

Lay Presidency at the Holy Communion

(This report was received by the Synod of the Diocese of Sydney in October 1987.)

This "report" consists of three reports, which the Standing Committee has resolved be printed for the Synod.

- (a) Report of the Standing Committee's Legal Committee in 1987, including majority and minority reports.
- (b) Report of a Synod-committee in 1986.
- (c) Report of a Synod-committee in 1985.

Following the reception of the 1985 report, the Synod endorsed the principle of lay presidency and requested the Standing Committee to investigate ways the possible legal and other difficulties in enacting this principle could be overcome. The various reports show that there is a difference of opinion on this matter.

For and on behalf of the Standing Committee

W.G.S. GOTLEY
Diocesan Secretary

12 August 1987

Report of the Synod Committee

Re 37/83 "Towards A Theology of Ordination": Lay Presidency at the Holy Communion

Resolution 37/83 "Towards A Theology of Ordination"

1. "This Synod . . .
 - (e) requests the Standing Committee to set up a committee to explore the desirability and constitutional aspects of lay presidency at the Holy Communion."

Membership of the Committee Appointed by Standing Committee

2. The appointment of this Committee was deferred until the Diocesan Doctrine Commission had reported on "historical aspects of ordination . . ." arising from the report "Towards a Theology of Ordination" as requested in part (e) of resolution 37/83.

3. Upon receipt of that report, Standing Committee, at its meeting in August 1984, elected the following persons -

Bishop E. D. Cameron (Convenor)	Rev Dr. P. F. Jensen
Mr N. M. Cameron	Mr T. R. Smith
Canon J. C. Chapman	Mr Justice P. W. Young
Bishop R. H. Goodhew	

4. Bishop E. D. Cameron declined to accept the nomination. Bishop R. H. Goodhew was appointed Convenor and the Rev S. A. Horton was appointed to replace Bishop Cameron.

Desirability

5. Bearing in mind the preaching ministry of a large number of lay persons in our Diocese, the occasions where a clergyman can only be found with difficulty to take a Holy Communion service, and the important principle that word and sacrament should be united, the majority of the Committee has taken the view that lay presidency at Holy Communion is desirable under the following circumstances -

- (a) where the minister of the church is unable to conduct the Lord's Supper; or
- (b) where there is no minister of the church because of a vacancy in the cure; or
- (c) for institutions such as Deaconess House, by a suitable member of the church or institution.

6. A dissenting view was expressed, however, to the effect that there is insufficient need for this provision in the Diocese, and that a reformed view of word and sacrament does not of necessity require that those licensed to preach should also preside at the Lord's Supper.

Who Should Be Appointed

7. Persons to be appointed should be authorised by the Archbishop under the Deaconesses, Readers and Other Lay Persons Ordinance 1981, though this and other functions of the Archbishop under that Ordinance should be delegated to regional bishops. A person should not be given authority to preside at the Lord's Supper unless he or she is authorised to preach and vice versa.

Legal Matters

8. It could be argued that sections 3, 4 and 71(2) of the 1961 Constitution create impediments, but it is difficult to reconcile these arguments with the long-standing practice of authorising or permitting certain classes of lay persons to conduct public worship.

Trusts

9. It may be that the charitable trusts which govern the use of most of our churches presently require that the Holy Communion be celebrated only by episcopally ordained priests licensed by the bishop. If this is the case, an ordinance can be passed under section 32 of the Anglican Church of Australia Trust Property Act, 1917 to make the necessary adjustments.

The Nature of Clerical Presidency

10. For Anglicans, the rector has traditionally been the president of the congregation at church services and the chairman of congregational committee meetings.

11. Lay presidency should not supersede the traditional role of the rector.

Recommendations

12. The Committee recommends that alterations to the effect of the following be made to the Deaconesses, Readers and Other Lay Persons Ordinance 1981.

