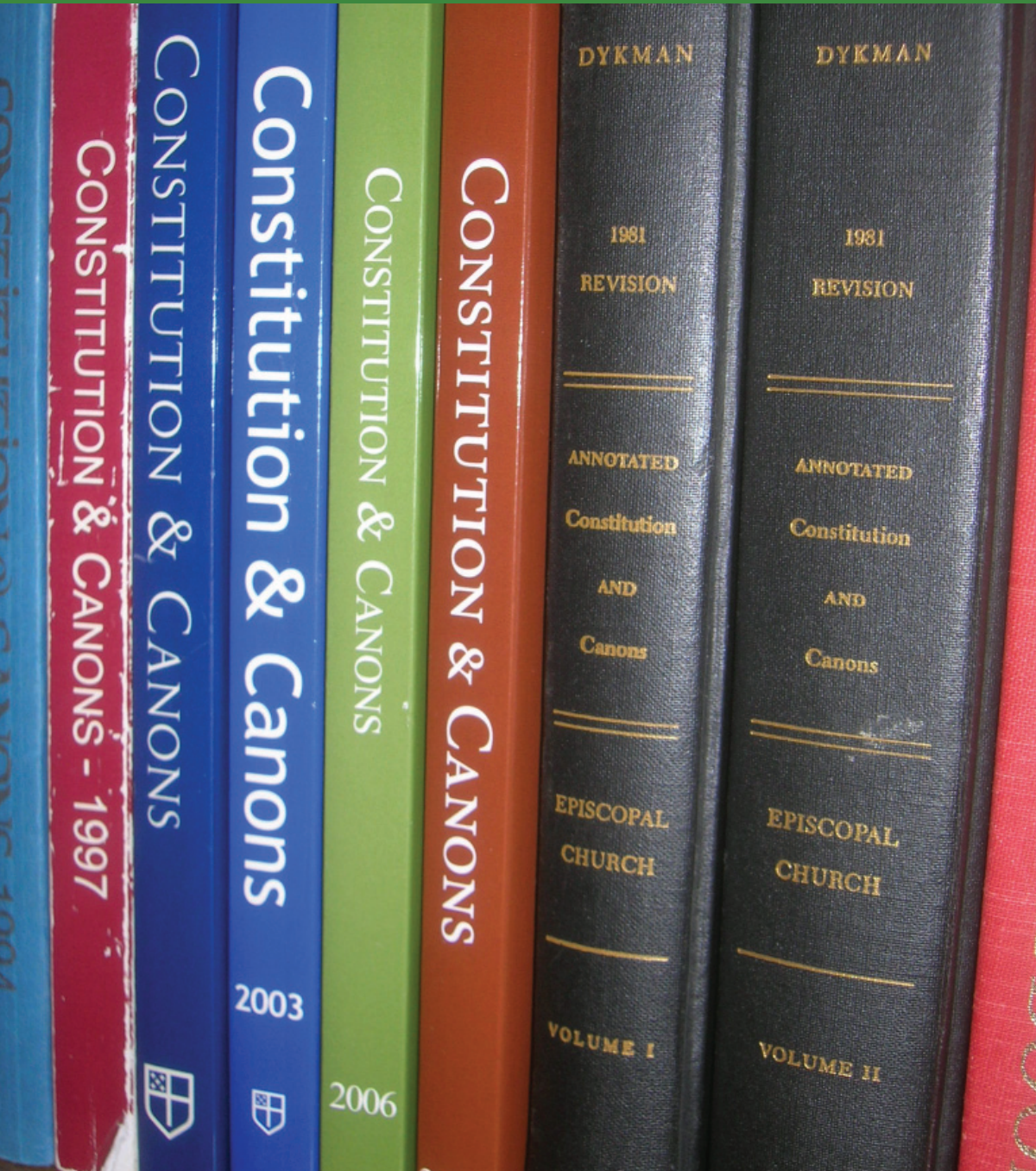




# THE JOURNAL OF EPISCOPAL CHURCH CANON LAW

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## Editor's Preface

This is the first issue of the *Journal of Episcopal Church Canon Law*. The journal is intended to be a resource for all with interest in canon law and particularly for those with concern for the canonical tradition of The Episcopal Church. It is hoped that this will include the chancellors of The Episcopal Church and its several dioceses, the participants in diocesan conventions and the General Convention (who enact canon laws for The Episcopal Church), canon lawyers, and those who like the editor have responsibility for teaching canon law to Episcopal seminarians. It is further hoped that canonists and scholars from other parts of the Anglican Communion and from other religious traditions will find the material of interest.

