor Vehicle Bill*, LC 7.12.71.

<sup>379</sup> *Dogs Bill*, LC 27.2.90.

<sup>380</sup> *Road Traffic (Driving Courses) Bill*, LC 22.5.90.

<sup>381</sup> *Church Legislation Bill*, LC 10.11.92.

<sup>382</sup> *Resolution to approve estimates of Board of Education*, TC 17.3.76.

<sup>383</sup> *Resolution to approve Shops Act (Temporary Exemption) Order*, TC 16.3.93;

<sup>384</sup> *Resolution to approve Shops Act (Temporary Exemption) Order*, TC 16.5.95.

<sup>385</sup> *Constitution Bill*, HK 23.1.01.

voice by noting that “Christianity does not have to be expressed with a purple frock and dog-collar”.

We can also identify a number of instances where the contribution of the Lord Bishop has been made, or looked for, on what might be regarded as a technical issue concerning the Manx Church.<sup>386</sup> This is a theme most strongly found in relation to Church legislation, but can also be seen during discussion of possible abolition of the diocese, church property, and even the protest of Bishop Gordon concerning the presentation of prayers to open Council meetings.<sup>387</sup> Additionally, in 1968, during discussion of oaths by young persons,<sup>388</sup> the Lieutenant-Governor asked Bishop Gordon’s view on the use of oaths, following press discussion. The Bishop said that one should be just as truthful whether on oath or not, but it was “good to be reminded of something beyond this world to help you to be your best”. In 1969 Bishop Gordon provided guidance to the Attorney-General on references in an interpretation Bill to “ecclesiastical commissioners”,<sup>389</sup> while in 1993 Bishop Jones provided guidance on the role of Church of England prison chaplains.<sup>390</sup> Although Bishop Jones was keen to disavow a similarity between his role and that of the Attorney-General, who acts as a technical expert on Manx law for the Council,<sup>391</sup> it does appear that on technical issues concerning the Manx Church, he discharges just this role.<sup>392</sup> Although outside of our period, the ability of the Bishop to identify interactions between Manx law and the Manx Church was seen as a real advantage by Archdeacon Philpot in 1837,<sup>393</sup> Bishop Straton in 1907, and the MacDonnell Committee.<sup>394</sup>

#### **III.4. Modes of contribution by the Bishop.**

In this section we are concerned less with how the Bishops have chosen to express themselves in debates, and more with what was seen by the Bishop and other members of Tynwald as the appropriate way for him to contribute to the work of Tynwald. The two issues are obviously related, but distinct, as we will see when we come to consider an instance where a Bishop acted contrary to the expectations of his fellow legislators. In gauging what sort of contributions might be appropriate, it might seem necessary to determine the basis upon which the Bishop is present in the legislature. On a number of occasions, the legislature has considered different theoretical underpinnings for the legislative role.

A recurrent theme is that the Bishop has traditionally been a part of Tynwald, so that his position contributes to the uniqueness of the Isle of Man. We see this most explicitly during the debate on the removal of the First Deemster from the Council,<sup>395</sup> but the significance of tradition can also be seen in, for instance, the speech of Bishop

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<sup>386</sup> This was seen as a limit on the appropriate interventions of the Bishop by a Committee of the House of Keys in 1966 – see p.33. The role of Tynwald in legislating for the Manx Church can be seen as a key justification for the place of the Bishop, see R. Davies, “Church and State” (1976) *Cambrian Law Review* 11 at 22.

<sup>387</sup> See p.67.

<sup>388</sup> *Children and Young Persons Bill*, LC 3.12.68.

<sup>389</sup> *Interpretation Bill*, LC 1.7.69.

<sup>390</sup> *Custody Bill*, LC 1.11.94. See later *Secure Home Custody Rules*, TC 22.1.03.

<sup>391</sup> See p.41.

<sup>392</sup> See later *Church of England Churches – Baptism and Marriage*, TC 21.1.03.

<sup>393</sup> See p.24.

<sup>394</sup> See p.26.

<sup>395</sup> See p.56.

Gordon when he took his seat in Council.<sup>396</sup> The obverse of this argument is that his traditional position is antiquated, and opposed to the continuing modernization of the Manx constitution. This can be seen as an important theme throughout the reforms to the composition of the Council, and in particular during the debate on the removal of the Second Deemster.<sup>397</sup> Critics of the Bishop's position have made a particular use of arguments from tradition to undermine the legitimacy of his legislative function. Callister raises this as a criticism of the Council during a debate on Tynwald Day ceremonial arrangements,<sup>398</sup> but most clearly during debate over the role of the Second Deemster in the Council. He saw the Council as a feudalistic remnant of the past, and the Bishop's place in it as a remnant of his baronial position.<sup>399</sup> Interestingly, this justification has normally been put forward by opponents of the Bishop's continued position, and deployed to criticize the position as archaic; only occasionally is the Bishop's position as of traditional right put forward as a positive feature.<sup>400</sup>

More utilitarian arguments have also been deployed. The self-governance of the Manx Church under its own Bishop was seen as consonant with the autonomy of the Isle of Man more generally. During one debate,<sup>401</sup> Cowin defended the role of the Bishop in Council, fearing that if he was done away with, the Island would be under the Archbishop of York, and thence the United Kingdom.<sup>402</sup> During debate of a measure to allow for simpler extension of measures that had been adopted for England by the General Synod,<sup>403</sup> Mann saw the issues explicitly in terms of independence. He criticized supporters of the measure for applying English legislation, contrary to other constitutional developments, in an area where the rights of the Island were at their strongest. The continued strength of the position of the Bishop, both fiscally and constitutionally, was seen as a key to the otherwise anomalous continuation of the Diocese of Sodor and Man. A perception of the Diocese as precarious can be seen during the debates on the future of Bishops Court, in particular the contribution of Deemster Easton.<sup>404</sup> He was concerned that the Church Commissioners of England had financial reasons for wishing the demise of the Diocese, citing the view of Bishop Pollard that there would be no question of a Bishopric with seventeen parishes and 50,000 people were it not for its antiquity. During a debate on a measure to harmonise English and Manx ecclesiastical legislation Bishop Gordon was called upon to reassure the Council that this was not the first step in abolishing the Diocese.<sup>405</sup> In a newspaper interview in 1970, Bishop Gordon had commented on the precarious position of the Diocese: "One of the reasons for the continuation of this Bishopric – by far the smallest of the 43 Dioceses of the Church of England – is the Island's separate political status and the Bishop's unique position in it. If the Bishop were removed from the Legislative Council the Bishopric might well be considered unviable and withdrawn altogether".<sup>406</sup> The linkage between the role of the Bishop in

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<sup>396</sup> See p.90.

<sup>397</sup> See p.56.

<sup>398</sup> See p.66.

<sup>399</sup> See p.55. See also the views of Quirk, at p.56.

<sup>400</sup> See for instance, Cowin at p.56.

<sup>401</sup> See p.56.

<sup>402</sup> See also *Assistant Curates Measure (Isle of Man)*, TC 16.12.98.

<sup>403</sup> See p.64.

<sup>404</sup> See p.68.

<sup>405</sup> See p.61.

<sup>406</sup> *Isle of Man Examiner*, 24 July 1970, p.7.

the Council and the continued survival of the Diocese was made explicit by Thornton-Duesbury during the debate on the removal of the First Deemster from the Council,<sup>407</sup> and was an important theme in the 1982-3 discussions of the Bishops role.<sup>408</sup> It remained a concern in 1994, by which point even opponents of the Bishops role were prepared to acknowledge it, with Cringle seeing it as a price to be paid for the democratisation of Tynwald.

The unique way in which the Bishop has been appointed has also been the subject of comment in the debates. A strong theme in the debates concerning the membership of the Council was that the Keys, or perhaps even the electorate, should be responsible for all appointments to the Council. Thus, his ex officio role was no more acceptable to some members than the role of any other official member. Beyond the role of the Keys in appointing to the Council, Kermeen linked criticisms of the Bishop's position in the Council with the relative exclusion of the Island from the process by which a nomination was made to a vacancy in the See.<sup>409</sup> There have also been hints of anti-English feeling in some contributions to debates. As a rhetorical device, this can be seen most clearly by the suggestion by the Speaker, Kerruish, that if the new Bishop was unwilling to live in Bishops court he could go back to England.<sup>410</sup> More thoughtfully, Delaney advocated the removal of the Bishop's vote in 1977, in part because he was able to vote as soon as he took up office, although he would not have the Island's interests at heart, or sufficient experience of the Island.<sup>411</sup> On occasion, however, the mode of appointment of the Bishop has been seen as a positive benefit. During the discussion of corporal punishment Bishop Nicholls found it easier to oppose a referendum on the question because he was a very privileged member of Tynwald Court who did not have to submit himself to the electorate,<sup>412</sup> and some contributors to the 1982-3 debate saw this "independence" as a positive aspect of the Bishops role.<sup>413</sup>

The position of the Bishop has also been seen as part of a broader web of Establishment, which carries with it both privileges and burdens for the Manx Church. Such a view of Establishment can be found in the debates, most notably in relation to scrutiny of ecclesiastical legislation by Tynwald.<sup>414</sup> Simcocks, for instance, saw Tynwald's role as flowing from the Establishment of the Manx Church,<sup>415</sup> while McFee saw Establishment as a relationship with disadvantages and advantages.<sup>416</sup> Irving felt that if the Church was unhappy with the details of the relationship, it was time to consider disestablishment.<sup>417</sup> The role of the Manx Church in the life of the Island was also touched upon by Bishop Gordon, who objected to the description of Tynwald Day as a state occasion, preferring to see it as national occasion which

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<sup>407</sup> See p.56.

<sup>408</sup> See p.36.

<sup>409</sup> See p.57. See also the comments of Delaney during *Constitution (Legislative Council) Bill*, HK 5.2.85.

<sup>410</sup> See p.67.

<sup>411</sup> See p.57.

<sup>412</sup> See p.75.

<sup>413</sup> See p.36.

<sup>414</sup> See p.61.

<sup>415</sup> See p.62 and p.63.

<sup>416</sup> See p.63.

<sup>417</sup> See p.63. See also Cringle and Quayle at p.64.

involved both the Church and the State.<sup>418</sup> In this context, it is striking that the early discussions of reform of the Legislative Council include only one reference to the impact upon Establishment of the Manx Church, with Delaney arguing that the Bishop should lose his vote, but continue to sit on the Council as a representative of the Established Church.<sup>419</sup>

The competing claims of these theoretical issues have not been resolved, but this has not hampered Tynwald from developing an implicit set of four principles about how religious representation should be accommodated. As discussed below these are the expectation that the Bishop should be non-partisan; that he should represent the Manx Church, Manx Christianity, and perhaps even religion more generally; that he may make use of both secular and religious modes of argumentation; and that he is not the only member of the legislature who may represent religious perspectives or make use of religious argumentation.

The strongest expectation from the debates is that the Bishop should be non-partisan, and this has been put forward by supporters of the Bishop's role - for instance by Bishop Jones himself during the 1994 debate,<sup>420</sup> and Lowey during the 1998-2001 debate.<sup>421</sup> There are not a significant number of examples of this expectation in practice, but this may be evidence for its power, and so the extent to which it is followed. This interpretation is supported by the strength of the reaction on the one occasion when a Bishop did act in a way that could be interpreted as partisan - albeit not in terms of Manx party politics.

In 1963 Tynwald Court was discussing the definition of Manx worker under the employment regulations intended to restrict immigrant workers.<sup>422</sup> Bishop Pollard indicated that he regularly told the English Bishops and Church Assembly bodies that unemployment was a minor problem in the Isle of Man, and that unemployment was much worse in the United Kingdom. He then suggested that this would get worse still if Labour Party policy were implemented. Nivison queried what he meant by policy, and was directed by Bishop Pollard to the party's statement - Nivison replied by suggesting that the Bishop should read the New Testament. Moore objected to the "vicious" attack of Bishop Pollard. He had always believed that the Bishop should sit in Tynwald Court as a historic right, but that this debate had changed his belief. Legislative business changed to the report of the Board of Agriculture and Fisheries,<sup>423</sup> but the controversy triggered by the Bishop's remarks continued. Callister directed the Bishop to the Labour Party, and in particular to their policies on employment. Bishop Pollard indicated he had read them, and could agree with none of them. Gale was "disappointed and disgusted" by the Bishop's remarks - one might conclude that he should be removed from Tynwald Court if he was going to participate in debate as he did this morning. Gale was prepared to attribute them to the Bishop's recent illness. Simcocks saw no justification for the "childish" attack on Bishop Pollard simply because he had indicated an attitude to an organization's policy. The suggestion he should not sit in the legislature was "not socialism but communism", and a fair warning to the population of the Island. Later, during the

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<sup>418</sup> See p.66.

<sup>419</sup> See p.57.

<sup>420</sup> See p.59.

<sup>421</sup> See p.59.

<sup>422</sup> *Regulation of Employment (Amendment) Order*, TC 22.5.63.

<sup>423</sup> *Report of Board of Agriculture and Fisheries*, TC 22.5.63.

debate on Bishops court, <sup>424</sup> Nivison indicated that the “partisan” Bishop’s outbursts needed to be controlled. It seems likely that this is a further reference to this conflict. In 1996, a report by a Committee of the House of Keys referred to a tradition of the Bishops, on the whole, displaying a spirit of independence and impartiality<sup>425</sup> - again, reiterating the importance of this expectation.

Secondly, although an individual Bishop will sometimes make it clear that he speaks for no-one but himself,<sup>426</sup> it is more usual for the Bishop to be being treated as a representative of some sort of religious community, although there are important differences in the breadth of his constituency. We have already referred to Delaney’s consideration of the legislative role of the Bishop as being associated with Establishment. Only a relatively small proportion of the Manx population are active members of the Manx Church, however, with MacDonald for instance describing it as a minority Church.<sup>427</sup> Given the particular religious demographics of the Isle of Man, a stronger theme has been the role of the Bishop as a representative of Christianity in the Island more generally. On a number of occasions, members of Tynwald have stressed that the Bishop had a representative role beyond Anglicans.<sup>428</sup> During the Bishops court debate,<sup>429</sup> Quayle saw the site as an important focus for Manx spiritual life, because people thought of the Bishop as Bishop for the whole Island, not just for Anglicans, with Bishop Nicholls having embraced the whole Christian spectrum. Bishop Gordon saw himself as exercising this role. During a debate on the procedure for ecclesiastical legislation,<sup>430</sup> the Bishop argued that many Roman Catholic and Free Church leaders saw Establishment as a national recognition of religion more broadly. In particular, the Bishop saw himself as speaking in Tynwald for Christians as a whole, rather than just for Anglicans. During the 1994 debate Lowey stated this most widely, seeing the Bishop as Bishop for everyone on the Island, regardless of his or her faith.<sup>431</sup> At the same time, Bishop Jones’ argued that his place in the Council arose not because of his place in the Church of England, but because the Lord of Mann had appointed him to serve her people in that part of the Church that is in the Isle of Man.<sup>432</sup> This was also a strong theme in the 1998-2001 debate.

There is considerable evidence to support this statement of the Bishops role. During the debate on proposals for development of the main Manx hospital,<sup>433</sup> the Bishop asked for an interdenominational chapel and chaplains’ room to be incorporated in the plans, although not for Health Service funding of chaplains as in England. He returned to this proposal in 1970.<sup>434</sup> Another example of interdenominational representation came up in relation to fire regulations,<sup>435</sup> where

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<sup>424</sup> See p.67.

<sup>425</sup> See p.33.

<sup>426</sup> See p.74.

<sup>427</sup> See p.62.

<sup>428</sup> But contrast the description by Cannell of the Bishop as the leader of a religious faction - see p.60.

<sup>429</sup> See p.67.

<sup>430</sup> See p.64.

<sup>431</sup> See p.59.

<sup>432</sup> See p.59.

<sup>433</sup> *Resolution to approve Health Services Board proposals for development of Nobles Hospital*, TC 10.12.68.

<sup>434</sup> *Resolution to approve Heath Services Board estimates*, TC 18.3.70.

<sup>435</sup> *Resolution to approve estimates of Local Government Board*, TC 19.3.75.

the Bishop raised the problem of stringent fire regulations for small church halls, Methodist as well as Anglican. The concerns of Methodists were raised again in relation to gambling in 1981,<sup>436</sup> and the Bishop spoke knowledgeably on a bill dealing purely with Methodist affairs in 1982.<sup>437</sup> Another example, although one met by incorrect responses from the Attorney General, was the concern of the Bishop as to how far clergy, including Roman Catholic priests and Free Church ministers, were precluded from standing for some offices.<sup>438</sup> Similarly, in drawing upon sources of argumentation, Bishops have explicitly made use of Christianity as broadly defined, as well as institutional sources within the Manx Church. We have already referred to the Bishop feeling the need to distinguish between his own view, and that of the Isle of Man Council of Churches, in relation to corporal punishment.<sup>439</sup> On other occasions the Council has been used by the Bishop in debate. In relation to aid for British Honduras,<sup>440</sup> the Bishop asked whether the Lieutenant-Governor would act on the appeal to Tynwald by the Isle of Man Council of Churches; and he referred explicitly to the opposition of the Council to a licensing measure,<sup>441</sup> and to a national lottery.<sup>442</sup> While Bishops have made use of the IMCC, they have also made use of distinctively Anglican structures. During discussion of whether to introduce the breathalyser to the Isle of Man,<sup>443</sup> the Bishop noted that he had raised the issue in the Diocesan magazine eighteen months before, and some of the responses had not been very polite.<sup>444</sup> During a discussion of divorce reform, Bishop Attwell indicated that he was very unhappy with a particular measure “as are the English Bishops”.<sup>445</sup> Bishop Jones also made use of materials from the Salvation Army to explain a distinctively Christian viewpoint on Sunday trading, rather than an Anglican document, because he wished to avoid appearing too “churchy”.<sup>446</sup>

The contribution of Bishop Jones to the debate on sexual acts between men is particularly interesting. At the beginning of the debate, the Bishop referred to having consulted with other churches on the moral status of homosexual acts. Later, however, the Bishop distinguished between his own views and those of the majority of Manx Christians, which he had gauged by discussions with a cross-section of Christians of all denominations.<sup>447</sup> Laying aside his private and personal interests, he felt he was under a duty to represent as wide a range of Christian opinion as possible.

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<sup>436</sup> *Public Lotteries Bill*, LC 5.5.81.

<sup>437</sup> *Methodist Church Bill*, LC 12.1.82.

<sup>438</sup> *Statute Law Review Bill*, LC 9.4.79. The reference to other religions in relation to Sunday trading was a support for a day of rest coinciding with the Christian Sabbath, rather than an argument for taking the needs of adherents of those faiths into account. See later, *Redundant Church Buildings*, TC 16.4.02.

<sup>439</sup> See p.74.

<sup>440</sup> *Question on aid to British Honduras*, TC 19.11.74.

<sup>441</sup> *Licensing (Sunday Opening) Bill*, LC 6.12.77.

<sup>442</sup> *Resolution noting the success of the Millennium Lottery and calling for legislation permitting lotteries for purposes approved by Tynwald*, TC 20.11.79.

<sup>443</sup> *Resolution calling for introduction of breathalyser*, TC 22.4.69.

<sup>444</sup> Other members of Tynwald could also draw upon Diocesan opinion - see the reference to the diocesan Mother's Union by Lowey in *Civil Registration Bill*, LC 24.1.84.

<sup>445</sup> *Matrimonial Proceedings Bill*, LC 11.3.86.

<sup>446</sup> See p.74. See later, *Iraq Government Policy*, TC 20.11.02.

<sup>447</sup> See *Sexual Offences Bill*, LC 26.5.92.