(a) Add at the end of clause 5 of the Ordinance:

"and may authorise any person whom he has authorised to deliver a sermon or sermons to preside at the Lord's Supper or Holy Communion -

(a) at the request of the minister thereof where the minister thereof is unable to preside; or

(b) at the request of the Archbishop where there is no minister; or

(c) with the approval of the Archbishop in a church to which no minister is ordinarily appointed."

(b) Add to clause 12 -

"The Archbishop may delegate any of his rights, powers and duties hereunder to any one or more of the assistant bishops."

13. These alterations do not sit well with the existing clause 5 of the Ordinance and will need to be revised.

14. The Committee discussed the Draft Report with the Archbishop who indicated that he will not give his assent to an Ordinance which sought to give effect to the proposals contained in the Report.

For and on behalf of the Committee

R. H. GOODHEW (Bishop)

Convenor

24 June 1985

Report of the Synod Committee

Lay Presidency At the Holy Communion

1. Introduction

1.1 In resolution 37/83 Synod inter alia requested Standing Committee to set up a committee to explore the desirability and constitutional aspects of lay presidency at the Holy Communion. That Committee recommended in effect that clause 5 of the Deaconesses, Readers and Other Lay Persons Ordinance 1981 (*The Inside Story* p. 173) be amended by empowering the Archbishop or an Assistant Bishop to authorise any person whom he has authorised to preach to preside at the Lord's Supper or Holy Communion.

1.2 This report was received by Synod in 1985 which resolved (18/85) that it -

"endorses the principle of lay presidency and requests the Standing Committee to investigate ways the possible legal and other difficulties in enacting this principle could be overcome, and to report to the next session of Synod."

1.3 The Standing Committee appointed the following committee to carry out the investigation required by resolution 18/85 and to report to the Standing Committee -

The Rev J. Baxter	Canon D. B. Knox
Dr A. M. Bryson	Mr K. Mason, Q.C.
The Rev P. J. Hughes	Archdeacon P. N. Oliver (Convenor)

The committee met six times.

2. Clarification of Issues Raised

2.1 *Meaning of "lay presidency"*

The term is not defined in Resolution 37/83 or in the Resolution which established this committee. However, it is reasonably clear that what is involved is the conduct of a Holy Communion service (cf. the expressions "take a Holy Communion service" and "conduct the Lord's Supper" in paragraph 5 and "preside at the Lord's Supper or Holy Communion" in paragraph 10 of the 1985 Report.) It is equally clear that a distinction is to be drawn between the position of the Rector as such who, as stated in paragraph 10 of the 1985 Report, "has been traditionally the president of the congregation at church services" and presiding at the Holy Communion service itself. On this basis the Rector would not be presiding at the Holy Communion if he were absent, or present as a member of the congregation.

2.2 *Form of service contemplated*

Although this is only implicit in the 1985 report and resolution 18/85, the committee has interpreted its mandate as confined to the legality of lay presidency for the orders of service for Holy Communion contained in the Book of Common Prayer (BCP) and An Australian Prayer Book (AAPB).

3. What Legal Difficulties are Presented by the Concept of "Lay Presidency" as Envisaged in the 1985 Report?

3.1 Consonant with Synod's prior resolutions on the topic, the committee accepts that there exist no doctrinal objections to lay presidency in the context contemplated by Synod. This context includes the authorisation by the bishop of suitable and duly prepared lay persons in situations where the regular ministry in the local congregation of an episcopally ordained priest is not available.

3.2 The reason for stressing this context is that we can see difficulties if lay presidency became the norm as there are some who would argue that it could alter the role of the priest whom they would see as a focus of leadership and unity.

3.3 The Deaconesses, Readers and Other Lay Persons Ordinance 1981 does not expressly prohibit the Archbishop from authorising a lay person to preside at the Holy Communion. It could, however, be argued that it prohibits by implication since it expressly deals with a number of functions excluding this role. In any event, the 1985 report makes plain an intention that, if lay presidency is to occur, it should be pursuant to authority granted under that Ordinance by the Archbishop or an Assistant Bishop and subject to such conditions as might be contained in that authority.