*The Journal of Episcopal Church Canon Law* is a refereed journal, published online twice a year in February and July. The Virginia Theological Seminary has graciously agreed to host the journal on its website, but the publication is editorially independent and does not purport to represent the opinions and ideas of anyone beyond its editor and other contributors.

The editor welcomes comments, suggestion, and potential manuscripts. The latter should be submitted as email attachments in Microsoft Word. The editor can be contacted at [rprichard@vts.edu](mailto:rprichard@vts.edu).

Robert W. Prichard  
Editor



The Power to Appoint Committee Membership:  
An unlikely by-product of  
The Call to the Mutual Responsibility and  
Interdependence of the Body of Christ

Edgar G. Taylor<sup>1</sup>

Title One of the current Canons of The Episcopal Church deals with the organization and administration of the General Convention, the Presiding Bishop, the Domestic and Foreign Missionary Society, and multiple other aspects of the way that the church is administered and structured. By and large, the nitty-gritty work involved in the creation of the resolutions and amendments that are considered at each convention for approval is done by commissions and committees working between the conventions to research the relevant information, consult with experts as needed, and hammer out the recommendation(s) the commissions and committees feels are prudent for addressing whatever task(s) they have been assigned. This is standard operating procedure in most churches in the Anglican Communion.<sup>2</sup>

The membership of these working bodies is therefore crucial in determining not just the direction such deliberations pursue but also in defining which recommendations make it to a vote and which are never considered by the convention at large. Yet the determination of this membership is not something that is widely shared; indeed, by canon and rules of order, this determination rests solely in the hands of two people: the Presiding Bishop and the President of the House of Deputies. This was not so from the beginning of the General Convention

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<sup>1</sup> Edgar G. (Gary) Taylor is currently a rising senior in the Master of Divinity program at the Virginia Theological Seminary. From 1991 to 2008 he was a faculty member and sometime assistant headmaster of the Wooster School in Danbury, Connecticut. [Editor's note.]

<sup>2</sup> Norman Doe, *Canon Law in the Anglican Communion, A Worldwide Perspective* (Oxford: Clarendon Press, 1998), 57.

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through 1964.<sup>3</sup> It is not reflected in the canons of the Church of England, Scotland, Wales, Ireland, or India as discussed below. The story of how this concentration of power in the hands of only two people came to be specified in canon law is obscured by the circumstances of the time and of the groups that recommended the new system, but it proves instructive about the workings of a political entity as large and complex as the General Convention of the Episcopal Church.

1963 was an eventful and tumultuous year in the life of the country and in the world. The Rev. Dr. Martin Luther King delivered his famous "I Have a Dream" speech on August 28, 1963, from the steps of the Lincoln Memorial during the March

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<sup>3</sup>The earliest General Conventions established committees by the adoption of resolutions, which generally named the committee members without identifying the manner in which they were selected. In 1820, however, the House of Deputies adopted a new rule of order specifying that "All Committees be appointed by the President, *unless otherwise ordered.*" See *Journals of the General Conventions of the Protestant Episcopal Church in the United States of America from A.D. 1785 to A.D. 1853, Inclusive*, ed. Francis L. Hawks and William Stevens Perry, 3 vols. (Philadelphia: Joseph W. Raynor, 1861), 2:121. [Emphasis added.]

The smaller and arguably more collegial House of Bishops continued the practice of selecting committee members by the adoption of resolutions for a longer period of time. In 1844, however, the bishops adopted a resolution presented by Whittingham of Maryland asking that the Presiding Bishop appoint the members of 7 committees in order for "the better dispatch of business." Three years later, however, the bishops made it clear that there were to be exceptions to appointment by the presiding bishop. Bishops voted that members were to be selected by ballot for a committee dealing with the suspended bishop of New York. In 1859, however, the bishops adopted a set of rules of order with language parallel to that in the House of Deputies. Committees were to be appointed "by the President *unless otherwise ordered.*" See *Journal of the General Convention (1844)*, 121; *Journal of the General Convention (1847)*, 125; and *Journal of the General Convention (1859)*, 154. [Emphasis added.]

Even after the adoption of these parallel provisions, the members of the two houses were aware that they had the ability to otherwise order the manner of committee selection. In 1871, for example, the Deputies adopted a resolution requesting the president to make appointments, a resolution that could be read as a subtle reminder that it was in their power to make alternative arrangements. See *Debates of the House of Deputies in the General Convention of the Protestant Episcopal Church in the United States of American* (Hartford: The Church Press, 1871), 10.