But there are clear limits to how far Bishops will go with this expanded role. During debate on a bill to allow sixteen year olds to consent to surgical treatment,<sup>448</sup> the Bishop expressed concern that parents should continue in control of the child until it reached adulthood. The Lieutenant-Governor referred to difficulties when drastic operations were necessary to save life. The Attorney-General indicated that sometimes parents might not agree because of religious reasons. The Lieutenant-Governor responded: "I am not talking about those strange people". This did not prompt any intervention by the Bishop. A particularly stimulating example arose during discussion of a bill dealing with animal welfare,<sup>449</sup> during which Bishop Nicholls asked whether the Bill would permit Jewish and Muslim slaughter, such slaughter having been permitted in the United Kingdom although it had 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". It may be relevant to understanding Bishop Nicholls' stance on this point to consider an earlier debate. During discussion of a criminal law bill dealing with theft in 1977,<sup>450</sup> Bishop Nicholls praised the Manx quality of life. He had lived for eighteen years in the West Midlands, in "a society that was becoming more and more multiracial on the one hand and more and more frightening on the other". He wished for a firmer stance on violence, and more consideration for victims. A later Bishop, Bishop Attwell, also saw difficulties with some Islamic practices. During a debate on reform of the law relating to marriage and divorce, he noted that a proposal could cause problems, as in England "with regard to Muslims and Koranic law, where you can marry a girl at 12 and divorce is simply a male thing - you just say 'I do not like you' and clear off".<sup>451</sup> Again, to place this in some context, during discussion of medical registration, Bishop Attwell expressed his concerns that procedures for testing the English language expertise of Indian doctors were inadequate.<sup>452</sup>

Bishop Jones involvement in Tynwald Court on the 16th of May 2000 is also illuminating. During the session, a resolution was before the Court to approve regulations dealing with motor-cycle helmets, including an exemption for turbaned Sikhs.<sup>453</sup> Cannell objected to this clause, on the basis that he could not think of another instance where religious conviction provided an exemption from complying with the law, and he thought this was unacceptable discrimination in favour of Sikhs. Bishop Jones did not respond with a defence of the religious interests of Sikhs. Rather, when the debate moved on to a resolution to approve summer opening of public houses,<sup>454</sup> he noted that he was glad that Tynwald Court had earlier respected the turbans of the Sikhs in a very sensitive way; so it should be noted that a number of deeply religious people of varying denominations would be very concerned with the proposed regulations.

Although the Bishops have more clearly fulfilled an interdenominational role than an inter-faith one, it will be recalled that non-Christian communities in the Isle of Man are comparatively small. Thus, it may be that the interests of non-Christians

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<sup>448</sup> *Family Law Reform (Isle of Man) Bill*, LC 9.3.71.

<sup>449</sup> *Welfare of Animals Bill*, LC 4.11.80.

<sup>450</sup> *Theft Bill*, LC 1.11.77.

<sup>451</sup> *Matrimonial Proceedings Bill*, LC 26.3.86.

<sup>452</sup> *Medical Bill*, LC 2.4.85.

<sup>453</sup> *Resolution to approve Motor Cycles (Protective Helmets and Visors) Regulations*, TC 16.5.00.

<sup>454</sup> *Resolution to approve Permitted Hours (Licensed Premises) Order*, TC 16.5.00.

simply never arise in legislative debates. The examples above, of instances where the Bishop had an opportunity to speak for non-Christian interests but failed to do so, suggest that this is not a complete explanation. Additionally, there is a recent instance of Bishop Jones constructing the Island as a Christian country, rather than a multifaith one. In 2000, during discussion of the Manx Human Rights Bill,<sup>455</sup> the question arose as to whether the Isle of Man was a multifaith society. He noted that, during a briefing on the UK Act, a Home Office official had stressed that it took into account the fact that England was not a Christian country, but a multifaith one. The Bishop saw the Island as still a Christian country, and so doubted whether a model drawn, explicitly, from a multifaith country would be appropriate. Lowey doubted whether the conclusion was apt, while Waft suggested that even the Isle of Man was becoming more of a multifaith country. In 2001 the Bishop took a leading role in resisting a description of religious education as “wholly or mainly of a broadly Christian character”, preferring to delete “broadly”.<sup>456</sup> In the Keys the deletion was seen as departing from the principle of comparative religion being imported from the English Bill, and Hannan expressed surprise that the amendment had come from the Bishop, given the Church of England’s lead role in interfaith dialogue.<sup>457</sup> No agreement followed a meeting of Keys and Council members,<sup>458</sup> and the Bill was eventually enacted with the original wording.<sup>459</sup> Later the Bishop stressed that his concern had been to ensure “a very firm base of moral and religious teaching”.<sup>460</sup>

If there is a strong expectation that the Bishop should not be politically partisan, there is some indication that some Bishops have themselves been keen not to be seen as partisan in relation to whatever their religious constituency is understood to be. Bishop Pollard, when speaking in opposition to extended Sunday trading on the basis that it would secularise the day,<sup>461</sup> stressed that although commerce could impact upon churchgoing, this was not his concern. Rather, like the rest of the Council he was there to conserve the good of society as a whole. Similarly, when he took his seat,<sup>462</sup> Bishop Gordon stressed that the link between Church and State was of value to the whole community - the Bishop stood for the good traditions of the Island; a point reiterated by Bishop Attwell when he took up office.<sup>463</sup> This may also explain the conduct of Bishop Nicholls during the Bishops’ court debate. Although present during earlier stages of the debate,<sup>464</sup> when Tynwald came to approve the government purchase, he withdrew.<sup>465</sup> In relation to Sunday trading, we have already seen how other members of Tynwald were prepared to categorise Bishop Jones’ contribution as special pleading, albeit pleading he was duty bound to make on behalf of his religious organisation.<sup>466</sup> This desire to avoid being seen simply as a distinctively religious narrative may also be seen in the argumentation choices of Bishops in some debates -

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<sup>455</sup> *Human Rights Bill*, LC 27.6.00.

<sup>456</sup> *Education Bill*, LC 8.5.01.

<sup>457</sup> *Education Bill*, HK 8.5.01.

<sup>458</sup> *Education Bill*, HK 22.5.01; *Education Bill*, HK 29.5.01.

<sup>459</sup> Education Act 2001.

<sup>460</sup> *St. John’s Primary School Expenditure*, TC 10.7.01.

<sup>461</sup> See p.72.

<sup>462</sup> See p.90.

<sup>463</sup> See p.96.

<sup>464</sup> See p.68.

<sup>465</sup> See p.68.

<sup>466</sup> See p.71.

for instance, explaining the interplay of sociological and religious arguments in the Sunday trading debate.

Moving from the question of representation, we have already seen an important technical role for the Bishop, in particular in relation to ecclesiastical legislation. Given the traditions of Anglican Christianity from which the Bishops emerge, we might also expect the Bishop to stress his role as an expert on religious sources. This does not, however, emerge strongly from his own contributions. Perhaps the clearest examples can be found in conceptions of human nature. During discussion of whether elected local government officers who were council house tenants should be allowed to vote on housing issues,<sup>467</sup> the Bishop noted that even the best humans can judge wrongly when their own interests are concerned - that being what the theologians call original sin.<sup>468</sup> In discussing rabies regulations, the Bishop noted that cats and dogs were part of the fullness of human life.<sup>469</sup> In neither case did the Bishop rely upon a role as interpreter of canonical texts. Exceptions to this can be found in the work of Bishop Attwell, who based his stance on Sunday opening initially on the Sabbath commandment, although he later added sociological and psychological arguments to his opposition, and his stance on gaming on mainstream theologians; while Bishop Jones similarly invoked the Fourth Commandment for his opposition to deregulated Sunday trading. During a debate on the legalisation of sexual acts between men, Bishop Jones expressed the wish that there was sufficient time for a bible study on Genesis, Deuteronomy, Leviticus, Judges, Romans, and Corinthians.<sup>470</sup>

Bishops have also been criticized, albeit implicitly, for their technical skills in relation to religious sources. This can be seen in Nivison's criticism during the corporal punishment debate - as Nivison based his view on a reading of the New Testament, and the Bishop disagreed, the Bishop must have been failing in his interpretation of that text. The point arose again in relation to capital punishment,<sup>471</sup> where the Bishop supported abolition of the death sentence. He argued that the New Testament had much higher and deeper principles than the Old Testament emphasis on retribution. Interpreting Simcock's comments in the debate as a criticism of the Bishop's contribution, McFee defended the Bishop as speaking with the force and sincerity he would expect from any legislator. Macleod had expected the Bishop to make the contribution that he did - although the Bishop preached the Bible he did not believe in the Old Testament.

It is worth noting that the technical justification for the role of the Bishop may be seen as putting them in the same position as the Attorney General, who is the expert legal advisor on the Council. We have already seen, in relation to the use of humour in debates, that analogies have occasionally been drawn between the Bishop and the Attorney General. In the 1994 debates, Bishop Jones was keen to draw a distinction between them in order to preserve his vote - the Attorney General was an

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<sup>467</sup> *Local Government and Housing Bill*, LC 1.4.69.

<sup>468</sup> There is also a, passing, reference to the views of Christian theologians in Bishop Attwell's discussion of the casino. See p.71.

<sup>469</sup> *Resolution calling for amendment of Cats and Dogs (Prohibition of Importation) Order 1969*, TC 17.2.70.

<sup>470</sup> See p.40.

<sup>471</sup> *Call for legislation to abolish capital punishment for murder*, TC 16.1.68.

(expert) advisor, the Bishop was a representative.<sup>472</sup> This was a theme that also emerged during the 1998-2001 debate.

Finally, if the Bishop is seen as a professional, religious officer, with a special expertise in religious issues, and a special role in representing religion, there is an expectation that he will not be the sole legislator with religious convictions, and so should not act as if he is. In the discussion of the right of the Bishop to discuss contentious matters, we have already seen how Moore defended the right of every legislator to bring their own religious beliefs into the political arena.<sup>473</sup> We can see a number of instances where this has occurred with members other than the Bishop.<sup>474</sup> In the discussion of corporal punishment in 1962,<sup>475</sup> the Attorney-General suggested that Nivison needed to think of the victim “rather than the others”. Nivison replied that “Christ had regard to the others”, leading another member, Moore, to observe that “He thrashed and turned the moneychangers out. I am in favour of birching”. In a debate on divorce,<sup>476</sup> Nivison referred to religious objections to part of the Bill, although he did not claim them as his own; and in a debate on corporal punishment under the Theft Act he made use of Biblical discourse: “Do-gooders have been trying to make us soft since Cain slew Abel”.<sup>477</sup> Similarly, in a discussion that effectively centred on the legislation of sexual activity between males,<sup>478</sup> while Bishop Attwell sought to sever discussion of law and morality, Corrin said “I’ve got a job holding myself back from really describing in working man’s language what is being proposed. Look in the Bible; sodomy, buggery, you name it”. These examples suggest that the Bishop is not necessarily to be seen as the sole Christian voice in the legislature and, as Cannell suggested during a 2001 debate on the Bishop’s vote, the removal of the Bishop would not equal the removal of Christian perspectives.<sup>479</sup> Indeed, the number of members referring to their own religious convictions during debates on ecclesiastical legislation,<sup>480</sup> suggests that many Christian voices can be found in Tynwald during our period. Members have also referred to Christian

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<sup>472</sup> See p.41. See also the analogy between the Bishop and the Attorney General raised by Hannan and Cannell in *Constitution Bill*, HK 23.1.01.

<sup>473</sup> See p.69.

<sup>474</sup> Additionally, in 1969 the Council briefly discussed a Bill to amend the legislation governing Douglas Municipal Corporation. The first clause of the Bill would permit clerks in holy orders to be members of the Corporation. The Lieutenant-Governor said that there was no record in the debates of the original legislation as to why clerics should be excluded, although Deemster Kneale thought that the Attorney-General of the time, who would have been responsible for drafting of the Act, was a high churchman. The Bishop referred to the disqualification of clergy from the United Kingdom House of Commons. See further *Douglas Municipal Corporation (Amendment) Bill*, LC 3.6.69.

<sup>475</sup> *Criminal Justice Bill*, LC 6.11.62. Consider also Cain’s speech in *Resolution calling for the death penalty to be confined to murder in course of crime or of policeman*, TC 15.2.83.

<sup>476</sup> *Judicature (Matrimonial Causes) Bill*, LC 30.3.71.

<sup>477</sup> *Theft Bill*, LC 1.11.77.

<sup>478</sup> *Resolution to call for restoration of right of individual petition to ECHR*, TC 24.3.87.

<sup>479</sup> See p.61.

<sup>480</sup> In relation to Sunday trading, see also the comments of Kniveton in *Shops Bill*, LC 25.1.00.

viewpoints that have been put to them - for instance Barton's reference to correspondence received from many Christians on legalizing sex between men.

This raises the possibility of a clash between the Christianity enunciated by the Bishop, and that of another member. Such a clash can be found in the initial discussion of corporal punishment, where Nivison criticized the Bishop for failing to provide Christian leadership.<sup>481</sup> In reality, Nivison was criticizing the Bishop for failing to come to the same conclusions as he did to the contents of 'the' Christian stance. Similarly, during a discussion on Sunday trading, Kermode made use of the example of Jesus to criticize what he saw as the Bishop's emphasis on church attendance; while Karran, who agreed with the Bishop's points, welcomed his voicing the fears of the Christian community of which he was a leader. Later, in a 1994 debate on the same topic, Kermode similarly opposed Bishop Jones' emphasis on Sabbath observance by noting that if an individual chose to open their shop on a Sunday it did not make them any less of a Christian. There was a similar difference of opinion in relation to sexual acts between men, where Lowey indicated that he would not argue with Bishop Jones on morals or religion, but many devout Christians were opposed to a change the Bishop supported.

### ***III.5 The five Bishops as individuals.***

So far, our discussion is in danger of homogenizing the episcopates of the five men who were Bishops during the period of our study. Although there is much continuity throughout our period, as is clear from the preceding sections, it is important to stress that important differences between the five Bishops also emerge from our analysis. In particular, these differences illustrate the importance of individual personality where a single individual acts as the only religious representative in a democratic legislature.

#### **(i) Bishop Pollard**

The departure of a sitting Bishop, or arrival of a new incumbent, have provided moments for reflection on the role of the Bishop in the Manx constitution. On his resignation, Bishop Pollard received a tribute from the Lieutenant-Governor in Tynwald Court.<sup>482</sup> The Lieutenant-Governor said that he had always been a source of great spiritual support and guidance in debate, and commended his work on the Boards of Education and Social Services.<sup>483</sup> He had helped to raise clergy stipends to more respectable levels, and had been forthright on the need for the cathedral, although not all clergy or laity agreed.

As already identified, Bishop Pollard saw a special role for the Bishop in relation to morality. We can see this in the debate on the Casino,<sup>484</sup> and also, in a negative sense, in discussion of a Bill to restrict high rates of interest, where the Bishop suggested that the term "usury" should be replaced with "lawful interest", which would not carry with it the same moral overtone.<sup>485</sup> The primary moral issue of

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<sup>481</sup> See p.74.

<sup>482</sup> *Tribute to Bishop Pollard*, TC 19.4.66.

<sup>483</sup> Bishop Pollard was not the first Bishop to take a leading role in the Board responsible for education – see D.G. Kermode, *Offshore Island Politics: The constitutional and political development of the Isle of Man in the Twentieth Century*, (Liverpool: Liverpool University Press, 2001) at 20.

<sup>484</sup> *Casino (Isle of Man Bill)*, LC 6.3.1962.

<sup>485</sup> *Usury Bill*, LC 6.2.62.

particular concern to this Bishop was gaming, as discussed above. As part of this, he showed a concern with Christian festivals and holy days, moving a clause to forbid proscribed gambling on Good Friday and Christmas Day.<sup>486</sup> In terms of his expertise as a leader of the Manx Church, Bishop Pollard was rarely called upon to speak, with the only purely ecclesiastical point upon which he expressed a view being the state of churchyards and variations in the burial rate between parishes.<sup>487</sup>

On broader issues, he took a view on constitutional affairs, speaking on the proper role of the Speaker of the House of Keys,<sup>488</sup> and rejecting the MacDonnell Committee as being inferior to a committee appointed from the Island with intimate knowledge of Manx affairs.<sup>489</sup> Additionally, Bishop Pollard took a definite, but minority view, on cultural activities when he urged a financial guarantee for a music festival, arguing that the government should take a part in the Island's cultural activities.<sup>490</sup> He made a detailed contribution to discussion of National Health Service and hospital matters, with an important role on the relevant Board of Tynwald,<sup>491</sup> and had a similar involvement in social security issues.<sup>492</sup> On his retirement the Lieutenant-Governor also acknowledged his role on the Board of Education,<sup>493</sup> although this does not emerge from the legislative debates after 1961.

As well as these substantive points, Bishop Pollard drew upon the broader connections flowing from his office. For instance, he referred to a meeting with the Home Office to discuss civil defence,<sup>494</sup> and to providing English Bishops and Church Assembly with information on the Island.<sup>495</sup>

## **(ii) Bishop Gordon.**

His successor, Bishop Gordon, was sworn in to the Council in 1966.<sup>496</sup> The Lieutenant-Governor referred to him as “constructively merciful rather than negatively critical of human frailties”. He observed that there had been press suggestions that the non-elected Members of the Council were blots on Manx democracy, but suggested that perhaps this confused ex-officio with the hereditary principle. Certainly, he was conscious of the value of having in the Council a churchman who was esteemed by the whole people of Essex. The Bishop replied that he had already gathered his office was a controversial one, with a jocular reference to the flight of Bishop Murray from the Isle of Man. He stressed that the ancient link between church and State involved in his presence on the Council could be of value to the whole community - the Bishop stood for the good traditions of the land, which he would endeavour to maintain, develop and enrich in the present day. On his resignation, Bishop Gordon received a tribute for contributions that the Lieutenant-

<sup>486</sup> *Gaming Betting and Lotteries (Casino) Amendment Bill*, LC 8.1.63.

<sup>487</sup> *Burials Bill*, LC 1.5.62.

<sup>488</sup> *Isle of Man Constitution Bill*, LC 28.1.64.

<sup>489</sup> *Isle of Man Constitution Bill*, LC 11.2.64.

<sup>490</sup> *Motion urging financial guarantee for 1964 International Festival of Music*, TC 20.11.63.

<sup>491</sup> *National Health Service (Isle of Man) Bill*, LC 6.11.62; *National Health Service (Isle of Man) Bill*, LC 27.11.62; *National Health Service Bill*, LC 19.6.63.

<sup>492</sup> *Employment Bill*, LC 2.6.64.

<sup>493</sup> *Tribute to Bishop Pollard*, TC 19.4.66.

<sup>494</sup> *Civil Defence Bill*, LC 12.6.62.

<sup>495</sup> *Regulation of Employment (Amendment) Order*, TC 22.5.63.

<sup>496</sup> *Bishop Gordon Sworn*, LC 15.11.66.

Governor understood were of a very high order in certain areas.<sup>497</sup> Nivison said that the Bishop's advice in the Board of Education was very valuable, and his concern for elderly people in particular had "badgered us" to speed up provision of assistance.

There are strong continuities between Bishop Pollard and Bishop Gordon. Like his predecessor, Bishop Gordon spoke on what he saw as moral issues. As discussed above, gaming remained the principal moral issue identified by the Bishop. He also argued for the protection of a Christian Sunday, objecting to the extension of shop opening hours.<sup>498</sup> A number of additional issues arose, however, which Bishop Gordon seems to have engaged with as fundamentally moral issues. During discussion of sexual offences the Bishop queried whether the penalties for brothel-keeping were sufficiently stiff.<sup>499</sup> When discussing revenue he spoke against lowering revenue on tobacco and alcohol, as he did not want the Isle of Man to be seen as a place to drink and smoke cheaply,<sup>500</sup> and returned to a paternalistic view in relation to alcohol at a later point.<sup>501</sup> He supported proposals to abolish capital punishment,<sup>502</sup> the authority of parents over children's healthcare,<sup>503</sup> and the value of compulsory mediation during marital breakdown.<sup>504</sup> Perhaps most clearly, in a discussion of the government estimates in 1973,<sup>505</sup> the Bishop opposed abolition of the Postcard Censorship Committee, seeing it as making a small "contribution to wholesomeness". He would have liked to have seen more censorship of bookshops and stalls, seeing it as "spraying people's minds", analogous to measures taken to deal with foot and mouth disease.