3.4 The legal question is: does the Diocesan Constitution - including the 1961 Constitution - preclude this Synod from passing an ordinance to permit lay persons presiding at the Lord's Supper?

3.5 The Synod's power to make ordinances is controlled by the Constitution Act 1902 and the Anglican Church of Australia Constitution Act 1961. The Constitution of the Anglican Church of Australia ("the 1961 Constitution") is a Schedule to the latter Act and it is in Section 3 and 4 of the 1961 Constitution that the germs of legal objections to the introduction of lay presidency potentially arise.

3.6 *1961 Constitution, Section 3*

The 1961 Constitution embodies a Fundamental Declaration that this Church will "preserve the three orders of bishops, priests and deacons in the sacred ministry". We do not think that there would be a threat to the concept of the three orders if the Church allowed lay presidency as contemplated.

3.7 The 1985 report makes plain the intention that lay presidency as presently contemplated would be used in limited situations -

- (a) where the minister of the church is unable to conduct the Lord's Supper; or
- (b) where there is no minister of the church because of a vacancy in the cure; or

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- (c) for institutions such as Deaconess House, by a suitable member of the church or institution"

(paragraph 5 of that report).

3.8 We do not think that lay presidency as contemplated threatens this aspect of church order which the Constitution deems "Fundamental".

3.9 1961 Constitution, Section 4

For relevant purposes this states that "This Church, being derived from the Church of England, retains and approves the . . . principles of the Church of England embodied in the Book of Common Prayer together with the form and Manner of Making Ordaining and Consecrating Bishops, Priests and Deacons . . . Provided, and it is hereby further declared, that the abovenamed Book of Common Prayer . . . be regarded as the authorised standard of worship . . . in this Church, and no alteration in or permitted variations from the Services . . . thereon contained shall contravene any principles of worship laid down in such standard."

3.10 The majority of the committee believes that lay presidency as contemplated does not contravene any "principle of worship" the Book of Common Prayer envisaged in Section 4 of the 1961 Constitution.

One member of the committee could not agree. He saw a diminishing area of leadership for the priest due to a confusion of roles. This, he felt, would profoundly affect both the "style" of worship (even if no "principle" was involved), and also the whole area of clergy recruitment and training. He felt the character of our church would be changed, and in his opinion, not for the better.

Another member disagrees on the basis that he believes that a legal objection may exist. It is clear that not every instruction in the rubric embodies a "principle of worship" laid down in the Book of Common Prayer. But the member derives a principle of priestly presidency (in the sense of a prohibition on the total absence of a priest from the service of Holy Communion) from -

- (a) the repeated reference to "the priest" throughout the rubrics;
- (b) the collocation of the Holy Communion Service in the Book of Common Prayer with the Ordinal;
- (c) the long tradition of priestly presidency before the Reformation and (if relevant) the factual background of events in the century preceding 1662; and
- (d) the absence of any statement suggesting any receptiveness of lay participation, let alone lay presidency.

If a "principle" means in this context "a general law or rule as a guide to action" (Shorter Oxford English Dictionary), then the dissenting member infers the existence of such a principle from the matters stated in (a) to (d).

24 July 1986

Standing Committee of Synod

Report of the Legal Committee Re Lay Presidency At the Holy Communion

Referral

1. On 18 August 1986, the Standing Committee received a report on lay presidency and asked the Legal Committee to report on the legal opinion in the report.
2. Copies of the report received by the Standing Committee in August 1986, and of a Synod-Committee report in 1985, are attached.