The allowance to otherwise order the manner of committee selection remained in the Rules of Order of both houses through 1964. See *Journal of General Convention (1964)*, 1014, 1033.



on Washington for Jobs and Freedom. President John F. Kennedy was assassinated on Friday, November 22. The Vietnam War had been going on since 1959 and in November 1963 South Vietnam's President, Ngo Dinh Diem, was overthrown and executed, with, many believe, the support of the CIA. Public school-sponsored prayer and devotional Bible reading was declared unconstitutional by the Supreme Court in *District of Abington Township. v. Schempp* which was argued on February 27–28 and decided on June 17, 1963.<sup>4</sup>

The bishops of the Roman Catholic Church assembled in the fall of 1963 in the second of four sessions of the Second Vatican Council (1962-65). Pope Paul VI, who was elected that year to replace Pope John XXIII, delivered an opening address on September 29, 1963 in which he set out four purposes for the council that would have important repercussions for the work of the Episcopal Church about which we are concerned here:

- to more fully define the nature of the church and the role of the bishop;
- to renew the church;
- to restore unity among all Christians, including seeking pardon for Catholic contributions to separation;
- and to start a dialogue with the contemporary world.<sup>5</sup>

The year in the Anglican Communion was highlighted by the Pan Anglican Congress in August, 1963 in Toronto, Canada. The major outcome of the Congress and the related gatherings that met immediately before it was the endorsement of what came to be called the "Mutual Responsibility and Interdependence in

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<sup>4</sup> U.S. Supreme Court. "School District of Abington Township v. Schempp," Find Law, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=364&invol=298>, accessed May 5, 2009.

<sup>5</sup> II Vatican Council; "Decree *Ad Gentes* on the Mission Activity of The Church," and "Decree on Ecumenism, *Unitatis Redintegratio*," [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/](http://www.vatican.va/archive/hist_councils/ii_vatican_council/) accessed May 5, 2009.

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The Body of Christ” manifesto.<sup>6</sup> This thesis focused on three central statements:

- the church's mission is to respond to the living God;
- we are united in Christ;
- it is time to find a new level of expression and corporate obedience.<sup>7</sup>

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<sup>6</sup> The document titled “Mutual Responsibility and Interdependence in The Body of Christ” (The MRI document) was drafted in August of 1963 immediately before the gathering of the Anglican Congress and not by the Congress itself. While many closely associate the Congress with the document it is not entirely clear whether the Congress adopted the document in any official manner.

Historian John Booty suggested in his biography of Bishop Stephen F. Bayne, Jr. (the then executive officer of the Anglican Communion) that the initial ideas for the MRI document came from a meeting of some fifty Anglican missionary society executives and supporters. Bayne participated in the discussion and championed some of the ideas that the final MRI document would contain, but he denied that he himself was the author. Bayne and others, however, carried that missionary executives’ “new understanding of brotherly, mutual relationship” to the bishops and primates on the Advisory Council on Missionary Strategy, which met in the week before the Anglican Congress. The members of the council worked with some of the missionary executives who served as advisers, producing several drafts and a final form of the MRI document. The Lambeth Consultative Body, a precursor to current the Anglicans Primate’s Meeting, met in the days between the Advisory Council and the Anglican Congress. It either adopted the MRI document or simply agreed to send it to the Anglican Congress. See John Booty, *An American Apostle: the Life of Stephen Fielding Bayne, Jr.* (Valley Forge: Trinity Press International, 1997), 112-15.

The Archbishop of York, who was a member of both Advisory Council on Missionary Strategy and the Lambeth Consultative Body, either “presented” or “reported” the MRI document to the Anglican Congress, which either “received” the report or took on action because it “wasn’t a legislative body and wasn’t being asked to review or adopt the” document. The account of the Congress by the Primate’s Committee on the Church’s World Mission of the Anglican Church of Canada favored the language of presentation and reception, though it did note that no action of the Congress could be binding on the provinces of the Anglican Communion without their own independent action. Bishop Bayne took the more guarded position that the MRI document was only reported since the Anglican Congress. See: Primate’s Committee on the Church’s World Mission, The Anglican Church of Canada, *The Parish . . . A Powerhouse for World Mission, a Parish Study Guide* (Canada: A.B.C., n.d.), 16-17; and Stephen F. Bayne, Jr., Bayne, *Mutual Responsibility and Interdependence in the Body of Christ with related Background Documents* (New York: Seabury Press, 1963), 9-13.