Bishop Gordon's principal contribution on technical issues was in relation to Church legislation, which it will be recalled was a controversial topic during his episcopate. He also took a, comparative minor, role in constitutional affairs, speaking to the independence of the Council,<sup>506</sup> and the composition of Boards of Tynwald.<sup>507</sup>

As with Pollard, Bishop Gordon was initially elected to the Boards of Education and Social Services,<sup>508</sup> and took an active role in both areas. In relation to Education,<sup>509</sup> he entered into very detailed discussions on educational matters,<sup>510</sup> and

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<sup>497</sup> *Tribute to Bishop Gordon*, LC 5.3.74.

<sup>498</sup> *Shop Hours Bill*, LC 10.2.70; *Shop Hours Bill*, LC 10.3.70.

<sup>499</sup> *Sexual Offences Bill*, LC 4.4.67.

<sup>500</sup> *Motion to adopt Finance Board recommendations on customs and the Common Purse*, TC 19.4.67. This became associated with his concerns over the sort of visitor the Island might attract - see below.

<sup>501</sup> *Licensing Bill*, LC 12.11.68.

<sup>502</sup> *Call for legislation to abolish capital punishment for murder*, TC 16.1.68.

<sup>503</sup> *Family Law Reform (Isle of Man) Bill*, LC 9.3.71.

<sup>504</sup> *Judicature (Matrimonial Causes) Bill*, LC 11.5.71.

<sup>505</sup> *Resolution to approve government estimates*, TC 20.2.73.

<sup>506</sup> See *Judicature Bill*, LC 23.10.71; *Road Traffic Bill*, LC 9.10.73.

<sup>507</sup> *Boards Bill*, LC 1.12.70; *Isle of Man Airports Bill*, LC 9.10.73.

<sup>508</sup> TC 20.12.66.

<sup>509</sup> See also *Education Bill*, LC 7.2.67; *Resolution for inquiry into education system*, TC 22.2.67; *Education Bill*, LC 6.2.68; *Resolution approving adaptation of former Drill Hall as new Douglas Fire Station*, TC 21.10.69; *Representation of People (Candidates' Deposits) Bill*, LC 9.3.71.

<sup>510</sup> eg. *School Teachers' Superannuation Bill*, LC 3.10.67; *Children and Young Persons Bill*, LC 3.12.68; *Education Bill*, LC 20.7.71.

put forward a strong policy position on the school-leaving age,<sup>511</sup> and the merits of schools affiliated with particular religious communities.<sup>512</sup> In that debate he indicated that the Church had supported families in education before the State became involved. He lost his place in the Board of Education in 1971, following a debate stressing the importance of the dominance of Members of the Keys in key Boards,<sup>513</sup> but continued to speak on education matters,<sup>514</sup> including faith schools.<sup>515</sup> In relation to social services,<sup>516</sup> he dealt with the care of young offenders,<sup>517</sup> chaplaincy in hospital,<sup>518</sup> care for the elderly,<sup>519</sup> and the value of legal aid for those not entitled to supplementary benefit.<sup>520</sup>

Perhaps most significantly, Bishop Gordon substantially expanded the interest Bishop Pollard had shown in matters of Manx culture and traditions. In taking his seat in the Council, as we have already seen, Bishop Gordon identified one of his roles as standing for good traditions on the Island. In discussion of the Education Bill he argued against change for change's sake,<sup>521</sup> while on constitutional reform he argued for a slow, steady progress.<sup>522</sup> He also spoke on issues related to the Manx Museum,<sup>523</sup> the preservation of the environment,<sup>524</sup> the benefits of footpaths,<sup>525</sup> particularly in relation to the dangers of the roads,<sup>526</sup> and the need for support for the

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<sup>511</sup> *Call to raise school-leaving age to 16*, TC 13.12.67; *Education (School Leaving Dates) Bill*, LC 4.6.68; *Education (Compulsory School Age) Bill*, LC 8.6.71; *Education (Compulsory School Age) Bill*, LC 20.7.71 and LC 5.10.71.

<sup>512</sup> *Resolution to approve Board of Education Estimates*, TC 16.3.71.

<sup>513</sup> *Selection Committee Nominations*, 15.12.71.

<sup>514</sup> *eg. Motion to approve £300,000 extension to Douglas High School Ballakermeen Section*, TC 6.7.72.

<sup>515</sup> *Resolution to approve Board of Education estimates*, TC 20.3.73.

<sup>516</sup> See also *Call for legislation providing pensions for current Manx residents*, TC 9.4.68; *Urban Housing Improvement Bill*, LC 7.5.68.

<sup>517</sup> *Children and Young Persons Bill*, LC 3.12.68; *Resolution approving Remand Home Proposal*, TC 20.2.73.

<sup>518</sup> *Resolution to approve Health Services Board proposals for development of Nobles Hospital*, TC 10.12.68; *Resolution to approve Health Services Board estimates*, TC 18.3.70.

<sup>519</sup> *Social Services Estimates*, TC 19.3.69; *Resolution to approve reduction in Coal Subsidy*, TC 18.5.71; *Resolution to approve Health Services Board estimates*, TC 21.2.72; *Petition of Ramsey Town Commissioners for leave to sell land to Boards of Education and Social Security*, TC 21.2.72; *Resolution to approve Board of Social Security estimates*, TC 21.3.73.

<sup>520</sup> *Legal Aid Bill*, LC 14.11.72.

<sup>521</sup> *Education Bill*, LC 7.2.67.

<sup>522</sup> *Isle of Man Constitution Bill*, LC 1.4.69.

<sup>523</sup> *Approval of Manx Museum Purchase of 3 Kingswood Terrace*, TC 18.4.67; *Manx Museum estimates*, TC 20.3.68; *Resolution approving £5000 grant to Manx Museum*, TC 20.2.73.

<sup>524</sup> *Sand and Gravel Pits Regulation Bill*, LC 7.5.68; *Tree Preservation Bill*, LC 6.2.73; *Town and Country Planning Bill*, LC 13.2.73; *Resolution to approve Local Government Board estimates*, TC 21.3.73.

<sup>525</sup> *Resolution to approve Tourist Board Estimates*, TC 16.3.71; *Resolution to approve compulsory purchase of land from Isle of Man Railway Company*, TC 20.6.73.

<sup>526</sup> *Budget*, TC 16.5.72.

arts.<sup>527</sup> He described coining of money intended for collectors only as undignified,<sup>528</sup> and argued for an image of the Island that would attract a more respectable and sober kind of holidaymaker than those who sought out Majorca.<sup>529</sup>

There were two significant departures from the approach of Bishop Pollard. Firstly, Bishop Gordon appears to have been concerned with the general quality of legislation emerging from Tynwald; and concerned that his contributions should have a solid theoretical foundation. He spoke in favour of examiners having wide powers to inspect vehicles, with the saving of lives justifying the restriction of liberty.<sup>530</sup> He favoured obedience to the spirit of the law even where it could be argued against on its merits,<sup>531</sup> a paternalistic stance on some matters;<sup>532</sup> and careful control of the government by law,<sup>533</sup> and taxation.<sup>534</sup> He also showed a more general concern for the quality of legislation, for instance in relation to the provision of gas,<sup>535</sup> and postal services.<sup>536</sup> Secondly, Bishop Gordon was involved in expediting passage of legislation to protect horses from inappropriate treatment,<sup>537</sup> called for sympathy for those whose pets were excluded from the Island because of fears over rabies,<sup>538</sup> and supporting measures to restrict hare-coursing.<sup>539</sup>

### (iii) Bishop Nicholls.

Bishop Nicholls was formally welcomed in 1974.<sup>540</sup> His appointment, and the period after he took office, was to some extent coloured by the Bishopscourt controversy discussed elsewhere.<sup>541</sup> When he left office in 1983, Nivison's tribute included particular reference to his active involvement in the work of the legislature, and the extent to which he had become involved in the life of the Isle of Man as soon as he arrived.<sup>542</sup> In his reply the Bishop noted that he had enjoyed his work in the

<sup>527</sup> *Resolution to approve Government estimates*, TC 20.2.73.

<sup>528</sup> *Coinage (Manx Crowns) Bill*, TC 14.4.70.

<sup>529</sup> *Douglas Corporation (Summerland) Bill*, LC 14.3.72. He returned to this theme in the *Resolution to approve the Improvement of Tourist Accommodation Scheme*, TC 6.7.73.

<sup>530</sup> *Road Traffic Bill*, LC 6.12.66. Road safety was an ongoing concern, which he returned to in relation to breathalysers, and to compare with the lesser dangers of rabies - see *Resolution calling for introduction of breathalyzer*, TC 22.4.69; *Douglas Corporation (Summerland) Bill*, LC 14.3.72; *Road Traffic Bill*, LC 9.10.73; *Resolution calling for amendment of Cats and Dogs (Prohibition of Importation) Order 1969*, TC 17.2.70.

<sup>531</sup> *Marine Broadcasting Offences (Isle of Man) Bill*, LC 10.1.67.

<sup>532</sup> For instance, licensing for alcohol - see *Licensing Bill*, LC 12.11.68, and opening hours for betting - see *Call for extension of betting office hours*, TC 21.2.72.

<sup>533</sup> *Tenancy of Business Premiums Bill*, LC 9.3.71.

<sup>534</sup> *VAT and Other Taxes Bill*, LC 9.1.73.

<sup>535</sup> *Gas Bill*, LC 8.2.72.

<sup>536</sup> *Post Office Authority Bill*, LC 9.5.72.

<sup>537</sup> *Riding Establishments (Inspection) Bill*, LC 14.11.67; see also LC 9.1.68.

<sup>538</sup> *Resolution calling for amendment of Cats and Dogs (Prohibition of Importation) Order 1969*, TC 17.2.70.

<sup>539</sup> *Game (Hares) Bill*, LC 11.5.71.

<sup>540</sup> *Bishop Welcomed*, TC 13.8.74.

<sup>541</sup> See p.67.

<sup>542</sup> *Tribute to Bishop Nicholls on retirement*, LC 26.4.83.

Council, which had included ministry to “some Members of the Legislative Council who in eventide of life, have welcomed the ministry of a Bishop representing the Church”; and thanked the legislature for passing much needed church legislation during his term. He drew an explicit parallel with service in the House of Lords as a Lord Spiritual, preferring his office in Tynwald.

The interventions of Bishop Nicholls represent primarily a continuation of the role of Bishop Gordon, but with a return to the argumentation style of Bishop Pollard. In particular, the explicit effort to link the legislative debate with a theoretical foundation is notably missing from his contributions. The topics that concerned Bishop Nicholls, however, are very much the same as those that concerned Bishop Gordon.

As with his predecessors, Bishop Nicholls made particular contributions to topics with a moral element. We have already seen his involvement in the ongoing debate on gaming,<sup>543</sup> and he was also concerned over clubs getting a Good Friday liquor licence.<sup>544</sup> He was concerned with aid and assistance for those in the developing world - for instance in relation to disaster relief for British Honduras,<sup>545</sup> and reception of refugees.<sup>546</sup> Some of his concerns over the significance of the family may also be seen in this light. He spoke on a ban of sale of alcohol to young persons,<sup>547</sup> the desirability of allowing children to sit with their parents during pub lunches,<sup>548</sup> and against encouraging young people to use amusement arcades.<sup>549</sup> He also warned for caution over capital punishment partly on basis that it could deprive children of both parents - one through murder, one through punishment.<sup>550</sup> In relation to technical matters, Bishop Nicholls was involved in a substantial body of Church legislation, which as we have seen did not always seem to other legislators to be a sensible use of legislative time.<sup>551</sup> In 1980, during a debate on a piece of ecclesiastical legislation he reflected on his activities in this sphere.<sup>552</sup> He noted that during his six years in office he had endeavoured to bring the legislation of the Manx Church into line with the dioceses of England.

Like his predecessors, Bishop Nicholls was frequently involved in education and social security matters, on a number of occasions drawing on his experience on the work permit appeals panel.<sup>553</sup> He piloted a potentially contentious bill to more closely link Manx and English social security measures through the Council.<sup>554</sup> He was also concerned with the social benefits of providing financial support for housing

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<sup>543</sup> See p.69.

<sup>544</sup> *Licensing (Amendment) Bill*, LC 7.1.75; see also *Licensing (Sunday Opening) Bill*, LC 9.1.79.

<sup>545</sup> *Question on aid to British Honduras*, TC 19.11.74.

<sup>546</sup> *Question on aid to boat people*, TC 16.1.79.

<sup>547</sup> *Licensing (Young Persons) Bill*, LC 22.1.80.

<sup>548</sup> *Licensing Amendment Bill*, LC 12.4.83.

<sup>549</sup> *Resolution calling for curtailment of amusement machine industry*, TC 17.6.80.

<sup>550</sup> *Resolution calling for murder death penalty to be confined to murder in the course of crime or of a policeman*, TC 15.2.83.

<sup>551</sup> See p.61.

<sup>552</sup> *Church (Suspension of Presentation) Bill*, LC 10.6.80.

<sup>553</sup> *Resolution to approve additional places on the temporary employment scheme*, TC 18.10.77. See also *Control of Employment (Amendment) Bill*, LC 4.4.78; *Employment Agencies (Amendment) Bill*, LC 5.5.81.

<sup>554</sup> *Social Security Bill*, LC 1.6.82.

improvements,<sup>555</sup> and Millennium benefits for the poor.<sup>556</sup> On more specific points, he was concerned that tips were not always passed on to the serving staff,<sup>557</sup> that debtors were not always properly served by auctions of their goods,<sup>558</sup> and that farmers could be very seriously inconvenienced by road closures for motor-racing.<sup>559</sup> Also as his predecessors, education was a recurring concern of Bishop Nicholls. He was involved in discussion of aid to a private school,<sup>560</sup> penalties for parents who do not send their children to school,<sup>561</sup> and general education policy and the need for additional schools.<sup>562</sup>

Heritage, tradition, and culture also interested Bishop Nicholls. he stressed the importance of steam railway in attracting visitors,<sup>563</sup> the preservation of the Villa Marina,<sup>564</sup> the significance of historical and architectural value in deciding on the use of church property,<sup>565</sup> and the implications of the listed building system.<sup>566</sup> He was also concerned with opportunities for local artists.<sup>567</sup> More nebulously, he seemed to respect traditions. For instance in relation to corporal punishment, he expressed his admiration for the ladies of the Isle of Man for trying to preserve something they held dear, which had meant much to the Island through the years.<sup>568</sup>

On one issue, Bishop Nicholls superficially was in agreement with a well-defined trend in the contributions of Bishop Gordon - concern over cruelty to animals. It should be noted, however, that Bishop Nicholls sole contribution on this point arose over religious slaughter methods.<sup>569</sup>

#### **(iv) Bishop Attwell.**

Bishop Attwell's welcome in 1983 included a number of jocular references to the "hot seat" in Tynwald.<sup>570</sup> The Speaker commended the works of a Manx poet, T.E. Brown, to the new Bishop, as useful in understanding Manx aspirations. The

<sup>555</sup> *Resolution calling for housing improvement aid to cover roof repairs and rewiring*, TC 20.11.79.

<sup>556</sup> *Resolution calling for pensioners resident for more than 10 years to be given a Tynwald Millenium memento*, TC 11.12.79.

<sup>557</sup> *Question by Bishop to the Chairman of the Consumer Council*, TC 12.12.78.

<sup>558</sup> *Coroners Bill*, LC 1.2.83.

<sup>559</sup> *Road Races Bill*, LC 30.3.82.

<sup>560</sup> *Resolution to approve and fund Board of Education Grant to Buchan School*, TC 19.11.74.

<sup>561</sup> *Education (Increase of Fines) Bill*, LC 3.12.74.

<sup>562</sup> *Resolution to approve supplementary vote for teachers' salaries*, TC 21.10.75; *Resolution to adopt recommendations of Select Committee on Board of Education*, TC 19.2.80; *Resolution to approve Board of Education estimates*, TC 19.3.80.

<sup>563</sup> *Resolution to guarantee the Isle of Man Railway Company against operating losses on Castletown-Port Erin service*, TC 10.12.74.

<sup>564</sup> *Resolution to allow Douglas Corporation to create an amusement arcade in the Villa Marina*, TC 17.10.78.

<sup>565</sup> *Question to Bishop on Andreas Rectory*, TC 22.4.80.

<sup>566</sup> *Town and Country Planning Bill*, LC 10.3.81.

<sup>567</sup> *Manx Heritage Fund Bill*, LC 12.1.82.

<sup>568</sup> *Resolution to grant Tynwald Day petition of Margaret Irving and Others*, TC 21.11.78.

<sup>569</sup> See p.85.

<sup>570</sup> *Welcome to Bishop Attwell*, TC 15.11.83.

Bishop indicated that he would seek to appreciate all that was important in the Manx way of life and to the Manx nation, and would try to master the Manx language. In particular, he stressed that he was to be of service to the whole Island, and not to a small section or group. On leaving office in 1988,<sup>571</sup> Bishop Attwell admitted that he had not found learning Manx an easy task. The Lieutenant-Governor, in formally thanking the Bishop for his work, particularly noted his contribution to debates on “youth, on heart and soul, and on morality in its greatest sense”.

The interventions of Bishop Attwell, as with Bishop Gordon, initially sought to explicitly identify philosophical foundations for legislative activity,<sup>572</sup> but this was a not trend present throughout his Bishopric. Although he was complemented for the volume of his attendance during his legislative career, compared with the other Bishops his contributions were relatively low key. Nonetheless, it is possible to identify a concern with issues of morality. In particular, he spoke on the importance of conventional family groups for children,<sup>573</sup> and the importance of strengthening the institution of marriage.<sup>574</sup> He also engaged with the continuing debate on Sunday trading.<sup>575</sup> Like his predecessors, he spoke on education, particularly as a source of character development rather than simply vocational training;<sup>576</sup> and culture, including Manx museum and archaeological issues.<sup>577</sup> He was also concerned with overseas development,<sup>578</sup> and the need to deal with illegal drugs.<sup>579</sup>

#### **(v) Bishop Jones.**

Bishop Jones’ welcome in 1989 included a reference to the antiquity of his place on the Council by President Anderson,<sup>580</sup> and recommendation by the Speaker that, once again, the new Bishop should look to the works of T.E. Brown.<sup>581</sup>

Bishop Jones continued to be concerned with questions of morality, supplementing the discussion of sex between men and abortion discussed above with a contribution to a debate on censorship.<sup>582</sup> He also continued the link between the Bishops and heritage, taking a leading role in debates on the Manx Museum,<sup>583</sup> and

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<sup>571</sup> *Farewell to Bishop Attwell*, TC 13.7.88.

<sup>572</sup> *Resolution for legislation to make casino laws permanent*, TC 16.11.83.

<sup>573</sup> *Civil Registration Bill*, LC 10.1.84; *Civil Registration Bill*, LC 24.1.84.

<sup>574</sup> *Matrimonial Proceedings Bill*, LC 11.3.86; *Matrimonial Proceedings Bill*, LC 26.3.86.

<sup>575</sup> See p.71.

<sup>576</sup> *Resolution calling on Board of Education to report to Tynwald on reasons before making Order bringing in school leaving age of 16*, TC 13.12.83; *Resolution to endorse general strategy in CoMin policy document ‘Development of a prosperous and caring society’*, TC 20.11.87.

<sup>577</sup> *Manx Museum Bill*, LC 28.2.84; *Manx Museum Bill*, LC 22.5.84.

<sup>578</sup> *Resolution to approve Public Lottery Regulations 1984*, TC 11.12.84.

<sup>579</sup> *Resolution to adopt recommendations of Advisory Council of Drug Misuse*, TC 22.10.85.

<sup>580</sup> *Welcome to Bishop Jones*, LC 1.8.89.

<sup>581</sup> *Welcome to Bishop Jones*, TC 17.10.89.