Details of Meetings

3. This matter was considered at a number of meetings, the last being on 15 May 1987 when the following members were present -

Mr N. M. Cameron (Chairman)

Mr R. Tong

Mr D. R. Lewarne

Mr Justice P. W. Young

Majority Opinion

4. The only possible objections to lay presidency at the Holy Communion on legal grounds appear to be (a) Section 3, (b) Section 4 and (c) Section 71(2) of the 1961 Constitution; or (d) the Law of Charitable Trusts.
5. It is significant that both Synod committees which have examined this issue have agreed that there is no problem in the constitutional provisions. We also agree.
6. In short, there can be no breach of Section 3 of the 1961 Constitution which preserves the orders of bishop, priest and deacon by giving the function which is presently exclusively carried out by one or more of those orders to a new order.
7. There is no principle of worship involved, nor any principle of doctrine, in having a lay president in the situations contemplated in both the 1985 and 1986 Reports to Synod, that is in situations where the rector (archdeacon or bishop) is obviously the president of the congregation, but the particular service, at the president's direction, is carried out by a lay person.
8. Section 71(2) of the 1961 Constitution does not create any additional problems.
9. If there is any additional problem with the Law of Charitable Trusts, as pointed out by the 1985 Synod Committee, an ordinance can be passed under Section 32 of the Anglican Church of Australia Trust Property Act 1971 to make the necessary adjustments.
10. Accordingly, a majority of the members of this Committee are of the view that there is no legal impediment to lay presidency as contemplated, and that the view of the 1985 committee and the majority of the 1986 Committee is correct in law.

Minority Opinion

11. A minority opinion from Canon Johnstone is appended.

Recommendation

12. That the report be received.

For and on behalf of the Legal Committee

N. M. CAMERON
Chairman

15 May 1987

Minority Opinion

1. The Preface to the Ordinal in the Book of Common Prayer, 1662, states, inter alia;
"That from the Apostles time, there have been these *Orders* of Ministeries in Christs' Church; Bishops, Priests, and Deacons. Which *Offices* were evermore had in such reverend estimation, that no man might presume to execute any of them, except he were called, tried, examined and known to have such qualities as are requisite for the same; and also by publique prayer with imposition of hands, were approved, and admitted thereunto by lawful authority. And therefore to the intent that these *orders* may be continued, and reverently used, and esteemed in the Church of England; No man shall be accounted or taken to be a lawful Bishop, Priest, or Deacon in the Church of England, or suffered to execute any of the said *Functions*, except he be called, tryed, examined, and admitted thereunto, according to the Form hereafter following, or hath had formerly Episcopal Consecration or Ordination."
2. The 1662 Preface differed from that in the 1552 Book, which was the same as that in the 1549 Book. I do not have access here to the Prayer Books of 1559 and 1604, but understand that it is not likely that changes to the Preface to the Ordinal were made in 1662.
3. The parts of the Preface in the 1552 Book corresponding to the quote from the 1662 Book given above read as follows -
". . . that from the Apostles tyme there hath bene these *ordres* of Ministers in Christ's Church: Bishoppes, Priestes, and Deacons which *Offices* were evermore had in such reverent estimacion, that no man by his own private auctoritie might presume to execute any of them, except he were first called, tried, examined, and knowen to have such qualities as were requisite for the same: And also, by publique prayer, with imposition of handes, approved and

admitted thereunto. And therefore, to the extent these *orders* shoulde bee continued, and reverentlye used, and esteemed, in this Church of England; it is requysite, that no man (not beyng at thys presente Bishoppe, Priest, nor Deacon) shall execute anye of them, exepte he be called, tryed, examined, and admitted, accordynge to the forme hereafter folowinge."