<sup>7</sup> Donald S. Armentrout, and Robert B. Slocum, *An Episcopal Dictionary of the Church; A User-Friendly Reference for Episcopalians,*

The authors felt that their call was radical and nothing less than "asking (for) the rebirth of the Anglican Communion."<sup>8</sup>

The parallels with the Vatican II documents (which actually were published the following month) are striking. Both organizations, the Anglicans and the Catholics, in this period of international upheaval, felt that their church had to be renewed and strengthened, both motivationally and structurally, to better fulfill Christ's commission. One report to the 1967 General Convention of the Episcopal Church summarized this conviction well:

The critical problems that beset civilization everywhere are rapidly approaching the point where they will become totally insoluble—unless there is reference to the one, veritable Truth of all time, Jesus Christ Himself. The Church, therefore, as the champion of His Gospel, will be forced into a role of increasing relevance in earthly concerns... All of this, of course is predicated upon the willingness and ability of the Church to reform itself, for in the present divided state this bright future is not foretold. The time is urgent. The woods are on fire. The trees are burning all around.<sup>9</sup>

This statement was the conclusion of the extraordinary report of the "Mutual Responsibility Commission," a 32-page report culminating in 24 proposed amendments and resolutions on matters ranging from how the Presiding Bishop is to be elected to a Partnership Plan of Voluntary Stewardship to a call for a continuation of the convention, after a recess, to 1969.

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[http://www.episcopalchurch.org/19625\\_14839\\_ENG\\_HTML.htm](http://www.episcopalchurch.org/19625_14839_ENG_HTML.htm), accessed May 11, 2009.

<sup>8</sup> Armentrout and Slocum, *Episcopal Dictionary*.

<sup>9</sup> "Report of the Mutual Responsibility Commission," *Journal of the General Convention* (1967), appendix 25, page 22.

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Among its many proposed resolutions, the Commission's third proposal was that an entirely new section be added to Canon One after the existing Section One and pushing the old Section Two back to become Section Three. The proposed Section Two contained five subsections; the first two (a and b) established that the General Convention can create Joint Committees and Commissions for matters requiring interim consideration and comprised of members drawn from the two Houses (in the case of Committees) or from any layman or clergyman (in the case of Commissions).<sup>10</sup> The third subsection (c) read:

The Presiding Bishop shall appoint the episcopal members, and the President of the House of Deputies the lay and clerical members, of such Joint Committees and Joint Commissions as soon as practicable after the General Convention; one member of each Joint Commission to be appointed from the membership of the Executive Council to serve as liaison therewith.<sup>11</sup>

This subsection has remained largely unchanged since its ratification by the House of Deputies on the fifth day of the 1967 convention as Resolution HD 49 and approval two days later by the House of Bishops.<sup>12</sup> In 1979, the references to the appointment of *committees* were removed from the canon and restored to the Rules of Order, and the clause after the semicolon (concerning commission liaisons) was moved down to become a new sub-section (d) as the entire section expanded.<sup>13</sup> In 1985

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<sup>10</sup> Edwin A. White and Jackson A. Dykman, *Annotated Constitutions and Canons for the Government of the Episcopal Church adopted in General Conventions 1789-1979*, 2 vols. (New York: Seabury Press, 1981), 1:189.

<sup>11</sup> "Report by the Mutual Responsibility Commission," *Journal of the General Convention* (1967), appendix 25, page.25.

<sup>12</sup> *Journal of the General Convention* (1967), 315-16.

<sup>13</sup> Although the provisions for committees (bodies made up entirely of members of the General Convention) were moved from the canons to the Rules of Order in 1979, the earlier provisions that the houses of convention might otherwise order

and some details were added to (c) to articulate that vacancies in commissions were to be filled by the Presiding Bishop, which was again augmented in 1991 to elucidate how this would be handled in the case of a change in Presiding-Bishop. But the essential power to appoint members remains to this day in the hands of the Presiding Bishop and the President of the House of Deputies.

The other approved subsections of Canon One, Section Two have changed substantially since 1967, with the inclusion of subsection (f) in 1970 establishing the first of several canonically identified Commissions (the Standing Committee on Structures of the Church, see below), followed in 1976 by the addition of four additional commissions or committees. In 1979 Section Two became essentially what it is today, with subsections (h) through (m) defining the ways the commissions are to be run, are to communicate with the wider church, and are to be financed, and subsection (n) describing the then (1979) 8 commissions (now, 2009, 14 commissions) so established. Yet through all this expansion and change, the authority of the Presiding Bishop and the President of the House of Deputies to determine membership has remained undiminished.