<sup>582</sup> *Video Recordings Bill*, LC 24.10.95; *Video Recordings Bill*, LC 7.11.95. See later *Legislation by Subordinate Bodies*, TC 10.12.02.

<sup>583</sup> *Church Records Measure*, TC 1.4.00.

the creation of a Manx Patriot's Roll of Honour.<sup>584</sup> He continued to contribute to debates on education, particularly religious education,<sup>585</sup> and the care of children.<sup>586</sup> On broader social issues, a recurrent concern was addiction, in a sense that he interpreted broadly enough to encompass prohibited drugs, but also alcohol, tobacco, and lottery scratch cards.<sup>587</sup> Finally, he continued to deal with specifically Manx Church issues, such as the position of clergy of the Manx Church, particularly in relation to employment regulation.<sup>588</sup>

### **III.6. Conclusions.**

It seems to us that the preceding survey of the construction of the Bishop's role in the Manx legislature supports a number of conclusions.

Firstly, there are expectations, which appear to have been accepted by successive Bishops, that there are subject matters where the contribution of the Bishop is to be especially welcomed. These can be categorized as two broad classes: matters which implicate moral issues in a way beyond the normal legislative business of Tynwald; and matters which involve technicalities of the Manx Church, particularly ecclesiastical law or practice. These expectations suggest that the Bishop has a distinctive role which is both more powerful, and narrower, than that of other members of the legislature. In relation to moral issues, while the special voice of the Bishop has been vigorously contested by other legislators, it has also been suggested that his legislative role should be confined purely to such issues. In relation to technical issues concerning the Manx Church, hostility has been directed more towards the involvement of the national legislature in the internal affairs of a religious organisation. The special authority and expertise of the Bishop has been largely unchallenged, but if such business should not be before Tynwald at all, it provides little support for his legislative function. It is important to note, however, that the existing right of the Bishop to contribute to debates on any matter has never been contested nor, from our study, has he ever been criticized for speaking on a topic outside of these two broad categories.

Secondly, there are expectations that the Bishop should contribute to the work of the legislature in a distinct manner, whatever topic is under discussion. (a) The Bishop is expected to work in a non-partisan, non-political manner. The strength of

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<sup>584</sup> *Resolution to adopt Recommendations in First Report of Tynwald Honours Committee*, TC 11.4.0. See later *Manx National Heritage Expenditure*, TC 20.3.02; *Redundant Church Buildings*, TC 16.4.02.

<sup>585</sup> *Education Bill*, LC 27.3.01; *Education Bill*, LC 3.4.01; *Education Bill*, LC 8.5.01. See also *Education Bill*, HK 29.5.01; *St. John's Primary School Expenditure*, TC 10.7.01.

<sup>586</sup> *Children and Young Persons Bill*, LC 27.2.90; *Children and Young Persons Bill*, LC 13.3.90. See also *Draft Code of Practice on Sex Discrimination*, TC 16.10.01.

<sup>587</sup> *Resolution to approve Licensing (Permitted Hours) (no.2) Order*, TC 19.3.96; *Children and Young Persons' (Protection from Tobacco and Liquor) Bill*, LC 8.12.98; *National Lottery Bill*, LC 2.2.99; *Resolution to approve Permitted Hours (Licensed Premises) (Temporary Variation) Order*, TC 18.5.99; *Resolution to approve Permitted Hours (Licenses Premises) (no.2) Order*, TC 19.10.00; *Resolution to receive First Report of Drug Strategy Committee*, TC 19.10.00; *Licensing (Amendment) Bill*, LC 8.5.01. For a later discussion, see *Licensing Amendment Bill Third Reading*, LC 8.5.01.

<sup>588</sup> *Residence Bill*, LC 23.1.01; *Residence Bill*, LC 30.1.01.

the reaction by other legislators when Bishop Pollard appeared to act outside of this expectation may indicate the importance of this expectation. It is worth noting that Bishop Pollard erred in expressing a criticism of a non-Manx political party, at a time when the party political systems in the Isle of Man were, compared with the United Kingdom, of marginal importance. A Bishop who chose to endorse one side in a conflict between two Manx political parties could expect even more stringent criticism. (b) The Bishop is expected to act as a representative of the Manx Church, or Christianity generally, or perhaps religion generally. We have seen that on occasion Bishops have chosen to distance their own views from those of the broader religious community, or have been criticized for not sufficiently representing the range of opinion within that community. Bishops have, however, far more commonly accepted a representative role encompassing not simply the Manx Church, but Christianity within the Island more generally. As we have seen, however, within the Manx context it would be wrong to see the Bishop as a representative of religion outside the Christian denominations. (c) The Bishop is an expert on religious sources, who may make use of them in his argumentation. This is not, however, a major theme in the Bishops' contributions to debate. We did not find a significant, consistent, difference between secular argumentation by the other members of Tynwald, and religious argumentation by the Bishop. There are numerous examples of Bishops using arguments whose grounds are exclusively secular; and of other members of Tynwald having recourse to their religious identity and beliefs in argument. Given the hostility and humour with which the Bishops have sometimes been met, it may have been poor tactics for a Bishop to regularly adopt an exclusively religious argumentative mode.

Thirdly, both of these sets of expectations have arisen in the absence of any clearly enunciated, let alone universally agreed, statement of the theoretical basis for the Bishop sitting, and voting, in Tynwald. During debates we have seen the Bishop represented as an undemocratic vestige of a feudal order, sitting as Baron rather than Bishop; as a similarly undemocratic remnant of the former position of the appointed officers of the Lord, which should give way to the greater power of the Manx people; as a representative of the interests of the Manx Church; as a symbol and practical manifestation of the relationship between Manx Church and Manx State commonly described as establishment; as a representative of a disenfranchised clergy; as a representative of the people of the Manx Church, or of the Christian denominations, or religions more generally; as a non-partisan legislator isolated from the political pressures which directly or indirectly elected members of the legislator are subject to; or as an ecclesiastical specialist with extra-Insular experience. These constructions are not necessarily mutually compatible, and the implications in terms of role, legitimacy, and appointment are not identical. For instance, if the Bishop sits as a Baron, then the size of the Manx Church and his non-partisan role are irrelevant – he sits as of right and may do as he pleases. If, on the other hand, the Bishop sits as a non-partisan legislator isolated from political pressures then not only is this called into question if a Bishop becomes involved in partisan discourse, but it is no longer obvious that when appointing a non-partisan legislator it should necessarily be the Lord Bishop of Sodor and Man, *ex officio*.

Fourthly, it is not possible to treat a religious organization that has the power to appoint a member of the legislator as a forbidden zone for analysis. In the debates on the role of the Bishop, there were a number of references to the process by which the Bishop is appointed. Appointment of a religious leader, albeit one in a religious organization with a special link with the State, is an essentially internal affair. But when it leads, *ex officio*, to membership of the national legislature, it becomes a

legitimate subject for constitutional analysis. The most striking, and to our eyes, important example of this Church/State interaction concerns the repeated concerns that the removal of the Bishop from Tynwald would lead to the extinction of the Diocese of Sodor and Man as a separate entity, with a damaging impact on national pride and independence, as well as more practical losses to the community of the Manx Church. From the legislative debates there are times that 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.

Fifthly, when we talk about “the Bishops”, it is important to stress that we are actually discussing five men who, in succession, held a single office. It is clear from both the style, and content, of the contributions to the debates of Tynwald, that there was extensive personal variation between Bishops. All, to us, exercised their role in line with fundamental expectations as noted above. But individual differences are important around this commonality. For instance, Bishop Gordon’s aversion to the motor car informs a number of his contributions. It may be that religious representation that consists of a single person, particularly if that person is not simultaneously restricted and empowered by organizational support, raises quite different issues from a larger representation. It may be that a significant difference between the Lord Bishop of Mann, and the Lords Spiritual of the United Kingdom, is simply the difference between one Bishop, acting with only diocesan support and twenty-six, acting with a more extensive support structure.

Having considered the Manx context, the development of ecclesiastical representation in Tynwald, and the way in which this representation actually operated between 1961 and 2001, in the final chapter we move to evaluate the Manx experience of religious representation in a democratic legislature.

## IV. Evaluating the Bishop's role in Tynwald.

In the preceding chapters we described the constitutional and religious context in which the Bishop operates; discussed the growth, decline, and contemporary challenges facing ecclesiastical officers in Tynwald; and analysed at length how the legislative function of the give Bishops were performed between 1961 and 2001.

In this chapter our primary concern is to contribute to evaluation of the Bishop's role in Tynwald and, more broadly, to understanding of the role of ex officio religious officers in democratic legislatures. Although unusual, the Isle of Man is not unique in having ex officio religious representatives in the national legislature. In Andorra, the Bishop of Urgell is "in personal and exclusive right", co-Prince with the President of the French Republic.<sup>589</sup> In Bhutan, the Tshojdu (national assembly) established in 1953 has a tripartite system of representation which in 1989 consisted of 30 officials, 10 monks, and 110 representatives of the people. The monks are appointed by the Central Monk Body at Thimphu.<sup>590</sup> In Brunei, the Legislative Council consists of six ex officio members, including the Religious Advisor appointed by the Sultan, five official members, and ten nominated members.<sup>591</sup> In Iran seats in the 230 member Islamic Consultative Assembly are reserved for the recognised minority religions of Zoroastrians, Jews, Assyric and Chaldean Christians, and both the Northern and Southern Armenian Christians.<sup>592</sup> In Jersey, the Dean sits as a non-voting member of the States.<sup>593</sup> The officers closest to the Lord Bishop in context and role are the Lords Spiritual of the Westminster Parliament. Accordingly, in this chapter we draw to some extent upon the United Kingdom debate over the Lords Spiritual, and religious representation more broadly. It should be stressed, however, that the focus of this report is upon the Manx experience, rather than an explicitly comparative consideration of Parliament and Tynwald. Keeping this focus on Tynwald, we consider three key evaluative issues.

Firstly, we detail a taxonomy of religious representation in deliberative assemblies, and show how the Bishop fits into this taxonomy. By unpacking the characteristics of the Bishop's role in this way, it may be possible to develop the debate by detailed engagement with the genuinely contentious issues.

Secondly, we consider the impact of the European Convention on Human Rights on this aspect of the Manx constitution. Despite a troubled relationship with the organs of the Convention, it remains the closest, and most powerful route by which the international human rights regime can influence Manx law. This has always been the case, given the regional profile of the Convention, but will be exacerbated by the growing impact of the Human Rights Act 2001, an Act of Tynwald. Accordingly, we consider possible areas of incompatibility between the Bishop's role, as currently defined, and the Convention.

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<sup>589</sup> Andoran Constitution, Title III, article 43.

<sup>590</sup> The Constitution of the National Assembly of Bhutan, 1953 r.1-2; Rules and Regulations of the National Assembly of Bhutan, 1968 r.1-2; Rules and Regulations for the Election of National Assembly Members, 1981 r.8.

<sup>591</sup> Laws of Brunei, 1984 art. 3, 24-5.

<sup>592</sup> Constitution of Iran, 1979 s.12, 64.

<sup>593</sup> See further *Evidence given before the Privy Council Committee on proposed reforms in the Channel Islands*, 1946, PRO HO 45/21270; *Draft Committee Report of the Privy Council Committee on proposed reforms in the Channel Islands*, 1946, PRO HO 45/21272.

Thirdly, we consider the possible justifications for the Bishop's role. As we noted earlier, the role of the Bishop has not been justified in a sustained way – rather, possibly justifications have been presented, or attacked, in rapid succession. In this section, we draw out the implications of the possible justifications at greater length.

#### ***IV.1 A taxonomy of religious representation.***

It seems to us that, before seeking to analysis the potentially problematic issues arising from the Bishop's place in Tynwald, it is useful to draw out the key elements of that position. In doing so, we have identified a series of questions that might usefully guide the consideration of religious representation in any democratic legislature.

##### **(i) Incidental/integral representation.**

There is a distinction between a member of an assembly who functions as a religious representative, and someone who is a member of such an assembly because they are a religious representative. At one extreme, an elected MHK may seek to represent their spirituality, but apart from the unquantifiable impact their religious identity had on their electorate, this is not relevant to their right to sit in the assembly. At the other extreme, the Bishop sits in the assembly because of his place in the Manx Church – if he were to leave that Church, he would ipso facto lose his place in the assembly. The distinction between incidental and integral is of analytical importance. If the member has only an incidental role, analysis of their functioning should proceed initially by reference to their primary role, and only then focus on their role as a religious representative. Identifying such representatives may, in any case, be a difficult task. If integrated, however, their functioning and legitimacy needs to be considered primarily by reference to their role as a religious representative. In a practical sense, of course, incidental/integral may best be seen as a spectrum, rather than a dichotomy. Consider, for instance, a life peer appointed to the House of Lords while holding, or having held, a leadership role in a minority faith community. He or she may be expected to represent that community in the legislature, and be portrayed as an example of non-Church representation,<sup>594</sup> but representation would not be integral to their place in the Lords.

Even within a spectrum, the Bishop lies at the integrated end. In a legal sense, he sits *ex officio* and loses his seat along with his ecclesiastical office. In a practical sense, the Bishop sees himself, and is seen by other members, as a religious representative in a way not shared by the rest of the Council. We will discuss the theoretical bases for his role in a later section, but it is worth noting at this point that even if a non-religious basis explains his original presence on the Council, it does not explain his survival as the sole voting *ex officio* member. This is best explained by his role as a religious representative.

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<sup>594</sup> Consider life peers appointed as religious representatives to the Westminster Parliament – see P.W. Edge, “Religious remnants in the composition of the United Kingdom Parliament”, in R. O’Dair and A. Lewis (eds), Law and religion: Current Legal Issues 2001, (Oxford: Oxford University Press, 2002) at 446-7; V. Weare, “The Lords Spiritual”, (1966) 167 *Church Quarterly* 208 at 214; A. Everitt, “Lords in Limbo”, (1996) 190 *Country Life* 48.

## **(ii) Established/non-Established representative.**

One of us has argued elsewhere that “establishment” is a term of limited utility for legal analysis,<sup>595</sup> but that “Establishment” may be convenient shorthand for the position of a State Church.<sup>596</sup> Taking this as the meaning for Establishment, there may be an important distinction between representation of an Established religion, and of any other religion. If representation forms part of Establishment, then taking it in isolation may distort proper evaluation. For instance, if the internal rules of an Established religion are determined by the national legislature, then the representation may be seen as a safeguard – one comprehensible only within the broader framework of a particular State/Church relationship. Similarly, if representation forms part of Establishment, claims to representation by other religious groups may be resisted on the grounds of different placing – the groups are not State Churches with the mix of advantages and disadvantages that status carries with it, and so are not entitled to religious representation.

If the representation is not part of Establishment, however, this departs from an exclusive, bipolar relationship between the State legislature and one (or exceptionally more than one) State Church. In particular, it raises important questions of how communities to be represented are selected. If the decision has not already been made via identification of the State church, what criteria should be used? Possibilities include historical presence in the jurisdiction, philosophical distinctiveness, vulnerability to oppression, social acceptability, demographic power, association with a significant ethnic or racial minority. Once we have non-Established representatives, these questions move to the fore, both analytically and practically.

A recurring theme in the Manx debates is that the position of the Bishop forms part of a broader, and complex, relationship between the Manx Church and the Manx State. So, for instance, we find discussions linking the role of the Lord Bishop with the special procedure by which Tynwald became intimately involved in ecclesiastical legislation - at its bluntest, review of such legislation being the price the Church pays for Establishment, and in particular for representation by the Bishop.<sup>597</sup> Additionally, as has been seen in the UK context, the presence of representatives of the national church in the national legislature may be an important symbol of the place of that church in national life.<sup>598</sup> Accordingly, the Bishop’s role is best viewed as forming part of a broader Establishment.

## **(iii) Organisation/community representation.**

Although the terms are sometimes used interchangeably, there is an important distinction between representation of a community and an organisation. A community is a potentially amorphous grouping of individuals who may define its boundaries in their own way, or have different understandings of how the community functions, and who leads it. For instance, consider the “Christian community”. Does this include Roman Catholics, Jehovah’s Witnesses, and members of the Church of Jesus Christ of the Latter Day Saints? Members of each tradition would see

<sup>595</sup> P.W. Edge, “Reorienting the Establishment Debate: From the Illusory Norm to Equality of Respect”, [1998] *Anglo-American Law Review* 265-284.

<sup>596</sup> P.W. Edge, *Legal responses to religious difference*, (The Hague: Kluwer, 2002) at 126-9.

<sup>597</sup> See p.63.

<sup>598</sup> N. Smith, *Reform of the House of Lords*, (London: Constitution Unit, 1996) at 164.

themselves as Christian, but a substantial number of each group would not accord that status to the other traditions. Even once a community has been defined, it does not follow that mechanisms to allow the State to interact with it will exist. For instance, the Pagan communities of the United Kingdom have tended to reject many ideas of authority, hierarchy, and the need for legitimation by an individual or organisation outside the individual practitioner. The difficulties of a State wishing to interact on, say, the details of animal rights legislation, are clear. The lack of clear hierarchies by which the State could interact with some religious communities was central to the decision of the UK Government to reject proposals to extend ex officio religious representation beyond the Church of England.<sup>599</sup>

Where the representation is of a religious organisation, on the other hand, these problems are notably reduced. We may be unable to adequately define the Roman Catholic community, but it is comparatively simple to identify the organisation of the Roman Catholic Church. Similarly, organisations by definition possess structures capable of making decisions corporately and acting upon them. Thus it is possible for the State, as a corporate entity, to interact with the religious organisation, as a corporate entity. In particular, as we discuss below, it is possible for the State to turn to the organisation's own systems to identify religious representatives.

In relation to the Bishop, although as we discuss below he has a wider representational role, the centre of his representation is the Manx Church. There are many instances of his being seen as the voice of the Manx Church and an expert on technical matters concerning it. Additionally, whatever support the Bishop may enjoy outside that organisations, if he were to lose his position within its structures, he would cease to be a member of Tynwald. Accordingly, the Bishop is best seen as an organisational representative of the Manx Church.

#### **(iv) Denominational/Inter-denominational representation.**

If we take the idea of denomination to mean one of a number of separate communities, and associated organisations, that see themselves as distinct but intimately related to other communities within a broader shared tradition, there may be an important distinction between denominational and interdenominational representation. With denomination representation, the representative would act in relation only to that denomination. With interdenominational representation, they would act in relation to an interdenominational community within a shared religious tradition. A third possibility, exemplified by the Bishop, is that the representation is based firmly within a single denomination but sees, and is seen as owing, a

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<sup>599</sup> See House of Lords Reform Team, The House of Lords: Completing the Reform – Supporting Documents, (London: Lord Chancellor's Department, 2001); The House of Lords: Completing the Reform, (Cm. 5291, 2000) at para.71.

responsibility to represent other denominations.<sup>600</sup> This weak interdenominational role, visible in other areas of public life,<sup>601</sup> is clearly visible in the Bishop's role.

Although the legal basis for the position of the Bishop is his place within the hierarchy of the Manx Church, successive Bishops have tended to base their claims, not upon exclusive representation of the Manx Church, but upon representation of Christianity of all denominations. As we have discussed above, the Lord Bishops appear to have taken this duty very seriously, with extensive consultation with ecumenical bodies, reference to the concerns of other denominations, use of materials produced by other denominations, and even expression of views with which individual Bishops disagreed, in the interests of fairly representing Christian opinion broadly.

### **(v) Religious/Inter-religious representation.**

Clearly there are significant issues raised by interdenominational representation, from identification of a community or organisation with a representative role, to the contentious issue of how a member of one denomination can fairly represent issues that are of concern only to a different strand of the shared tradition. If the focus shifts to inter-religious representation, these issues are exacerbated. In particular, if the range of human spiritualities are to be represented by a single representative or set of representatives coming from a single tradition, there is a danger of homogenising the rich variety of values and ethical systems, and social missions, into an insufficiently differentiated "religious" view. Additionally, by shifting the focus into different religions, the possibility of needs that are not only not shared by the representative, but are positively antithetical, is increased. To take a hypothetical, let us say a religious community that accepted much Christian teaching, but chose to pledge allegiance to a specifically Christian Satan, was concerned that a Bill dealing with animal slaughter would adversely impact on a key ritual intended to reduce the power of Christ in the world. A Bishop of the Manx Church may find it more difficult to represent this religious view effectively – or indeed at all – than say Methodist concerns over gaming.