4. In the 1662 preface the words "execute any of the said Functions" were substituted for the words "execute anye of them" in the 1552 Book.
5. In the older Books the three "Orders" were also described as "offices". In 1662 it was considered important to use the word "Functions" in the prohibition and change was made accordingly.
6. This prohibition was strongly enforced in the 1662 Act of Uniformity (14 Car.2,c.4) section 10. See also Halsbury's "Laws of England", Second Edition, Vol. II at 1479, p. 811 and footnote. That section provided -
"And it be further enacted by the Authority aforesaid, That no Person whatsoever shall thenceforth be capable to be admitted to any Parsonage, Vicarage, Benefice or other Ecclesiastical Promotion or Dignity whatsoever, nor shall presume to consecrate and administer the Holy Sacrament of the Lord's Supper, before such Time as he shall be ordained Priest according to the Form and Manner in and by the said Book prescribed, unless he have formerly been made Priest by Episcopal Ordination; upon Pain to forfeit . . . (etc)."
7. The 1662 Act of Uniformity may not have been still in force in the Church in Australia when the new Constitution was passed. Even if it were there would be no bar to the General Synod passing a Canon repealing or superseding it. Possibly a diocesan Synod could do so by an Ordinance. But that is not the matter under consideration here. The importance of section 10 of that Act for our present consideration is that it provides strong evidence of the establishment of a principle of worship in the Book of Common Prayer of 1662. The changes deliberately made in the Preface to the Ordinal in the 1662 Book, so strongly enforced by the Act of Uniformity to which that Book was attached, established a "principle of worship" which was "laid down" in the Book of Common Prayer, that the Holy Communion cannot be consecrated and administered by a person who has not been episcopally ordained priest.
8. It can be argued that under the 1549 and 1552 Books the prohibition was not so strict. Cranmer in his day, and possibly others of note, we are told, allowed that it was permissible for clergy with non-episcopal ordination to celebrate Holy Communion. But the 1662 prohibition not only prohibited a man from exercising the "order" or "office" of a Priest: it also prohibited such a man from exercising the "Functions" of a Priest, the enforcing Act explicitly applying that prohibition to the consecrating and administering of the Holy Communion. It also imposed a strong penalty for transgressing it.
9. Section 4 in the Ruling Principles of the Constitution of the Anglican Church of Australia empowers this Church to "order its forms of worship", but that is qualified by a proviso which firstly declares "that the abovenamed Book of Common Prayer, together with the Thirty-nine Articles, be regarded as the authorised standard of worship and doctrine in this Church", and then goes on to provide that "no alteration in or permitted variations from the Services and Articles therein contained shall contravene any principle of doctrine or worship laid down in such standard".
10. For the reasons given above, it is not competent for this Church to authorise lay presidency at Holy Communion. To consecrate and administer the Holy Communion is a function of a Priest having episcopal ordination. This does not necessarily exclude others from assisting him. "The Form and Manner of Making of Deacons" contained in the same Book of Common Prayer attached to the Act of Uniformity of 1662 stated that "It appertaineth to the office of a Deacon . . . to assist the Priest in Divine Service, and specially when he ministereth the Holy Communion", and to help him "in distribution thereof". Again, the Priest is clearly seen as the person in charge of the conduct of that Service. (A Deacon is also authorised in the Ordinal to Baptise infants in the absence of the Priest.) But a Deacon is excluded from "consecrating" and "administering" the Holy Communion because he has not been ordained a Priest.
11. Although the words "Priest" and "Minister" are apparently used interchangeably in a number of rubrics in the Book of Common Prayer, it seems that there is a more strict use of the word "Priest" in the rubrics of the Holy Communion Service. Assuming that this is so, and allowing for the fact that a Deacon is authorised in the Ordinal to assist the Priest "when he (the Priest) ministereth the Holy Communion, and to help him in the distribution thereof", and considering the particular rubrics stating that the Priest shall do specific acts, there remain some things which some other minister, including a Deacon or another Priest, may clearly do. For example, reading the Epistle or Gospel (see also the Ordering of Deacons, as to the Gospel), leading in the Confession, Preaching (if he be admitted thereunto, in the case of a Deacon), receiving the Alms etc, and helping in the distribution of the elements.

J. R. L. JOHNSTONE

4 March 1987