Although the resolution was recommended to the House of Deputies by Joseph Irion Worsham from the Committee on Structure and endorsed by the Committee on Canons, it at first seems odd that such resolution was actually proposed by the "Mutual Responsibility Commission" born from the ideas of that Pan Anglican Congress meeting in Toronto. When first established in the 1964 Convention, the Commission was charged with "stimulating, supporting, and coordinating responsibility for the implementation, at all levels of the Church, of the program set forth in the document entitled 'Mutual Responsibility and Interdependence of the Body of Christ,'" which came to be known as MRI.<sup>14</sup> Most understood this

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the manner of selection of committee members were not restored. See Alexander H. Webb II's article in this same issue for a discussion of the differences between committees and commissions. [Editor's note.]

<sup>14</sup> "Report of the Presiding Bishop's Committee on Mutual Responsibility to the General Convention," *Journal of the General Convention* (1964), 727.

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document as a call to improved missionary relationships with recently independent colonies, relationships based more on mutual respect and cooperation than on charity to the less fortunate.

But, in fact, the mandate of the Mutual Responsibility Commission was enormously broad. Before the Commission came to be a Joint Commission of the General Convention in 1967, the Presiding Bishop of the time, the Rt. Rev. John Elbridge Hines had appointed a Committee on Mutual Responsibility to “consider the summons to Mutual Responsibility and Interdependence in the Body of Christ issued to every Church in the Anglican Communion by the Primates and Metropolitans” from the Pan Anglican Conference.<sup>15</sup> This committee understood its call to be for a “sweeping renewal and re-organization of the life and work of the Church,” almost identical wording as used by Pope Paul VI in his opening address to Second Period of Vatican II.<sup>16</sup> As such, the Committee identified several broad areas that needed work and proposed a resolution to the 1967 General Convention for the establishment of the Mutual Responsibility Commission aimed at addressing the MRI document as well as a resolution that “the Church undertake, without delay, that evaluation and reformation of our corporate life, our priorities, and our responses to Mission, which is called for by the leaders of the Anglican Communion.”<sup>17</sup>

In its lengthy report at the Special Convention of 1969 the Commission asserted its responsibility to address a wide variety of issues. The report asserted, “The charge to the Mutual Responsibility Commission made by the 1964 General Convention was of an unprecedented scope. It included, as someone said, virtually everything comprehended in the Summary of the Law.”<sup>18</sup> In particular the Commission, in its own words, “oriented its life” toward the Five Points of Section

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<sup>15</sup> “Report of the Presiding Bishop’s Committee,” *Journal* (1964), 722.

<sup>16</sup> “Report of the Presiding Bishop’s Committee,” *Journal* (1964), 722.

<sup>17</sup> “Report of the Presiding Bishop’s Committee,” *Journal* (1964), 726.

<sup>18</sup> “Report of the Mutual Responsibility Commission.” *Journal* (1967), appendix 25, page 2.

III of the MRI, which included an immediate commitment to increase support of mission, to seek of ways to receive from other Churches and cultures, to improving communication, and to “begin at once a radical study of our obedience, our structure, our theology, and our priorities.”<sup>19</sup> This last element (which was actually point two of the Five Points) was taken by the Commission as impetus to start with the most fundamental structures of the operation of the Church. The report asserts,

Most important of all, there is no other group that has been directly working on this particular aspect of structure—the matter of the relationships among the three principal centers of leadership in the national Church. A definition of our mandate is quite simple: the General Convention directed the Mutual Responsibility Commission to “begin at once a study of structure” and the Presiding Bishop defined the precise area of his deepest structural concerns.<sup>20</sup>

This is striking on two levels. First, nowhere in the initial charge of the committee is the word “structure” mentioned, except as one quarter of one of the Five Points of the MRI (with “obedience”, “theology” and “priorities” in Point two). Second, the referenced “areas of deepest structural concerns” of the Presiding Bishop are not identified. Any connection is purely conjecture.

The Commission itself defined its mandate in the midst of its deliberations, adopting on May 18, 1966 one of their precise assignments to “identify ... how the structures that now do the central work of the Church would need to be changed.”<sup>21</sup> In

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<sup>19</sup> “Report of the Mutual Responsibility Commission.” *Journal* (1967), appendix 25, page 2.

<sup>20</sup> “Report of the Mutual Responsibility Commission.” *Journal* (1967), appendix 25, page 4.

<sup>21</sup> “Report of the Mutual Responsibility Commission.” *Journal* (1967), appendix 25, page 5.