Although the work of the Bishops in our study suggests that an Anglican leader can provide some form of representation for Christianity more broadly, the Manx experience suggests that this representation breaks down as we move from interdenominational to inter-religious representation. The Bishops do not have an impressive record of raising non-Christian, or even Christian non-mainstream, concerns. This may be in part due to the lack of established non-Christian communities within the Isle of Man for much of our period, so that the Bishops were not made aware of religious needs. The opposition to particular religious practices, particularly within Islam, cannot be explained so easily.

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<sup>600</sup> The emphasis on a constitutional responsibility to represent other denominations moves this beyond Davie's view of the current role of the Lords Spiritual: "The representatives of the Church might well choose to use their privileged role on behalf of the diverse communities of faith, but that would be their choice" – G. Davie, "Religious representation in a revised House of Lords: Position Paper", (2000) *MOST Journal on Multicultural Societies* 1(2), para. 3.1.

<sup>601</sup> See J.A. Beckford and S. Gilliat, Religion in prison: Equal rites in a multi-faith society, (Cambridge: Cambridge University Press, 1998).

### **(vi) State/Organisation or community appointment.**

Ultimately, the decision as to the composition of the legislature lies with the State. In the Isle of Man, for instance, this can be seen in the Acts of Tynwald defining the Council. The State may, however, choose to delegate the identification of individual representatives to religious communities or organisations. This can be illustrated by the Wakeham Report,<sup>602</sup> which recommended three tiers of religious representation, at least in terms of appointment. The Church of England would appoint sixteen representatives, whose identity was for it to determine.<sup>603</sup> Ten other Christian representatives would be appointed by the (State) Appointments Commission after extensive consultation with Churches Together in England and analogous bodies.<sup>604</sup> Over time a convention might arise where names put forward during this consultation would normally be accepted.<sup>605</sup> Five non-Christians would be appointed by the Appointments Commission, ultimately on the basis of their assessment of the individual, although community organisations would be welcome to make suggestions to the Commission.

There are practical advantages for the State in delegating appointment to a religious organisation. By allowing the organisation to appoint its own representative, the State steps back from the process, reducing to some extent the entanglement of Church and State, as well as avoiding responsibility for contentious appointments.

In the Manx context, appointment lies within the Manx Church. The relationship of the Church to the Crown, however, means that the decision ultimately lies with the United Kingdom Prime Minister. The Manx experience suggests that even a clearly defined procedure for appointing a religious representative by reference to a religious organisation can be controversial. The appointment of the Bishop ipso facto involves the appointment of a new member to the Council, and has accordingly been the subject of discussion within Tynwald. Debates over the internal processes by which a religious organisation appoints its representative may be complicated if the values of that religious organisation do not accord with those of the legislature. We see this most clearly in the Manx context where opponents of the Bishop's vote refer to the "undemocratic" nature of his appointment; and defenders feel it tactically wise to base their arguments on - rather tenuous - claims that the Lord Bishop is appointed democratically. It is of interest that the gender bar in the Church has not been a matter for discussion - although the Bishop is the only member of Tynwald who is legally required to be a man, this has not been put forward as a criticism of his position.

### **(vii) Individual/Corporate representation.**

Potential differences may also lie between corporate representation of a constituency by a body of members, and representation by a single member. With corporate representation, it is possible both to share responsibility for contributing to debates, to develop expertise in particular areas and, crucially, to dilute the impact of a single individual's personality on the representation. This is particularly the case if the corporate representation is associated with administrative support such as that enjoyed by the Lords Spiritual in Westminster. On the other hand, a single representative not only must represent the constituency across the full spectrum of

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<sup>602</sup> Wakeham, *A house for the future*, (London: HMSO, 2000).

<sup>603</sup> Ibid, at 15.28.

<sup>604</sup> Ibid, at 15.22-23.

<sup>605</sup> Ibid, at 15.21.

legislative business, but also has the potential to mould that representation on the basis of their own personality, legislative style, and interests.

In the Isle of Man, since the reforms of the early twentieth century, the Bishop sits as the sole *ex officio* representative of the Manx Church. Our review of the debates since 1961 suggests that the different Bishops had different personalities, argumentation styles, and topics of interest. As the sole religious representative, these individual characteristics are less diluted than in the case of a larger, at least partly corporate, legislative presence such as with the Lords Spiritual.

### **(viii) Proportion of representation.**

The preceding categorisation focuses on the absolute size of a representative group. The proportion of members who are also religious representatives may also be significant. In pragmatic terms, the larger the religious bloc, the more likely its votes are to be decisive. Less easily quantified, the more representatives sit to represent religion, the more the argumentation within the body as a whole is likely to reflect that. In the Isle of Man, the population of voting members who are religious representatives is comparatively high – more than 10% of the Council, as opposed to roughly 4% in the House of Lords.<sup>606</sup>

### **(ix) Distinctive/Non-distinctive role.**

Although a representative may be appointed to represent a particular religious community, once appointed he may function, or be entitled to function, in the same way as members who owe their position to different routes. As a matter of constitutional law, and practice, the Bishop is entitled to speak on any topic before Tynwald. Against this *de jure* licence, however, there is clear evidence of expectations that the Bishop has a special role in the legislature. He is a technical expert on the Church of England, a spiritual guide particularly on moral issues, and a non-partisan member of the legislature detached from the political process.

### **(x) Distinctive/Non-distinctive argumentation.**

Similarly, although there are no restrictions on the Bishop's use of non-religious argumentation, there is some evidence of a distinctive mode of argumentation being broadly tolerated. The way in which the Bishop has used sources in debate has not, generally, proven very contentious. On occasions when the Bishop has been criticized for his use of sources, this has generally been as part of a challenge from the spirituality of another representative - a rather stronger theme in the debates. There are indications in the debates, however, that Bishops can choose between two different forms of argumentation, based upon their choice of sources. The first form draws upon religious sources that, in the absence of the religious beliefs of the Bishop, lack authority. For instance, the reference to the Fourth Commandment in the debates over Sunday trading may make a powerful contribution to debate between Christians. A participant who does not give the Fourth Commandment any spiritual authority, however, will treat it as important only, at the most, as an indicator of the place of Sabbath day observance to some members of the Manx community. As we have seen, the Bishop has no monopoly on the use of religious arguments based upon religious sources, but the expectations that he should provide spiritual and moral guidance, and speak for the Christian communities of the Island, support his use of

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<sup>606</sup> P. Strickland and R. Cracknell, "House of Lords Reform: Developments since 1997" (2001) House of Commons Library Research Paper 1/77 at 10.

this form of argument.<sup>607</sup> The second form draws upon sources, and types of knowledge, which can be shared by legislators regardless of their religious beliefs. So we find examples of the Bishop referring to the views of Manx people he has talked to, unemployment figures, and the sociological merits of a shared day of rest regardless of religious culture.

**(xi) Exclusive/Non-Exclusive religious voice.**

The presence of a religious representative in the assembly raises the possibility of two types of religious voice – the professional voice of the religious representative and the amateur, perhaps illegitimate, voices of other members. There is no indication in constitutional law and practice, or the debates of Tynwald, that other religious voices in the assembly should be silenced. Indeed, a recurring theme in the debates, both explicitly and implicitly, is the tension between an *ex officio* member of the Council who is seen as having a special religious role; and the spiritualities of other members of the legislature. Explicitly, we see this in challenges to the authority of the Bishop to accurately interpret Christian doctrine, or to speak for the Christian people of the Island; and, perhaps most pungently, in arguments that a Christian voice in the legislature can be well served without a Bishop. Implicitly we see this in the recurring theme that the moral and spiritual leadership of the Bishop, and their role as a religious figure generally, is a source of amusement to other legislators. Something about another legislator as an authority on moral matters strikes a number of members of Tynwald, repeatedly and throughout our period, as risible.

**(xii) Describing the Lord Bishop of Sodor and Man in Tynwald, and the Lords Spiritual in Parliament.**

Although a taxonomy may be of general value in clarifying understanding of the place of religious representation in Tynwald, this taxonomy may serve a more specific purpose for this study. In the sections that follow we have recourse to the comparatively large body of literature that has considered the role, and future, of religious representation in Parliament. To place this literature into context, and to show its relevance to the Manx experience, it is useful to compare the Lord Bishop with the Lords Spiritual.

A full comparison would require an analysis of the debates similar to that carried out for Tynwald in this study. There are, however, a number of existing studies of the Lords Spiritual that may be drawn upon even at this stage. In particular, we have the general study of the House of Lords by Bromhead in 1958,<sup>608</sup> the important review of the Lords Spiritual by Weare in 1966,<sup>609</sup> the study of the Lords Spiritual by Drewry and Brock in 1971,<sup>610</sup> the detailed study of them between 1979 and 1987 published by Brown in 1994,<sup>611</sup> and the body of commentary surrounding

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<sup>607</sup> Consider further J. Raikka, “The place of religious arguments in civic discussion” (2000) 13 *Ratio Juris* 162; R. Audi, “Religious values, political action and civic discourse”, (2000) 75 *Indiana Law Journal* 273.

<sup>608</sup> P.A. Bromhead, *The House of Lords and Contemporary Politics 1911-1957*, (London: Routledge, 1958).

<sup>609</sup> V. Weare, “The Lords Spiritual”, (1966) 167 *Church Quarterly Review* 208.

<sup>610</sup> G. Drewry and J. Brock, “Prelates in Parliament”, (1971) 24 *Parliamentary Affairs* 222.

<sup>611</sup> F. Brown, “Influencing the House of Lords: The role of the Lords Spiritual 1979-1987”, (1994) 42 *Political Studies* 105.

the Labour Government’s reform of the House of Lords since 1997.<sup>612</sup> Drawing on the secondary sources reveals a representation in Parliament similar, but not identical, to that in Tynwald.

	Integrated/ Incidental	Established	Org./ Community	Inter- denominational	Inter- Religious
Sodor and Man	Integrated	Yes	Org.	Weak Inter-denom.	No.
Lords Spiritual	Integrated	Yes	Org.	Weak Inter-denom.	Possibly.

	Appointed	Individual /corporate	%	Role	Argument	Exclusive
Sodor and Man	Org.	Ind.	11	Distinct	Distinct	No
Lords Spiritual	Org.	Corp.	4	Distinct	Distinct	No

The Lords Spiritual sit as integrated religious representatives. Although it is possible to argue that they entered the Lords as Barons,<sup>613</sup> and so constitute merely a “hangover from the middle ages”,<sup>614</sup> this historical explanation – if valid – is no longer the prime justification for their presence.<sup>615</sup> Rather, they sit as representatives of the Church of England.<sup>616</sup> Although summoned individually,<sup>617</sup> they sit by virtue of their ecclesiastical office. When a Bishop already a member of the House changes his See “he has to be reintroduced to the House as the representative of that particular See”.<sup>618</sup> Similarly, “[t]he Bishops are the only true ex officio members of the House of Lords, as they retire from the House on retirement from their See”.<sup>619</sup> Accordingly, the Lords Spiritual are integrated representatives in a way identical to the Lord Bishop.

The Lords Spiritual sit as representatives of an Established Church, the Church of England. In her recent discussion of the issue, Smith sees this as central to understanding the role of the Lords Spiritual,<sup>620</sup> and it has informed many considerations of reform of that role.<sup>621</sup> To that extent, the position is very similar to

<sup>612</sup> E.g. Church of England, The role of Bishops in the Second Chamber, (London: Archbishops Council, 1999).

<sup>613</sup> J.A.R. Marriott, Second chambers: An inductive study in political science, (Oxford: Clarendon Press, 1927) at 8-9.

<sup>614</sup> M. Russell and R. Hazell, Comments on the Wakeham Report, (London: Constitution Unit, 2000) at 17.

<sup>615</sup> DATF, Making a modern Senate, (Essex: Democratic Audit, 1999) at 24.

<sup>616</sup> See House of Lords Precedence Act 1539 s.3; Welsh Church Act 1914 s.2(2).

<sup>617</sup> Brown, *op.cit.*, at 106.

<sup>618</sup> Carlton Group, The Guide to the House of Lords, (Pinner: Carlton Group, 1997) at 16.

<sup>619</sup> White Paper, para. 2.6.

<sup>620</sup> See C. Smith, “Episcopal seats and proposals for reform of the House of Lords”, (2002) 13 Kings College Law Journal 109.

<sup>621</sup> See for instance, Bryce, On the reform of the Second Chamber, (London: HMSO, 1918) at para. 26.

that of the Lord Bishop. The multinational nature of the United Kingdom, as opposed to the Isle of Man, adds a slight complication however. The Church of England is one Established church in the United Kingdom. Arguably the Church of Scotland is also Established, and this has led to proposals for “the inclusion of the Moderator of the Church of Scotland [to rectify] an injustice to the Established Church north of the border”.<sup>622</sup>

The Lords Spiritual sit as representatives of a religious organisation, the Church of England, rather than a religious community. As with the Lord Bishop, the same evidence that indicates the Lords Spiritual have an integral role, indicate that it is an organisational representation.

The Lords Spiritual have a weak interdenominational role. Bromhead saw the contributions of Archbishop Fisher, for instance, as “on behalf of the Church, and perhaps organised Christianity in general”.<sup>623</sup> Contributing to a collection of essays in 1954, Archbishop Garret thought that “[i]ncreasingly when the Bishops speak they are not only representing their own Church, but the great body of Christian opinion in the nation”.<sup>624</sup> Brown saw more than 60% of Bishops’ interventions between 1979 and 1987 as involving Church or Christian interests.<sup>625</sup> In a recent passage quoted in the following paragraph, the Church of England describes its role in Parliament as encompassing speaking for other denominations. Although a definitive finding on this point will require a detailed study similar to that carried out of Tynwald, it seems likely that the interdenominational role is similar in both legislatures. It will be recalled, however, that the Manx Church has long been a minority denomination in the Island.

The Lords may, in contrast to the Lord Bishop, have a weak inter-religious role. Certainly this is a role that has been claimed by the Church of England itself. In a detailed response to the Royal Commission considering reform of the House of Lords, it argued: “Bishops will be found speaking not just for the Church of England but for its partners in other Christian churches, and for people of other faiths and none”.<sup>626</sup> As we have seen, a similar claim for the Lord Bishop is not supported by the evidence of the debates. We might expect to find this role being carried out more in multifaith Britain than Christian Mann, however, and some evidence supports this role. Lord Jakobovits, a life peer, has said that “[i]t does not bother me that as a rabbi I exercise less authority than the bishops. I often wish that the Anglican bishops had more influence and spoke with greater authority”.<sup>627</sup> This may indicate that the work of the Lords Spiritual is seen as broadly religious, and there is evidence in recent debates of attempts by them to represent non-Christian religious interests.<sup>628</sup> Accordingly, while some commentators have doubted the willingness or ability of the Bishops to fully perform an inter-religious role,<sup>629</sup> the possibility that the Lords Spiritual carry out this

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<sup>622</sup> J. Arnold, Reform of the House of Lords: Practical proposals for a strong second chamber, (London: Bow, 1977) at 4.

<sup>623</sup> Bromhead, op.cit..

<sup>624</sup> The Future of the House of Lords, (Hansard Society, 1954).

<sup>625</sup> Brown, op.cit..

<sup>626</sup> Church of England, The role of Bishops in the Second Chamber, (London: Archbishops Council, 1999) at 4.

<sup>627</sup> C. Aslet, Inside the House of Lords, (London: HarperCollins, 1998) at 20.

<sup>628</sup> For instance Bishop of Chelmsford, HL Deb 24.10.2001 col. 1075-77.

<sup>629</sup> For instance DATF, op.cit., at 25; K. Medhurst, “The Church of England: A progress report”, (1999) 52 Parliamentary Affairs 275.

role to a greater extent than the Lord Bishop needs to be left open, and may constitute a difference between the two roles.

The Lords Spiritual are appointed by an organisation, the Church of England. As with the Manx Church, this is complicated by the role of Royal patronage – exercised on the binding advice of the Prime Minister – in making the appointment. Nonetheless, once a Bishop has been appointed by the Church’s own procedures, there is no discretion in any State actor as to whether a Bishop becomes a member of the Lords.

The Lords Spiritual sit as corporate rather than individual representatives, a marked contrast to the Lord Bishop. This should not be overstated, and in particular it would be erroneous to view the bishops’ bench as equivalent to a political party, with a party line and an interest in the number of votes cast on central issues. The Church of England has described the bishops as “primarily independent local leaders”.<sup>630</sup> In his consideration of their group life, Brown comes close to endorsing with those who saw their group behaviour as “both inconsistent and spasmodic”.<sup>631</sup> This comes from an institutional priority for a bishop speaking on an issue of concern, “no matter what he may actually say”.<sup>632</sup> Similarly, the bishops do not sit in groups, or vote in large numbers, even on key debates. With their range of other duties across England, the emphasis is upon ensuring a representation, not upon a volume of attendance.<sup>633</sup>

Nonetheless, corporate representation opens up two possibilities closed to the individual Lord Bishop. First, there is the possibility of dividing the legislative duties between the Lords Spiritual, and allowing individual bishops to develop legislative specialisms. There is some evidence of an institutional attempt to do just this, although the emphasis is on ensuring an ecclesiastical voice, with specialists called in only when the duty bishop (present for prayers), cannot fulfil that role.<sup>634</sup> Second, the differences between successive Lord Bishops can be replicated by contemporaneous Lords Spiritual – developing different areas of interest,<sup>635</sup> contributing to debate on different topics,<sup>636</sup> and even voting on different sides in the same issue. The pattern of representation of ecclesiastical views by a single bishop, or a handful of bishops, make this less significant than it would otherwise be. These remain, however, potentially important differences.

The Lords Spiritual constitute a smaller percentage of the chamber than the Lord Bishop, although this has been increased with the exclusion of many hereditary peers from the House, and the subsequent reduction in total size. The House remains, however, an unusually large second chamber.<sup>637</sup> At 4%, rather than 11%, we would expect to see fewer decisive votes in the UK than in the Island, particularly given the small number of Lords Spiritual present for any vote. Brown’s study of 1979-1987

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<sup>630</sup> Church of England, *op.cit.*, at 6.

<sup>631</sup> Brown, *op.cit.*, at 106.

<sup>632</sup> *Ibid.*, at 108.

<sup>633</sup> Brown, *op.cit.*, at 106-8; Church of England, *op.cit.*, at 10; Drewry and Brock, *op.cit.*.

<sup>634</sup> Brown, *op.cit.*, at 107.

<sup>635</sup> Brown, *op.cit.*, at 107.

<sup>636</sup> Weare, *op.cit.*, at 210-211.