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particular, the Commission made extensive proposals about the election and roles of the Presiding Bishop, the Executive Council, and the General Convention, and asserted that the redesign of the interrelation and communication between these bodies was so crucial that the Convention should not adjourn as planned but rather recess and resume its session in the summer of 1969, writing,

The MRI document was a “declaration of God’s judgment upon our insularity, complacency, and defective obedience to mission.” There can be no complete answer to this indictment until our antiquated structures are reformed. The Commission believes that the Church must assemble in Convention for this purpose alone.<sup>22</sup>

This proposal was partially adopted; a Special General Convention II was held in 1969, although not purely for the purpose of reforming these structures. Indeed, most Episcopalians today remember the 1969 Convention primarily for the debate over reparations and the General Convention Special Program, no longer recalling the organizational issues that led the MRI to call for the special session. Yet this is further startling testimony to the power that was invested—or perhaps assumed—by a Commission originally launched by the Presiding Bishop himself in response to a impassioned but undirected bemoaning of the state of mission in the Anglican churches in general, interpreted by the Commission to be a call to a fundamental reassessment of everything in the Church: “Taking the five points literally, there was virtually no area of our Church’s life where the Commission was estopped [sic] from entering.”<sup>23</sup>

The assigning of all power to appoint membership within the Committees and Commissions to the Presiding

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<sup>22</sup> “Report of the Mutual Responsibility Commission.” *Journal* (1967), appendix 25, page 11.

<sup>23</sup> “Report of the Mutual Responsibility Commission.” *Journal* (1967), appendix 25, page 17.



Bishop and the President of the House of Deputies proposed by the Mutual Responsibility Committee and approved in 1967 was not, as has been noted, the Episcopal practice prior to that time. It is not found in the canons of England, Scotland, Wales, Ireland, or India. Canon One, Part Three of the Constitution of the Church of Ireland includes section 32 which assigns that power to the General Synod.<sup>24</sup> The Law of the Church in Wales attests that “The Governing Body may appoint committees of its members as it sees fit.”<sup>25</sup> In the Scottish Episcopal Church Code of Canons, Canon 52, section 23 asserts, “The General Synod shall appoint with such duties as it sees fit ... committees which shall include persons with expert knowledge.”<sup>26</sup> The Constitution, Canons, and Rules of the Church of India, Pakistan, Burma, and Ceylon include Chapter 33, canon 1 and 2: “The General Council at each ordinary session ... may appoint any Committee or Committees of the council under any name that may seem desirable to deal with any business that the Council may commit to it or them” including, if necessary, “fill[ing] up any vacancies in any of the appointments named in Canon 1.”<sup>27</sup> The Canons of the Church of England include no reference to the method used for appointment to committees.<sup>28</sup> Assigning the appointment of committee members in the Canons to the Presiding Bishop and the president of the House of Deputies is all but unknown in Anglicanism outside of the American church.<sup>29</sup>

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<sup>24</sup> *The Constitution of the Church of Ireland* (1988). 1.6.

<sup>25</sup> Norman Doe, *The Law of the Church in Wales* (Cardiff: University of Wales Press, 2002), 50.

<sup>26</sup> *Code of Canons and Digest of Resolutions of the General Synod of the Scottish Episcopal Church*. (2008), 8.

<sup>27</sup> *The Constitution, Canons, and Rules of the Church of India, Pakistan, Burma, and Ceylon*, 1962.

<sup>28</sup> *The Canons of the Church of England*, 6th Edition. (London: Church House Publishing, 2000).

<sup>29</sup> While the formal practice of the American church differs from other Anglican provinces, it is not without precedent in parliamentary procedure. After outlining several other methods of appointing members to committees, *Robert's Rules of Order* asserts that, in the absence of special conditions appointment of committees (defined in the *Rules* as the selecting of persons to serve on the committees) by the chair or by the regular presiding officer is “usually the best

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This most unusual arrangement originally stemmed from the recommendation of the Mutual Responsibility Commission. It is striking that such an important assigning of power took place in the flurry of the issues of the day, a possibly unnoticed by-product of an enormous, although short-lived effort on the part of the church to respond to the call to reform and recreate itself in ways that could better serve the purposes of the Church.