<sup>637</sup> See R.L. Borthwick, “Methods of composition of second chambers” in N.D.J. Baldwin and D. Shell (eds.), Second Chambers, (London: Frank Cass, 2001); M. Russell, Second chambers overseas: A summary, (London: Constitution Unit, 1999) at 3.

found one decisive vote, but observed that if all the Lords Spiritual had voted with the bishop who attended, this would have risen to 63.<sup>638</sup> Despite the small percentage of religious representatives in the House, a number of commentators have seen representation as already disproportionate, and fear that extension of representation to other religious communities would exacerbate the problem.<sup>639</sup> Unlike the Lord Bishop, whose individual representation is either permitted or not, these concerns have led to debate over the number of bishops who should sit, with a reduction having been repeatedly suggested.<sup>640</sup>

The Lords Spiritual, like the Lord Bishop, appear from the secondary sources to have a distinctive role in debates. As with the Lord Bishop, the Lords Spiritual are entitled to contribute to all the work of the House, and since the 1960s have done so.<sup>641</sup> As with the Lord Bishop, however, we can see a special focus on the law of the Church of England, moral issues, and non-partisanship. Commentary tends to take for granted the role of the bishops in dealing with ecclesiastical business before the House,<sup>642</sup> but this has been seen by others as sufficiently important to justify their presence in the House.<sup>643</sup> Commentators, and the Church itself, have repeatedly seen the Lords Spiritual as bringing a special voice to bear on moral issues. In his discussion of the Lords Spiritual, Weare saw some bishops as limiting their contributions to moral or social welfare or education.<sup>644</sup> Drewry and Brock likewise saw a role developing in relation to social, ethical and moral issues – in practise a very broad category.<sup>645</sup> Winetrobe and Gay, writing in 1999, saw a continuing involvement in social and moral matters,<sup>646</sup> a view endorsed by the Church of England submission to Wakeham. The Church saw the bishops as bringing a thoughtful concern with ethical principles to bear on all public and private issues.<sup>647</sup> In the most recent consideration of the issue, Smith saw the debate over the Lords Spiritual as constructing them as specialists able to provide the House with expertise when discussing social, philosophical and theological issues.<sup>648</sup> The non-partisan nature of

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<sup>638</sup> Brown, *op.cit.*, at 108-110.

<sup>639</sup> For instance Public Administration Select Committee, Fifth Report: The House of Lords, (London: HMSO, 2000) at para. 157; M. Harrison, The House of Lords: The Future of the United Kingdom's Second Chamber, (Unpublished M.Phil.: Manchester University, 2001); DATF, *op.cit.*, at 25.

<sup>640</sup> For instance in Marriott, *op.cit.*, at 10; R. Brazier, "The Second Chamber: Paradoxes and Plans" in P. Carmichael and B. Dickson (eds.), The House of Lords: Its parliamentary and judicial roles, (Oxford: Hart, 1999) at 63; Arnold, *op.cit.*, at 4; The House of Lords: Completing the Reform, (Cm. 5291, 2001) at para. 83.

<sup>641</sup> Weare, *op.cit.*, at 210; F. Cranmer, "Church-State relations in the UK: A Westminster View", (2001) 6 *Ecclesiastical Law Journal* 111 at 113.

<sup>642</sup> For instance Weare, *op.cit.*, at 211; Brown, *op.cit.*, at 114.

<sup>643</sup> For instance Bryce, On the reform of the Second Chamber, (London:HMSO, 1918) at para. 26; P. Archer, "The House of Lords: Past, present and future", (1999) 70 *Political Quarterly* 396 at 402; N. Smith, Reform of the House of Lords, (London: Constitution Unit, 1996) at 164.

<sup>644</sup> Weare, *op.cit.*, at 209.

<sup>645</sup> Drewry and Brock, *op.cit.*.

<sup>646</sup> B.K. Winetrobe and O. Gay, The House of Lords Bill: Options for Stage Two, (1999) House of Commons Library Research Report 99/6.

<sup>647</sup> Church of England, *op.cit.*, at 6.

<sup>648</sup> Smith, *op.cit.*, at 111.

the Lords Spiritual, at least in the twentieth century, is also stressed by the sources.<sup>649</sup> Doubts have been expressed as to whether the Church of England will have its own, partisan, political agenda.<sup>650</sup> In any case, it should be noted that non-partisan does not mean non-political, and that the backgrounds of the bishops may be seen as closing off some lines of argument.<sup>651</sup> During the passage of the Reform Bill of 1832, for instance, their work in the Lords “cast them in the role of the most entrenched reactionaries. The palace of the Bishop of Bristol was burned down, and the Archbishop of Canterbury was assaulted with a dead cat”.<sup>652</sup>

Nonetheless, the role of the Lords Spiritual in relation to non-partisan involvement in moral debates, and the provision of specialist guidance on ecclesiastical business before the House, seems very similar to that of the Lord Bishop in Tynwald. Additionally, they have a further specialist role by its nature absent from Tynwald, the representation of the regions in Westminster. Because of their diocesan base, this has been seen as an important justification for their role by the Church itself.<sup>653</sup> During 1979-1987, Brown saw 21% of their contributions as concerning diocesan and regional issues.<sup>654</sup>

Finally, it may be that the Lords Spiritual are able to use moral or religious modes of argumentation with greater ease than other members of the legislature.<sup>655</sup> If this is the case then, like the Lord Bishop, this is unlikely to take the form of detailed theological analysis. Rather, they seek to offer “a voice of spiritual and moral concern”,<sup>656</sup> using their role “if not for the expounding of theology then at least for the articulation of a wide cultural consensus based historically on the Christian tradition”.<sup>657</sup>

It appears, therefore, that while there are instructive and significant differences between religious representation in Tynwald and Parliament, the two forms are sufficiently close together to allow investigation of one to benefit from work carried out on the other.

## ***IV.2 The impact of the European Convention on Human Rights and the Human Rights Act 2001.***

The relationship between the Isle of Man and the European Convention on Human Rights has not always been an easy one. The Crown, acting on the advice of the United Kingdom rather than the Manx executive, is responsible for the international relations of the Isle of Man. This includes creating international agreements binding upon the Island. Such agreements do not, of themselves, have legal force within the Manx legal system, although they can influence the interpretation and development of Manx law.<sup>658</sup>

<sup>649</sup> For instance, Weare, *op.cit.*; Church of England, *op.cit.*, at 6; Winetrobe and Gay, *op.cit.*.

<sup>650</sup> DATF, *op.cit.*, at 25.

<sup>651</sup> See H.J. Laski, *The problem of a Second Chamber*, (London: Fabian Society, 1925) at 3.

<sup>652</sup> Archer, *op.cit.*, at 401.

<sup>653</sup> Church of England, *op.cit.*, at 6; Winetrobe and Gay, *op.cit.*.

<sup>654</sup> Brown, *op.cit.*.

<sup>655</sup> See P. Goodrich, “A Bishop in the House of Lords”W, (1997) *Law and Justice* 63.

<sup>656</sup> Church of England, *op.cit.*, at 11.

<sup>657</sup> Archer, *op.cit.*, at 401.

<sup>658</sup> See further P.W. Edge, *Manx Public Law*, *op.cit.*, at 112- 114.

Since 1950, when entering into international agreements the United Kingdom government has proceeded on the basis that the Isle of Man is not covered by an agreement unless it has been expressly included.<sup>659</sup> The Isle of Man was, however, expressly included when the United Kingdom ratified the Convention, and accepted the right of individual application. This right, which allows individuals to bring alleged violations of the fundamental rights guaranteed under the Convention to an international judicial body, was made use of in *Tyrer v United Kingdom*.<sup>660</sup> As a result, the practice of judicial corporal punishment in the Isle of Man ceased,<sup>661</sup> although in theory the birch could be applied in a suitable case.<sup>662</sup> As a reaction to *Tyrer*, the right of individual application was allowed to lapse. In 1993, as part of a general programme of law reform intended to bring Manx law into line with the Convention and so allow the restoration of the right of individual application, corporal punishment was effectively abolished by Act of Tynwald.<sup>663</sup>

In 1993, although Tynwald was prepared to make a number of significant changes to particular areas of Manx law in order to meet the Crown's obligations under the Convention, adoption of a general Bill of Rights was rejected.<sup>664</sup> Following the passage of the United Kingdom Human Rights Act 1998, which was intended to provide mechanisms to give effect to Convention rights in United Kingdom laws, Tynwald reconsidered the issue. The Human Rights Act 2001 is modelled on the earlier United Kingdom legislation, with similar provisions to increase the role of the Convention in statutory interpretation,<sup>665</sup> and mechanisms for formally addressing incompatibility between legislation in the Isle of Man and provisions of the Convention;<sup>666</sup> and restricting the actions of public authorities by declaring acts in contravention of Convention commitments to generally be unlawful.<sup>667</sup> As with the United Kingdom Act, the Act includes special provisions dealing with freedom of expression and religious rights.<sup>668</sup> The latter provision, section 12, is identical to the Human Rights Act 1998 s.13.<sup>669</sup>

Thus, we can see that not only is the ECHR a regional human rights system with a developing body of authoritative jurisprudence generated by international judicial bodies, but it is also one that has been given unique power in the Manx legal system. Accordingly, a consideration of international law and the role of the Lord Bishop may usefully focus on the provisions of the Convention.

Three related questions need to be considered. Firstly, is religious representation in the national legislature permitted under the Convention? If it is not, then discussion of the following two questions is largely redundant. We argue below that religious representation is compatible with the Convention, so long as the

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<sup>659</sup> Ibid, at 146-7.

<sup>660</sup> *Tyrer v United Kingdom*, [1978-80] Manx L.R. 103 (E.Ct.H.Rts.).

<sup>661</sup> See T.W. Cain, "Address to the Isle of Man Magistrate's Association", (1981) 20 Manx L.B. 100.

<sup>662</sup> *O'Callaghan v Teare* [1981-3] Manx L.R. 103; *Sallis v R* [1987-9] Manx L.R. 329.

<sup>663</sup> Criminal Justice (Penalties etc.) Act 1993.

<sup>664</sup> *Report of the Select Committee of Tynwald on a Bill of Rights*, (Douglas, 1994).

<sup>665</sup> Human Rights Act 2001 s.3.

<sup>666</sup> *ibid*, s.4, 16.

<sup>667</sup> *ibid*, s.6

<sup>668</sup> *ibid*, s.11 and 12.

<sup>669</sup> On which, see P. Cumper, "The protection of religious rights under section 13 of the Human Rights Act 1998", [2000] Public Law 254.

fundamental rights of members of other religious communities are respected. Secondly, is the gender bar on the Bishop permitted under the Convention while the Bishop has a seat in the national legislature? We will argue that, although the Manx Church may limit the gender of the Bishop in his ecclesiastical role, it is less clear that this bar is compatible with the Convention when applied to a member of the national legislature. This is not necessarily an argument against the role of the Bishop in Tynwald, but retention of that role may necessitate a change in the internal rules of the Manx Church. Thirdly, is religious representation of the Manx Church permitted when no other religious organisation or community is represented? We will argue that although there are burdens for other religious communities, these are not sufficient to render the differential treatment of the Manx Church religious discrimination against the excluded communities.

### **(i) Is representation of a religious organisation permitted under the Convention?**

The Convention includes an obligation upon the State to hold elections to legislatures. By Article 3 of the First Protocol the States “undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the people in the choice of the legislature”. At first glance, this provision might seem to pose a serious challenge to the present Legislative Council, and in particular the role of the Bishop. It is, however, “an extraordinarily weak formulation”,<sup>670</sup> which has been interpreted to allow legislatures to include members who have not been directly elected. In *Mathieu-Mohin and Clerfayt v Belgium*,<sup>671</sup> the Court was required to consider whether the details of Belgian electoral law satisfied Article 3. French-speakers elected by direct universal suffrage were confronted with the choice between being a member of the French group in the national assembly (and consequent exclusion from the regional council), or surrendering their national influence on behalf of their language group in order to participate in regional affairs. The majority found no violation of Article 3. The principal judgment of the Court including a suggestion that the Article applied to elections to the legislature “or at least one of its chambers if it has two or more”.<sup>672</sup> In his concurring opinion, Farinha J disagreed, and although he thought the question of bicameral legislatures should be left to another day, he preferred “or at least one of its chambers if it has two or more, on the two-fold condition that the majority of the membership is elected and that the chamber or chambers whose members are not elected does not or do not have greater powers than the chambers that is freely elected by secret ballot”.<sup>673</sup> His preferred formulation was intended to prevent structures at variance to the will of the people, which “might even lead to a corporative, elitist or class system which did not respect democracy”. Even this more expansive view of the role of the Article would support the current Legislative Council. States enjoy a wide margin of appreciation even in areas which clearly engage Article 3 issues,<sup>674</sup> and a number of State legislatures

<sup>670</sup> Novak, *UN Covenant on Civil and Political Rights: A Commentary*, 1993 at 437.

<sup>671</sup> *Mathieu-Mohin and Clerfayt v Belgium*, (1987) A 113.

<sup>672</sup> *Ibid*, para. 53.

<sup>673</sup> *Ibid*, concurring opinion, para. 3.

<sup>674</sup> See e.g. *Gorizdra v Moldova*, (2002) HUDOC REF00023386.

include second chambers which are not directly elected – for instance the House of Lords in the United Kingdom; and the Irish Seanad.<sup>675</sup>

It is difficult to argue, therefore, that the Convention prohibits religious representation in the second chamber of the national legislature because of incompatibility with the principle of free election. This does not, however, show that such a scheme is compatible with the Convention. The place of the Bishop could constitute a violation of Convention rights held by the Bishop, by other members of the Manx Church, or by those outside the Manx Church.

It may be argued that the Bishop's role in the Council carries within it the possibility of violation of a Bishop's Article 9 rights to freedom of religion. Let us say that a Bishop converts to a non-Christian religion and, as a result, loses his ecclesiastical office.<sup>676</sup> Because his place in Tynwald is *ex officio*, he will simultaneously lose this place – he is ejected from the national legislature because of his religious conversion. Although there are no decisions directly on point, there is enough related jurisprudence to say with some confidence that this removal would not be in violation of the Convention. As a general principle, a worker faced with a conflict between his duties and his religious convictions cannot insist on being allowed to continue employment, but with modifications to accommodate their religious needs.<sup>677</sup> In particular, a religious professional cannot insist on being allowed to retain a religious post, and to adopt convictions incompatible with the religious organisation which controls the post. In *Knudsen v Norway*,<sup>678</sup> the applicant was a vicar who refused to perform some of the duties of his post, as a protest against Norway's abortion law. The Commission dealt with his Article 9 claim in categorical terms: "The Commission finds that a clergyman within a State Church system has not only religious duties but has also accepted certain obligations towards the State. If the requirements imposed upon him by the State should be in conflict with his convictions, he is free to relinquish his office as clergyman within the State Church, and the Commission regards this as an ultimate guarantee of his right to freedom of thought, conscience and religion". This approach also applies if the clerics disagreement is a theological one. In *Karlsson v Sweden*,<sup>679</sup> the applicant was a priest in the Swedish national church. He was a 'gammal kyrklighet', opposed to the ordination of women. During an interview for a position, he was asked whether he would be willing to cooperate with a female cleric. He did not address the question, doubting the authority of the interviews to ask this, and was found unqualified for the post. He claimed a violation of his Article 9 rights. The Commission found that Article 9 did not include "the right of a clergyman, within the framework of a church in which he is working or to which he applies for a post to practise a special religious conception", so that the Church was not obliged to accept him for the post. Any

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<sup>675</sup> See M. Russell, *Reforming the House of Lords: Lessons from Overseas*, Oxford: OUP, 2000 at 68-73.

<sup>676</sup> See N. Doe, *The legal framework of the Church of England*, (Oxford: Clarendon Press, 1996) at 178-182.

<sup>677</sup> See P.W. Edge, "Religious rights and choice under the European Convention on Human Rights", (2000) 3 *Web Journal of Current Legal Issues*; P.W. Edge, "The employment of religious adherents by religious organisations", in P.W. Edge and G. Harvey (eds.), *Law and Religion in Contemporary Society: Communities, Individualism, and the State*, (London: Ashgate Press, 2000).

<sup>678</sup> *Knudsen v Norway*, (1986) 8 EHRR 48.

<sup>679</sup> *Karlsson v Sweden*, (1988) 57 Decisions and Reports 172.

conflict between personal conviction and the requirements of the Church could be resolved by the cleric leaving his post, “and the Commission regards this as an ultimate guarantee of his right to freedom of thought, conscience, and religion”.

So, the individual who is the Bishop takes on a combination of ecclesiastical and State duties (one of which is to sit in Tynwald). If these become incompatible with his religious beliefs, his religious interests can be safeguarded by leaving the post. A more recent decision of the Grand Chamber can be reconciled with this view. In *Buscarini v San Marino*,<sup>680</sup> the applicants had been required to take an oath “on the Holy Gospels” before taking their elected seats in the national legislature. The Court found that this constituted a burden upon their Article 9 rights, “since it required them to swear allegiance to a particular religion on pain of forfeiting their parliamentary seats”, and needed to be justified under Article 9(2). The oath “was tantamount to requiring two elected representatives of the people to swear allegiance to a particular religion, a requirement which is not compatible with Article 9 of the Convention. As the Commission rightly stated in its report, it would be contradictory to make the exercise of a mandate intended to represent different views of society within Parliament subject to a prior declaration of commitment to a particular set of beliefs”. Although an important decision in relation to religious tests for members of the legislature, *Buscarini* has no application to our, hypothetical, heretical Bishop. The Court stressed the electoral mandate of the applicants, which would be absent for the Bishop. More fundamentally, it cannot be argued that requiring the ex officio representative of the Manx Church to accept the tenets of that Church contains any internal contradiction.

A slightly different focus would be upon the rights of individual members of the Manx Church. If we take the view that ex officio representation in the national legislature is a benefit to the community represented, it would seem a non sequitur to argue that members of the community thereby suffer damage to a Convention right. The jurisprudence of the Convention does not suggest that entanglement with the State is necessarily destructive to the interests of a religious community or organisation, and a number of cases can be found which endorse relationships that a strict separation of Church and State would preclude. For instance, the line of State church cases discussed above could be decided only if dual appointment as a religious professional and servant of the State was acceptable under the Convention. But if entanglement is not necessarily a burden, it may still be that in a particular case such a burden can be found.

In the Manx context, the strongest argument is that the role of the Bishop in Tynwald serves to support the hierarchical organisation of the Manx Church, effectively giving State approval and influence to the head of the organisation, and so strengthening his position against more egalitarian movements within the community. This would depend upon evidence that the Bishop’s legislative role supported the hierarchical position, rather than emerging from it – the strongest evidence from our study concerns the continued survival of the Diocese, which is a rather different point. Even if this were shown, it is unlikely that the Convention requires States to avoid policy decisions which support particular structural preferences within religious communities. In any case, individual members of the Manx Church who do not approve of its structures can safeguard their Article 9 rights by leaving the Manx Church, and their Article 11 rights by forming an organisation truer to their values. If

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<sup>680</sup> *Buscarini v San Marino*, (1999) HUDOC REF00001932.

Convention rights are not implicated by this structural support, s.12 arguments cannot be raised.

An alternative argument based on the rights of members of the Manx Church can be built on the gender bar – by granting legislative power to the an official who, under the Manx Church’s internal rules, can only be male, Tynwald reinforces discrimination against women, and the exclusion of women from positions of authority in public life. This point is discussed at length in the following section.

Finally, it may be argued that the role of the Bishop infringes on the human rights of members of other religious communities. It may be argued that to represent the Manx Church, but not other religious communities, in Tynwald constitutes discrimination on the grounds of religion, contrary to Article 14 of the Convention. We will explore this further in a following section, as it may equally be used as an argument for the further representation of religious communities, rather than the exclusion of the Bishop. A conclusion that representing only the Manx Church constituted a violation of Article 14 would not, ipso facto, lead to the conclusion that representation of the Bishop is contrary to the Convention, as it might be possible to overcome the objection by increasing the religious communities represented in the Legislative Council.

## **(ii) Is the gender bar on the religious representative permitted under the Convention?**

Since 1994 a woman has been able to be ordained as a priest in the Church of England and Manx Church,<sup>681</sup> but no woman may be consecrated as Bishop.<sup>682</sup> Although it has been suggested that there have been “tentative moves towards consecrating women as bishops”,<sup>683</sup> this would require a legal change. There is thus no route by which female members of the Church, including professional clergy, can become eligible for the office. Accordingly, of the places in the Manx legislature, the Bishop’s is unique in being de jure reserved for men. This is clearly differential treatment on the grounds of gender. Is it permitted under the Convention?

The principal provision is Article 14 of the Convention. Article 14 provides: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. This does not constitute a general prohibition on sex discrimination, but rather a protection against such discrimination in respect of Convention rights. A measure which is in conformity with the central Convention right involved (for instance, religious rights under Article 9), may infringe the Convention when that right is “read in conjunction with Article 14, for the reason

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<sup>681</sup> Priests (Ordination of Women) Measures 1993. See further L. Leeder, *The Ecclesiastical Law Handbook*, (London: Sweet and Maxwell, 1997) at 7.6-7.12. The Measures extend to the Isle of Man, with a number of modifications on points of detail.

<sup>682</sup> Priests (Ordination of Women) Measures 1993 s.1(2). See further Forward in Faith UK, *Implications for the Church of England of the Ordination of Women as Bishops*, [http://www.forwardinfaith.com/about/uk\\_implications.html](http://www.forwardinfaith.com/about/uk_implications.html) (07/02/03); M. Nazir-Ali, “Women Bishops – The task ahead”, (2001) 6 *Ecclesiastical Law Journal* 95.

<sup>683</sup> Group for Rescinding the Act of Synod, *The scandal of the Blackburn Report*, c.2001.

that it is of a discriminatory nature”.<sup>684</sup> Not every instance of differential treatment is discrimination, however, as the State may seek to justify the treatment. This will fail if the distinction has no objective and reasonable justification, or there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.<sup>685</sup>

In *Williamson v UK*,<sup>686</sup> the applicant was a priest in the Church of England. He objected to the ordination of women as heretical, productive of schism, and unlawful. Before the Commission, he argued that the ordination violated his Article 9 rights. The Commission rejected his arguments on the basis that his freedom of conscience could be protected by leaving the Church of England, endorsing the line of authorities noted above. Additionally: “the Commission recalls that Article 14 of the Convention prohibits discrimination in connection with Convention rights, and one of the aims of the Church of England in permitting the ordination of women was undoubtedly to achieve greater equality between men and women in that Church’s hierarchy ... The Commission ... finds that the Synod’s concern to abide by its view of scriptures can be regarded as coming within the meaning of ‘protection of ... morals’, and the Synod’s wish to treat women equally can be regarded as necessary for the ‘protection of the rights and freedoms of others’”. This may suggest that women clergy in the Manx Church have a right to the same treatment as male clergy, so that the bar on the consecration of women bishops is contrary to the Convention.

*Williamson* can, however, be limited. In that case a powerful body within the Church of England had found that it was a legitimate understanding of the doctrines of the Church that women could be ordained. Thus, the differential treatment could not be justified as respecting the internal doctrines and structures of the religious community. The Court has been unsympathetic to arguments justifying the State taking action to favour a particular internal order within a religious community,<sup>687</sup> but has recognised the importance of internal structures to the community itself. In *Hasan and Chaush v Bulgaria*,<sup>688</sup> a Grand Chamber of the European Court of Human Rights considered the removal by the State of the Chief Mufti. The Court found: “The Court recalls that religious communities traditionally and universally exist in the form of organised structures. They abide by rules which are often seen by followers as being of a divine origin. Religious ceremonies have their meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules. The personality of the religious ministers is undoubtedly of importance to every member of the community. Participation in the life of the community is thus a manifestation of one’s religion, protected by Article 9 of the Convention. Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Seen in this perspective, the believers’ right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very

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<sup>684</sup> *Belgian Linguistics Case*, (1968) 1 EHRR 252.

<sup>685</sup> *Ibid.*

<sup>686</sup> *Williamson v UK*, (1995) App. 27008/95.

<sup>687</sup> Consider *Serif v Greece*, (1999) HUDOC REF00001410; *Agga v Greece (no.2)*, (2002) HUDOC REF00003837.

<sup>688</sup> *Hasan and Chaush v Bulgaria*, (2000) HUDOC REF00001938.

heart of the protection which Article 9 affords. It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable.”<sup>689</sup> The Court has recently reiterated this in *Affaire Eglise Metropolitan de Bessarabie et autres c. Moldova*, where the Court found that “[i]n effect, the autonomy of religious communities is indispensable to pluralism in a democratic society, and this finds itself at the heart of the protection offered by Article 9”.<sup>690</sup> Accordingly, the Court would have to give a strong emphasis to the right to non-discrimination on the grounds of gender over the right to religious self-determination in order to find the gender bar on the Bishop to be contrary to the Convention.

If Convention organs are unlikely to require religious organisations to comply with non-discrimination norms, the Manx courts are less likely to apply the Human Rights Act in this way on their own initiative. In his review of United Kingdom precedents, Hill has identified a discernable reluctance by the courts to become involved in adjudicating disputes with a doctrinal element within religious communities generally, and this can be seen even in relation to the Church of England.<sup>691</sup> There are no direct Manx precedents. The closest case is *Halsall v Jones*,<sup>692</sup> where Deemster Cowley found that: “in all matters spiritual, no distinction is to be drawn between the Church of England in the United Kingdom and in the Isle of Man” (at 278), and so on the basis of the English cases found that the Bishop had an absolute authority to refuse an ordination. Given the importance of English cases in determining novel issues, and the similarities between the two jurisdictions here, we would expect to find a similar respect for religious autonomy in the Manx courts. In particular, in both jurisdictions a clause in the Human Rights Act requires particular regard to be had to the impact upon religious organisations of rights claims. Although the effect of this clause is opaque, it certainly will not reduce the preference for autonomy.

Finding that religious organisations may depart from Convention norms internally does not, however, end this discussion. The Bishop is a public official not only in that a professional role in a State Church can involve public duties, but also in that he sits in the national legislature. He owes his seat to his place in the internal structures of the Manx Church, but contributing to Tynwald is a public role. The arguments based on internal autonomy of a religious community here are very much weaker, and the importance of gender equality much stronger. In particular, by analogy with the cases on freedom of conscience for ministers, the Manx Church may not be required to accept State views as to equality between the genders – if the possibility of a female Bishop is essential to the continued role, the Manx Church can protect its doctrines by asking for the Bishop to be removed from the Legislative Council; or by voluntarily modifying its internal structures to create such an

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<sup>689</sup> Ibid, para. 62.

<sup>690</sup> *Affaire Eglise Metropolitan de Bessarabie et autres c. Moldova*, (2002) App. 45701/99. The translation is from L.S. Lehnhoff, “Freedom of religious association: The right of religious organisations to obtain legal entity status under the European Convention”, (2002) 2 Brigham Young University Law Review 561 at 605.

<sup>691</sup> See M. Hill, “Church autonomy in the United Kingdom”, (“Church autonomy and religious liberty”, University of Trier, 27-30 May 1999).

<sup>692</sup> *Halsall v Jones* [1921-51] MLR 275 (H.Ct.).

opportunity. Given that Convention organs have endorsed non-discrimination as a policy goal, and the small proportion of the legislature who are in practice female, a challenge to the composition of Tynwald may stand some chance of success.

### **(iii) Is representation of the Manx Church, and no other religious organisation, permitted under the Convention?**

If our study suggests that this form of representation is permitted under the ECHR, a further question will then arise – does the ECHR require such representation? The ECHR contains a number of positive obligations upon States, but it is not obvious that this includes a duty to provide a voting place in the national legislature to religious organisations. If this is a requirement, then all States except the United Kingdom and Andorra are in contravention of their obligations under the Convention in respect of all religious communities; the United Kingdom in contravention for all but the Church of England and the Manx Church; and Andorra for all but the Catholic Church.

A stronger argument, again based on non-discrimination, focuses on the position of the Manx Church in relation to other religious communities and organizations in the Isle of Man. It may be that representation of the Manx Church alone constitutes unacceptable discrimination against those of other communities. This will need to be resolved primarily in terms of an establishment/discrimination analysis.

The principal concern here is the extent to which the representation of the Manx Church, while other communities are excluded, has an disproportionate impact on those communities. *Darby v Sweden*,<sup>693</sup> the most important case on the distinction between (lawful) establishment and (unlawful) religious discrimination focussed on the impact upon the individual dissident within the context of a national church. In particular, “no one may be compelled to be involved directly in religious activities against his will”, which could include being made to pay a Church tax to a State church while not being a member. The role of the Lord Bishop does not have such an obvious impact on the life of those outside the Manx Church.

Nonetheless, in the United Kingdom debate it has been largely assumed that representing the Church of England, but not other communities, constitutes unjust discrimination. Since the start of the twentieth century, commentators have pointed out the difficulties of extending religious representation to other groups. An early, and pithy, example, is Ramsey who in 1910 wrote on extending representation: “the difficulties of embodying the suggestion in a concrete proposal are so great as to be probably insurmountable. It might be possible for the Roman Catholic bishops to attend the meeting of the House ... But certainly the hard working, and for the most part meanly-paid, ministers of the Dissenting Churches could not possibly find time to attend to the duties of a legislator, unless indeed the privilege of election was confined to London ministry, a proposal which would not be likely to arouse any wild enthusiasm in Wales, Scotland, the North of Ireland, or the English Provincial cities. More difficult still, how are the numbers and allocation of those representatives to be determined? Will the representatives of each sect or group of sects be proportionate to the number of their adherents and, if so, how are those numbers to be computed? Are all the sects named in Whittaker to be represented? If not, how and where is the line to

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<sup>693</sup> *Darby v Sweden* (1989) HUDOC 9 May (Eur.Cm.).

be drawn? The legislator who tries to draw it will find that he has put his hand into the hornet's nest".<sup>694</sup>

Following the proposals of the Royal Commission that the Lords Spiritual should be joined by representatives of other denominations, and of other faiths, a number of commentators argued that it would be impossible to accommodate other communities. This led to the Government rejecting extension of religious representation because of the practical difficulties, principally: lack of a hierarchy in many denominations and faiths which could easily identify the representative; the theological objections of some groups to the link with the State; the large number of denominations and faiths making representation by a comparatively small group of representatives difficult, especially if larger groups were to receive multiple representatives; and the difficulties of identifying a single representative in a heterogenous faith community.<sup>695</sup> To these concerns we can add the difference between these communities and the national and Established Church;<sup>696</sup> the impact of the distinction between "the smallest denomination allowed to nominate and the largest denomination not allowed to nominate";<sup>697</sup> defining what a religious group is;<sup>698</sup> the "problem of fair representation of those who declare they have no religion";<sup>699</sup> and the danger that religious representation will be partisan.<sup>700</sup>

Some of these concerns are overstated, even in the United Kingdom context. The inability (because of their hierarchical choices) or unwillingness (because of their theological choices) of some groups to take up representation may not preclude other communities from doing so. Sensitivity in dealing with individual groups could overcome some of these difficulties – for instance appointing a Roman Catholic bishop to represent English Catholics, but a lay representative for Scottish Catholics.<sup>701</sup> The problems of any individual representing a faith community apply to all religious communities, although they are exacerbated in some. The national role of the Church of England is not necessarily accepted by non-members – for some, it may have "a national presence, but this does not confer on it a nationally representative role".<sup>702</sup> The distinction between large and small groups, when we are operating on the groups right level, is not very unusual – consider for instance the impact of some systems of proportional representation on the largest group too small to be entitled to a member. The problem of those who will declare that they have no religion is a real one, but it is not the distinction between atheisms and other theisms. A scheme for religious representation could embrace what have been called "thinking

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<sup>694</sup> M. Ramsey, Peers and bureaucrats: Two problems of English government, (London:Constable, 1910) at 183-4.

<sup>695</sup> The House of Lords: Completing the Reform, (Cm. 5291, 2001) at para. 84; House of Lords Reform Team, The House of Lords: Completing the Reform – Supporting Documents, (London: Lord Chancellor's Department, 2001) at para. 11.8.

<sup>696</sup> Smith, op.cit., at 114-6.

<sup>697</sup> I. McLean, "Mr. Asquith's Unfinished Business", (1999) 70 *Political Quarterly* 382 at 388.

<sup>698</sup> Archer, op.cit., at 402.

<sup>699</sup> I. McLean, "Evidence to the Royal Commission", (1999) at para. 42.

<sup>700</sup> DATF, op.cit., at 25.

<sup>701</sup> See M. Hornsby Smith, "Roman Catholics and reform of the House of Lords: A review of submissions to the Royal Commission", (2000) at 29-30.

<sup>702</sup> DATF, op.cit., at 24.

disbelievers”<sup>703</sup> so long as they were sufficiently restrictive on doctrine (for instance on the ontological status of a metaphysical reality), and some form of community ethos. The real problem is those who hold religious beliefs – whether theist, atheist, or pantheist – but are insufficiently organised to be seen as a religious community.

Nonetheless, these are very serious objections to extending religious representation beyond the established episcopalian churches of the United Kingdom and the Isle of Man. Some commentators have seen this as leading to the removal of the Lords Spiritual – if it is not possible to represent other religions *ex officio*, then it becomes necessary to remove what religious representation there is to avoid “the inequity of lack of representation of other denominations”.<sup>704</sup> The same arguments could be used against schemes which extend religious representation to close analogs of the Lords Spiritual only – officers appointed to leadership roles of religious organisations such as the Moderator of the Church of Scotland.<sup>705</sup> Alternatively, we could see the practicality of the Lord Bishop sitting in Tynwald as a distinction between him and representatives of other religious communities. Taking that approach, allowing the Lord Bishop to sit is differential treatment, but not unjust discrimination. The other key factor is the cost of the differential treatment to those excluded. What are the costs of exclusion from the legislature for other religious groups?

In a later section we discuss the benefits to the Manx Church of representation. In a corporate sense, other communities suffer the lack of these benefits. Perhaps most tellingly, if the representation of the Manx Church has positive messages for the involvement of the Manx Church with the State, it is difficult to see how exclusion of other communities cannot carry a negative message. This would, however, seem intrinsic in the idea of a national Church – controversial in mainstream United States constitutional thought for instance, but entirely accepted under the ECHR. This suggests that the symbolic impact of non-representation is unlikely to be given great weight. More pragmatically, members of other communities may lack easy access to the legislative process. Given the interdenominational role of the Bishop, and the willingness of other members to put forward spiritual perspectives, this is also unlikely to be given great weight.

Accordingly, and particularly in the context of a national legislature emerging from colonialism, the ECHR is unlikely to be interpreted as prohibiting representation of the Manx Church, and the Manx Church alone. It must be stressed, however, that this does not close the debate, or indicate that such special treatment cannot be unjust and discriminatory. A practice may be lawful, particularly in the context of an international legal regime seeking to ensure minimum standards across a diverse range of sovereign states, without being right. Deciding whether the place of the Bishop is justified must, inevitably, move beyond the legal question of whether it is lawful.

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<sup>703</sup> Drewry and Brock, *op.cit.*.

<sup>704</sup> N. Smith, Reform of the House of Lords, (London: Constitution Unit, 1996) at para. 164.

<sup>705</sup> See J. Arnold, Reform of the House of Lords: Practical proposals for a strong second chamber, (London: Bow, 1977) at 4. See also I.S. Dickinson, “House of Lords Reform”, [1998] Public Law 187 at 188.

### **IV.3 Justifying the Bishop's role.**

As we have seen in the preceding chapters, the theoretical basis for the presence of the Bishop has not been developed in detail. It seems to us that the most likely explanation for his original presence lies not in his Barony, but in the decision of the Lord to summon him to join his Council. Although this may explain his presence as one officer amongst many, it does not provide a justification for his survival. With the placing of the Council on a statutory basis, all members owe their place to Act of Tynwald. The preceding review of the Bishop's role allows us to evaluate in more detail the justifications for his distinctive place in Council. It seems to us that arguments put forward by the Manx Church, contributors to debates in Tynwald, reformers and commentators on the Lords Spiritual and the United Kingdom, and the project team, can usefully be divided into four broad categories.<sup>706</sup>

Firstly, there are arguments which require acceptance of a particular metaphysical context to carry any weight. For instance: that the presence of the Bishop in the organs of the State was mandated by the will of God, or a godly way of organising the Church-Nation; or that the Bishop would, by virtue of his office, be granted a supernaturally acute understanding of the business before Tynwald; or that there is a higher power to which legislatures will be held accountable, and of who they need to be reminded.<sup>707</sup> The difficulty with these types of argument is that they require the State to endorse a particular understanding of metaphysical reality, and so depart considerably from the ideal of neutrality between religions.<sup>708</sup> It is unsurprising that these types of argument are very rarely deployed in the public sphere, beyond a brief reference to the Lord Bishop's mission "to advance the Kingdom of God in a Christian country". Because of the problems of shared context necessary to engage with these arguments, they are not taken account of in this analysis. Neither, for the same reasons, are arguments that the Bishop should be taken to represent errors as to the content of metaphysical reality.

Secondly, there are arguments related to the legislative process – in other words that the participation of the Bishop in the legislative process leads to more efficient consideration and processing of potential legislation and/or results in a higher quality of final legislation. For instance: that the Bishop brings a more cosmopolitan perspective to the Council, or that he contributes technical expertise in relation to the Manx Church. These process based arguments have been deployed in relation to the Bishop. It seems a legitimate, generally comprehensible, aim to improve the efficiency of the legislative process, and the quality of the final product.

Thirdly, there are arguments related to the broader interests of the State and society. Although it can be assumed that the process benefits above also constitute a benefit to the State as a whole, this category addresses benefits outside of the

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<sup>706</sup> A fifth category could be benefit to the United Kingdom. The mechanism by which the Bishop is appointed allow a member of the Council to be appointed by the Crown on advice of United Kingdom ministers. Although this power to appoint to the Council was seen as important between 1765 and 1828, when Atholl appointed to the See, it does not appear to have been an important factor since, except incidentally to show that the Bishop was an "officer" during constitutional moves against official membership.

<sup>707</sup> See C. Smith, "Episcopal seats and proposals for the reform of the House of Lords", (2002) 13 Kings College Law Journal 109 at 111.

<sup>708</sup> On which see further P.W. Edge, "Naturalism and neutrality: Fairly trying miraculous claims in English courts", (2002) 44 *Journal of Church and State* 521.

legislative process. For instance: that his role serves to underpin the traditions and autonomy of the Island, or that it encourages compliance with the law by members of the Manx Church. These public benefit arguments can be seen in the Manx debates. It is, once again, a legitimate aim to seek to secure benefits for the public generally through the composition of the national legislature.

Finally, there are arguments related to the interests of the represented community – in this case the Manx Church and Manx Christianity more broadly. To some extent, this is bound to overlap with the preceding category. Members of the Manx Church, and even more Manx Christians, are a substantial proportion of the population. Benefits to them can constitute a form of public benefit because of the number of beneficiaries or lead to indirect benefits – for instance, benefits to the Manx Church might encourage a feeling of belonging and citizenship amongst its members, which we can see as a public good. The distinction here is that these benefits are directly available only to members of the represented community. To take a pragmatic analogy, tax relief for charitable giving is intended to benefit the public as a whole by encouraging acts carrying with them a public benefit. It would be fair, however, to categorise the money saved because of such tax relief as a benefit to the individual who is saving the money. Examples of these community benefits include an entitlement for the community because of its traditional links with the State, or a route by which the leaders of the community can deploy argumentation to defend interests such as Church property. The legitimacy of composing the national legislature in order to accord benefits to a subset of the nation is less self-evident than in the preceding two categories. Nonetheless, we could see the territorial principal in relation to election of MHKs in a similar light. Although MHKs act in the national interest, rather than in the interest of their constituency, they frequently raise issues directly concerning their constituency; and are elected by this territorial community.

### **(a) Process arguments.**

There are a number of different ways of seeing the role of the Bishop as improving the legislative process.

Firstly, the unique way in which the Bishop is appointed to the Council, and holds office, results in degree of insulation from normal political life, and a non-partisan voice in the legislature; his place in the Council until retirement also lends an element of continuity and stability to the membership of the Council which – in sharp contrast to the House of Lords where the Lords Spiritual are the only members who do not serve for life – is otherwise subject to change at regular intervals. He is not accountable to colleagues for what he says, as would be the case if he were in a formal voting bloc; nor is he accountable to any electorate, as would be the case if he were an independent member appointed for a fixed term by either the Manx population, or the House of Keys. Thus he is free to contribute to debates in a way which is divorced from these pressures, and with no fear of courting disapproval of a party or electorate because of his contributions. As Spencer put it, trenchantly, isolation from an electorate renders a legislator “inaccessible to an influence which, more than any other, corrupts and degrades members of the House of Commons – the fear of losing their seats if they vote according to their honest judgment”.<sup>709</sup> Against these advantages, the unaccountability of the Bishop to any Manx organs might be seen, and at the end of the twentieth century frequently was seen, as undemocratic in a nation seeking to develop and maintain autonomy. In particular, it should be

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<sup>709</sup> B.E. Spencer, *A Strong Second Chamber*, (London: Pearson, 1907) at 12.

remembered that the Bishop is, despite his long tenure, an appointee of someone – in the Manx context, the Crown acting upon the advice of a United Kingdom minister, albeit after consultation with organs of the Manx Church and the Church of England.