Despite the authority given them to act unilaterally, the Presiding Bishop and the President of the House of Deputies consult with others before making appointments. In the last several decades it has become common for potential appointees to fill in self nomination forms, which can then be considered by the chairs of the two houses.<sup>30</sup> The practice of further consultation varies from person to person. Edmund Browning (Presiding Bishop, 1986-97) consulted staff members and invited suggestions for nominations from members of the House of Bishops at large.<sup>31</sup> Frank Griswold (Presiding Bishop, 1998-2006) relied heavily on input and research from Canon and coordinating his appointments with the President and Vice President of the House of Deputies.<sup>32</sup> Katharine Jefferts Schori confers with her Canon, with other staff members, and with the President of the House of Deputies.<sup>33</sup>

Presidents of the House of Deputies confer with staff and often rely upon their Councils of Advice. This was the case with Pamela Chinnis (President of the House of Deputies, 1991-2000) and George Werner (President of the House of Deputies, 2000-2006).<sup>34</sup> The Council is comprised of at least 7 appointed members and “meets throughout the triennium in order to provide feedback and consultation regarding the mission and

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method in large assemblies.” See Henry M. Roberts, *Robert's Rules of Order*, 10th edition (Cambridge, Massachusetts: Perseus, 2000).

<sup>30</sup> George Werner, e-mail message to editor, Wednesday, May 12, 2010.

<sup>31</sup> Richard Chang, e-mail to the editor, June 25, 2010.

<sup>32</sup> Carlson Gerdau, telephone conversation with editor, June 29, 2010.

<sup>33</sup> Charles Robertson, e-mail to editor, June 29, 2010.

<sup>34</sup> George Werner, e-mail message to editor, Wednesday, May 12, 2010.

ministry of the President of the House of Deputies.”<sup>35</sup> The council is particularly useful in making legislative appointments because of its appointment cycle; by the time that selections for legislative committee of convention are made, the members of the council have been working together for 2½ years. Relying on councils of advice for assistance in choosing members of committees, commission, agencies, and boards that meet between sessions of General Convention is more difficult because the Council of Advice is among those bodies that are newly appointed following convention. The current President of the House of Deputies, Bonnie Anderson, D. D. has made a concerted effort to constitute her Council of Advice early enough in the post-convention appointment process to be able to received advice on membership of the various bodies that meet between the sessions of General Convention.<sup>36</sup>

The goals of consultations are to identify what skills and qualities are needed on the various committees as a result of turnover and changing demands on the committee and to widen the pool of those who might identify qualified candidates. This is particularly useful when the President wishes to ensure a balanced cross-section of points-of-view in terms of race, gender, provincial-diocesan representation, and political identification (liberal-progressive or conservative-orthodox).

Interestingly, a recent challenge to the method of appointment has not concerned the actions of the presiding officer of either of the houses of General Convention, but deals with concerns about the theological balance of a subcommittee created by a House of Bishops committee. In 2009 the House of Bishops' Theology Committee created a panel to write two major papers on "Same Sex Relationships in the Life of the Church," a

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<sup>35</sup> Canon I.1.1(b) of the Canons of the Episcopal Church reads "...The President [of the House of Deputies] shall be authorized to appoint an Advisory Council for consultation and advice in the performance of the duties of the office..." White and Dykman, *Annotated Constitution and Canons*, 1:170 dates the reference to the Advisory Council to 1970. See also Website of the Episcopal Church, page for President of the House of Deputies, [http://www.episcopalchurch.org/92549\\_1683\\_ENG\\_HTM.htm](http://www.episcopalchurch.org/92549_1683_ENG_HTM.htm), accessed June 9, 2010.

<sup>36</sup> Bonnie Anderson, telephone conversation with the editor, July 6, 2010.

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study commissioned in 2008; one paper was to represent the church's traditional view and the other a proposal to revise the tradition. Bishop Henry Parsley of the Diocese of Alabama, the chair the Bishops' Theology Committee said, "The group of theologians is intentionally diverse and inclusive. We think all voices are included, in as much as eight people can include all voices."<sup>37</sup> Parsley declined to release the names of the study's authors in June 2009, but said at the time that he wanted to "assure those concerned that the panel very intentionally represents a robust range of views on the subject and includes gay and lesbian persons."

The lack of transparency sparked reaction from at least two groups, Integrity USA and the Chicago Consultation, and underscored that the process of appointment to committees, while it does involve wide consultation, is not widely known. The controversy led to the adoption of resolution 2009-D045, requiring a more transparent policy. Although the result of a concern about a single subcommittee, it was drafted in language that affects every committee of the church.

Resolved, the House of Bishops concurring, That the 76th General Convention direct that the membership of all committees, subcommittees, task forces, panels or other bodies elected or appointed by any body or leader throughout The Episcopal Church including, but not limited to, the House of Deputies, the House of Bishops, the Executive Council, Standing Commissions, Committees, Agencies and Boards of The Episcopal Church and their respective Presiding Officers and Chairs be publicly available within 30 days after election or appointment.<sup>38</sup>

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<sup>37</sup> Episcopal Life online, Thursday, May 06, 2010 reported by The Rev. Pat McCaughan, [http://www.episcopalchurch.org/79901\\_120896\\_ENG\\_HTM.htm](http://www.episcopalchurch.org/79901_120896_ENG_HTM.htm), accessed June 10, 2010.