Equally, if having one or more unaccountable members in the Council is seen as improving the process, there may be other ways in which this could be achieved. Perhaps the most modest way forward would be for some members of the Council to be hold office for a single, extremely long, term. Although they would have to command sufficient support – currently in the Keys - for their initial appointment, once appointed they could act free of the threat of removal by party bloc or electorate. Although this would have the advantage of putting initial appointment into Manx hands, it could increase the non-partisan nature of the unaccountable members. An alternative would be to appoint long-term members to the Council by lottery, or through a hereditary principle, or through some other non-volitional method of selection.<sup>710</sup> Neither of these alternatives, however, would guarantee replicating the non-partisan autonomy of the Bishop. It will be recalled that, on the one instance of partisan contribution we found, the reaction against the Bishop was very strong. This expectation appears to have been internalised by Bishops – who are after all individuals aware of acting within a long tradition, and within a sophisticated ecclesiastical structure which carries with it serious expectations of appropriate episcopal conduct. The Bishop is unaccountable, and so arguably contributes a uniquely independent voice to the legislative process, but does not thereby act without restraint. Other systems of unaccountable membership may not be able to strike the same balance.

Secondly, the technical expertise of the Bishop in relation to the Manx Church provides the Council with an in-house technical expertise on that Church, analogous to the expertise of the Attorney-General on Manx law. As we identified earlier, this has undoubtedly been an important part of the Bishop's work in Tynwald. It is not an argument that has found favour with the Bishops themselves, however, as it potentially suggests a narrow role for the Bishop. If he is a technical expert on the Manx Church, then as the involvement of Tynwald with that Church declines – most importantly through the changes in the ecclesiastical legislative process – the strength of this justification also ebbs. If he is a technical expert, then his voice on matters outside that specialism loses power against the general role of the appointed members of the Council. Finally, and an illustration of the preceding point, if he is analogous to the Attorney-General, the same arguments that have led to the loss of that officer's vote could be applied to the Bishop.<sup>711</sup> It will also be recalled that the original Council was composed of Officers with responsibility, and expertise, in different areas of the Manx administration – the Bishop might be identified with the First and Second Deemsters, who no longer sit in the Council, rather than the Attorney-General.

If technical expertise is a strong justification for the Bishop's role, the Established character of the Manx Church explains why only that community is represented – no other religious community is so intimately entangled with the Manx

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<sup>710</sup> See A. Barnett and P. Carty, The Athenian Option: Radical Reform for the House of Lords, (London: Demos, 1999).

<sup>711</sup> Proposals for reform of the Lords have envisaged technical specialists sitting in the House, either permanently or on an ad hoc basis, without a vote. See for instance Mackay of Clashfern, Initial report of the Constitutional Commission to consider options for a new Second Chamber, (London: Constitutional Commission, 1998) at para. 50.

State. If it is the strongest one, however, two questions suggest themselves. Given that Tynwald primarily focuses on the development of laws, might it be more sensible for this function to be carried out by a specialist whose knowledge will always include a legal expertise – the Vicar-General, who it will be recalled formerly sat in the Council? If the ecclesiastical officer sits primarily as a technical advisor, should they have a full vote in the Council?

Thirdly, the Bishop may possess a similar expertise over the content of Christian scriptures, and other religious sources. The arguments for his replacement by the Vicar-General are less potent here, but a more fundamental problem arises. We can appreciate how the national legislature would benefit from in-house advice on the structures and law of the Established Church. It is less clear why they would benefit from an expertise in the theological discipline of one religious tradition. In some cases, the interaction between proposed legislation and Christian practices may be important to assessing its merits, but this is better considered as representation of the religious communities needs or voice, discussed below. It is more difficult to come up with an instance when the process would benefit from this knowledge in the abstract – in particular, as we have seen, members who would seek to act in compliance with Christian teachings seem happy to develop their own understanding of these sources.

Fourthly, the Bishop is almost certainly not Manx, but instead brings with him a broad experience of both Church and public life. One would expect, given the career structure of the Church of England, for the Bishop to be a man of some maturity, with experience of running complex, but non-commercial, organisations; and with a considerable track record in relatively poorly paid public service. As was observed during one consideration of reform, he brings to the process “his respected and authoritative personality”. These expectations are not in any sense requirements for the post, however. The See has been occupied by a Manxman, and there are no special limits on who may be appointed to the See. Nonetheless, in practice we can see from the five Bishops studied in this report a particular pre-Council body of experience.

The negative side of this detachment, as has been observed during the debates, is that a new Bishop will not necessarily have a good knowledge of, or affinity with, the Island. Furthermore, the need of the Council for a member with broader experience than that offered by a professional life within the Manx nation does not, necessarily, sit well with the development of Manx autonomy during the twentieth century. If, however, the Council’s process benefits from a foreign member, analogous to the Judge of Appeal in the judicial process, it is difficult to conceive of a practical alternative to the Bishop.

The final, and most prevalent, process argument supporting his role is based upon the idea of a special spiritual voice in the Council, a counter to growing secularisation in Manx public life. As an ecclesiastical officer the Bishop brings a special voice to bear on, in particular, moral issues before the Council. In the United Kingdom context, many supporters of a role for the Lords Spiritual have stressed what Archbishop Garret described as their role in “forming and expressing the Christian conscience on some of the outstanding problems of the day. It is their special duty to scrutinise matters under debate in the light of the Christian faith”.<sup>712</sup> As we have seen, the distinctiveness of the Bishop’s voice has been queried by other members – the ability of other religious adherents to provide a spiritual voice in addition to the Bishop shading into active opposition to an ex officio religious voice. It is also worth

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<sup>712</sup> Archbishop Garret, in The Future of the House of Lords, (London: Hansard Society, 1954). See Church of England, op.cit., at 3.

considering why the spiritual voice selected should invariably be that of the Manx Church, albeit with a good level of consultation with Manx Christianity more broadly.

Perhaps a more fundamental problem with this justification is the question of why a spiritual voice is to be particularly valued within the Council. As Shell has argued, “[i]n principle a second chamber ought to provide for the mobilising into a legislature of people whose experience is different, decidedly different, from that which is normal in the first chamber”.<sup>713</sup> It may be that the process by which other members join the Council homogenises their perspectives, so that the addition of a professional cleric gives a valuable alternative view. Within the Council, as part of the process of debate, we would expect competition between differing views to enhance the legislative process. The difficulty with this argument is that the Bishop does not represent a very radical alternative from the Council as a whole – indeed, if he were the only practising Christian in Tynwald, his position might be attacked on just that basis. More radical alternatives could be provided by those whose life experiences, and values, might be expected to differ greatly from those of the other members of the Council – for instance assertive members of minority sexualities; or those who have rejected, or been excluded from, conventional ideas of employment; or those convicted of serious criminal offences. Each would seem able to contribute a more radically challenging perspective to the debates of the Council.

### **(b) Public benefit arguments.**

Moving from improved legislation, a number of arguments are based upon a broader benefit to Manx society or the Manx state.

Firstly, the role of the Bishop gives Tynwald a distinctive element, and so contributes to the distinctiveness of the Isle of Man. In particular, the role of the Bishop forms part of the traditional structures of the Isle of Man, representing a continuity of moral and spiritual tradition.<sup>714</sup> This is more than an argument *ad antiquitatem*, although this is the way it is sometimes presented by both supporters and opponents. Rather, it is recognised that the structures of the Isle of Man are unusual and worth preservation as part of a cultural heritage – a heritage which in part distinguishes the Isle of Man from neighbouring territories.

It is difficult to argue that the role and composition of the Council is not now distinctive. The colonial model of Governor-Council-Assembly, with a member of a State church playing a role in this tripartite structure, has declined across the former British Empire. A more difficult question is the extent to which the composition of the national legislature, as distinct from its decisions, should be used to preserve cultural heritage. Large elements of the distinctive composition of the Council were lost throughout the twentieth century, the damage to the Manx heritage being justified by other advantages – including the loss of disadvantages flowing directly from the composition of the Council.

Secondly, as we will see below, it can be argued that the place of the Bishop on the Council helps to secure the continued existence of the Diocese of Sodor and Man. As we will see below, this is primarily a community benefit argument. It can also be argued, however, that the existence of a Diocese encompassing, but limited, to the Isle of Man supports Manx autonomy. Taking the Manx Church to be a State

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<sup>713</sup> D. Shell, “The history of bicameralism” in N.D.J. Baldwin and D. Shell (eds.), Second Chambers, (London: Frank Cass, 2001) at 17.

<sup>714</sup> See also Bryce, *op.cit.*, at para. 26; cf. M. Russell and R. Hazell, Comments on the Wakeham Report, (London: Constitution Unit, 2000) at 17.

Church, its relationship with the Church of England may be significant in the relationship of the Manx and United Kingdom States. In particular, the current relationship may fairly be seen as one where the Bishop heads the Manx Church, but under the ultimate oversight of York. The parallels with the growth of Manx autonomy are clear, and can be seen across the debates.

To some extent, this argument depends upon the Manx Church occupying a special place in public life, so that its hierarchy is significant in a way that is not true for, say, Methodism. As we have seen, the Manx Church can fairly be seen as a State Church. It would, undoubtedly, be more difficult for the Manx Church to retain its separate identity if it were part of a single Diocese, merged with part of the United Kingdom. Once again, a more difficult question is whether this should be given sufficient weight to influence the composition of the national legislature.

Thirdly, the Bishop's place in Council is both a symbol of the Establishment of the Manx Church,<sup>715</sup> and one of the benefits which the Manx Church receives along with the burdens of Establishment. So, removal of the Bishop would be a symbolic severance of the Church and the State, while leaving the Manx Church encumbered without adjustment of the relationship more generally. This argument may, however, lose some power when the idea of Establishment is considered at more length. Establishment does not consist of a single keystone element, such as representation in the national legislature, but rather consists of a rich combination of laws touching on the position of the religious organisation. It is unhelpful to imagine that these laws developed as part of a single, coherent, policy vision. So, removal of the Bishop from Council would not necessarily signal disestablishment, rather than simply a change in Establishment; and such changes have been effected piecemeal before. In particular, in the Manx context, it is possible to identify the development of the Bishop's seat in the Council, which happened some considerable time after the Manx Church established its special relationship with the Manx State.

Fourthly, the place of the Bishop in the Council supports the Manx Church and, by doing so, encourages religious conformity and adherence to the State religion. This argument was put particularly strongly in the nineteenth century, but did not play a major role in denominational terms during the twentieth century, and has not appeared at all in the United Kingdom debate over the Lords Spiritual. With the Bishop emphasising his role as a Christian leader, however, it can be recast in terms of Christianity as a State religion. It will be recalled that at the end of the twentieth century Bishop Jones saw the Isle of Man as a Christian nation, as opposed to the multifaith United Kingdom.

The difficulty with this argument is that it presupposes that encouraging religious conformity remains an appropriate end for State policy. Within the context of a confessional state which to some extent tolerated private sects, as it tolerated the presence of non-nationals in the territory, this is not a problem. As we saw in relation to Bishop Jones' comments, however, it is open to question whether this is the true position of the Manx state. In particular, if Establishment does form part of a broader state policy encouraging the Manx population to adopt or adhere to religious conformity, then the obligations under the European Convention on Human Rights may be involved.

Fifthly, if a leader of a religious community is involved in the creation of laws by the national legislature, the members of that community may be more likely to comply with the laws of the State. This is not an argument that has been put forward

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<sup>715</sup> See also N. Smith, *op.cit.*, at para. 164.

in the debates, in part because when used to defend the status quo it could be seen as carrying an implicit threat. It has, however, been touched on by the broader commentary. In considering the role of second chambers generally, Shell considered that: “[a] chamber that represents varied interests, either explicitly and formally, or implicitly and informally, may have a vital role in mobilising support”.<sup>716</sup> Although this argument would seem to have strength in some contexts, given the position of the Manx Church, and Manx Christianity generally, it does not seem very powerful in the Manx context. Additionally, as Smith points out, to emphasise this as a justification for religious representation is not without danger. If the legislature has within it resources representing a particular religious or philosophical position, that legislature may prove confident enough to legislate for matters that would perhaps otherwise be seen as issues of individual conscience, with an adverse impact on individuals and on the distinction between law and morality.<sup>717</sup>

Similarly, and finally, it may be argued that the place of the Bishop gives a minority ethnicity a voice in the legislature that would be unjustly silenced by simple territorial or indirect election. This can also be seen as a benefit for that ethnic community, but is a public benefit because the State benefits from its legislature being justly composed. As we have seen, however, the Manx Church, and Manx Christianity more generally, is represented by a significant number of legislators who have been prepared to draw upon their religious identity, and teachings from their traditions, within debate.

### **(c) Community benefit arguments.**

A number of arguments are based upon benefit to the Manx Church, or to the Christian community in the Island more broadly.

Firstly, the Bishop is entitled, as a Baron of the Island, to sit in the Council. Recognising this entitlement protects his proprietorial, and feudal, rights. As we have seen, the basis for membership of the Council has never been based on the property rights of the members, but rather upon officers, and later others, being called to assist the Lord.

Secondly, the Bishop sits in the Council to represent the clergy of the Manx Church, who it will be recalled are unable to vote in elections to the Keys.<sup>718</sup> Thus, he provides a benefit to those disenfranchised clergy. It is not clear that the relationship of the Bishop to these clergy is similar to that of electors to members of the House of Keys; or that these clergy have a strong role in appointing the Bishop. In that sense, the role of the Bishop may be a poor compensation for exclusion from involvement with the Keys. In any case, these are a tiny proportion of the electorate, and it could be argued that a more proportionate response to this problem would be to allow them to vote in elections to the House of Keys.

Thirdly, the Bishop’s place in the Council gives the Manx Church, or Manx Christianity generally, a voice in the national legislature. As noted above, other members of Tynwald, in practice, can bring these voices into the debate. These voices do not, however, come from a religious leader speaking *ex officio*. In particular, we have seen how successive Bishops have taken their responsibility for representing the

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<sup>716</sup> D. Shell, “The history of bicameralism”, *op.cit.*, at 15. See also C. Smith, *op.cit.*, at 113.

<sup>717</sup> C. Smith, *op.cit.*.

<sup>718</sup> Due to changes in United Kingdom electoral law this is no longer relevant to the UK debate.

range of Christian opinion seriously. Coupled with his position in the Manx Church, this gives the Bishop a distinctive voice in the legislative chamber. Although these views may happen to be in the chamber in any case, if this is seen as a priority, it may be unwise to leave it to what Archer described as “random selection” – the presence for other reasons of members of the chamber able to contribute that voice.<sup>719</sup>

We have already discussed issues flowing from arguments based on the distinctiveness of the Bishop’s contribution. These are less powerful when we construct the voice as a benefit for the Manx Church and Manx Christianity, rather than the legislative process itself. To some extent if the Bishop is seen as a representative of Manx Christianity as a whole, then representing only this religious group is comparatively unproblematic – as we have discussed, non-Christian religious communities in the Island are very small. This leaves problems raised by the weak interdenominational nature of the Bishop’s representation however. If his place is justified as representing the broad Christian community, why is control of his appointment, and the power to dismiss, vested in one denomination? Although in the United Kingdom context the practical problems of extending religious representation led to the Government rejecting the proposal, a less ambitious extension of the appointment of a single religious representation to a body embracing Manx Christianity more broadly may be less impractical, especially considering the role that successive Bishops have already given to the Isle of Man Council of Churches.

Fourthly, the Bishops place in the legislature allows him to exercise oversight over legislation affecting the Manx Church. As a matter of legal theory, Tynwald can legislate concerning the affairs of any religious organisation – as we can see by a number of Acts of Tynwald. In practice, however, the relationship of such organisations to the State, coupled with their legal status, makes legislation on internal affairs unlikely. The position of the Manx Church, with an ecclesiastical law forming part of national law, is very different. We can see concerns over the need for oversight over legislation affecting the Manx Church from the eighteenth century on. The radical changes to the procedure for ecclesiastical legislation at the end of the twentieth century have, however, weakened the strength of this justification.

Fifthly, the place of the Bishop in the Council has contributed to the continued survival of the Diocese of Sodor and Man. The continued existence of the Diocese carries with it benefits for the Manx Church, in relation to autonomy and the number of clergy ministering to the Manx parishes. This has been a recurrent theme in the debates, and may have led to a position where the Diocese exists because the Bishop sits in Council, and the Bishop sits in Council because the Diocese exists. The loss of the Diocese has, however, been seen as a price worth paying for reform of the Council by some contributors to debates.

#### ***IV.4 Conclusions.***

Although this report is intended to contribute to the ongoing debate on the composition of the second chamber in the Manx Tynwald and the United Kingdom Parliament, we do not intend to conclude with a recommendation on the future of ecclesiastical representation in either chamber. Ultimately, within the very permissive framework of international law we have outlined, this is an issue for the representatives of the people of both territories – what form do they wish this key part of their polity to take? Nonetheless, a small number of key points can be drawn out from this study.

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<sup>719</sup> Archer, op.cit..

Firstly, if *ex officio* religious representation is desired, the current model is probably the simplest that can be envisaged. Although the choice between no representation and a system representing all shades of spiritual identity and religious opinion is too simplistic, extension of religious representation beyond a single, established, religious organisation with a developed hierarchy would be a complex task.

Secondly, religious representation *ex officio* is not the only way in which religious voices are heard in the chamber. As we have seen, not only are non-members of the Manx Church free to discuss their spiritual perspective in the chamber, but members of that Church can, and do, disagree with the Bishop over theological and moral issues. There is more to religious representation in the legislative process than *ex officio* representation.

Thirdly, the Bishop is a special member of the chamber. Whatever the basis for his original inclusion in the Council, today he sits as a representative of the Manx Church, and of Manx Christianity more generally. He is looked to as a specialist on ecclesiastical and moral issues, expected to eschew party loyalties, and perhaps allowed a little more latitude when engaging in theological modes of argumentation. This is important to consider when evaluating plans for mixed second chambers with different modes of entry for different members.

Fourthly, although the Bishop clearly does perform an interdenominational role, the evidence is against him performing an interreligious one. Although this may be more achievable by the Lords Spiritual, we remain sceptical as to whether it is possible for a religious professional of one tradition to fully represent the perspectives and needs of another. This problem becomes more serious the further apart the two traditions are in terms of practices and values. A Bishop may be committed enough, and to some extent knowledgeable enough, to representing Judaism, a monotheism perceived by Christians to have strong links with Christianity. The acid test is the quality of representation which would be received by Jains, Scientologists, Druids and – most difficult of all – Christian mythos Satanists.

Fifthly, there are few limits under the ECHR on the model for a second chamber each state chooses to adopt. Religious representation is neither forbidden nor mandatory for any religious community, and it appears likely that representation of the national church only will be permitted. The specific limit on gender of the representative is, however, more problematic. It is not impossible that the Manx Church may be required to choose between allowing a female Bishop; losing *ex officio* representation on the Council; or allowing itself to be represented by an office open to either gender.

Sixthly, there is no single justification for the place of the Bishop in Council which can be identified as the decisive one for the debate. It may be inappropriate, however, to rely upon each of these grounds in isolation. It may be that a number of justifications, none of them strong enough individually to justify his role, come together in the Bishop – and in the Bishop only – to do so. Evaluating the strength of this sort of melange will be a difficult process.

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