<sup>38</sup> The final language, as well as the final status of each resolution, is being reviewed by the General Convention office. *The Journal of the 76th General Convention and the Constitution and Canons* will be published once the review process has been completed

Citing in its explanation, “transparency in our dealings with one another is one way human dignity is respected,” the resolution seems to be a long overdue step toward wider participation in the committee nomination procedures. It is important to note, however, that the resolution lacks any statement about penalty for non-compliance and is therefore not easily unenforceable.

One postscript to the story is that the Mutual Responsibility Commission passed away shortly after its moment of prominence in the church in 1967. In a report to the 1970 General Convention, far briefer than its earlier documents, commission members lamented,

The Church found it hard to tolerate the burden which MRI placed upon it. The church found it hard to listen to those who steadily called it to the MRI document.... From the Commission’s work, issues have arisen which represent the tasks and obligations the Church ought not to avoid. They are tender subjects; they cost time and money to solve.... For example the Joint Commission on Structure (which has quite properly taken over the Commission’s earlier work on structure) needs the continued support of the Church.<sup>39</sup>

The Committee, feeling underfunded, under-supported, and perhaps overwhelmed by the enormity of the tasks to which it felt called recommended it not be renewed for another triennium, but that its responsibilities be replaced with “an entirely new body which will stand outside the usual institutional and canonical structures, able to examine them more freely.”<sup>40</sup> In the end, the 1970 Convention did in fact discharge and discontinue the Committee on Mutual

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<sup>39</sup> “Report of the Mutual Responsibility Commission,” *Journal of the General Convention* (1970), 547.

<sup>40</sup> “Report of the Mutual Responsibility Commission,” *Journal of the General Convention* (1970), 548.

## 22 The Power to Appoint Committee Membership

Responsibility on the tenth day of the Convention,<sup>41</sup> but no new body was created in its place. The Commission on the Structure of the Church became a Standing Committee in 1970.<sup>42</sup> A new committee “outside of the institutional structures” was not, however, to be.

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<sup>41</sup> *Journal of the General Convention* (1970), 84.

<sup>42</sup> *Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America . . . 1970* (n.p.: Printed for the Convention, 1970), 14.



# Standing Commissions in the Twenty-First Century: A Case for Reform

Alexander H. Webb II<sup>1</sup>

Every three years, the General Convention receives a wide range of policy recommendations from the standing commissions that work on its behalf in between its regular meetings. This system was intended to provide for frank conversations among diverse groups of Episcopalians, and provide a means for generating thoroughly researched General Convention resolutions based on those conversations.

Canon I.1.2 was created to regulate the standing commission system, and at first glance, the system appears to be good and straightforward. However, it has a propensity for falling into disarray. For more than forty years, the General Convention has struggled to organize its standing commissions and other interim bodies in a way that is both efficient and understandable. These conversations continued in 2009, but the General Convention has not yet found a system that can realize its dream. Confusion remains. Canon I.1.2 has not delivered the clarity it was intended to provide, and significant reform is needed.

## Background

Prior to 1967, there were no general canonical provisions regarding the creation and appointment of General Convention committees and commissions. The Standing Liturgical Commission was written into Title II in 1928, but it was unique, and Canon II.4 clearly specified both its mandate and its

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composition. All other committees and commissions were established under the Joint Rules of Order.<sup>2</sup>

In 1967, it was the Mutual Ministry Commission that proposed the addition of a new section in Canon I.1 (now numbered Canon I.1.2) that would make the committee and commission system more uniform.<sup>3</sup> Each “joint committee” and “joint commission” was to be established by a General Convention resolution that would specify its mandate, composition, and reporting obligations at the following General Convention. After one triennium, all such interim bodies would disband unless a resolution or canon specified otherwise. The only difference between these two types of interim bodies was that the lay and clerical members of joint committees had to be members of the House of Deputies; joint commissions could draw members from outside.<sup>4</sup>

The plan of naturally expiring committees and commissions was a good one, but it did not last for long. At the next regular meeting of the General Convention (1970), the Joint Commission on the Structure of the Church predicted that it was “here to stay,” and proposed a resolution that added its mandate to Canon I.1.2.<sup>5</sup> With the adoption of this resolution, Structure became the second standing commission in the church, and the first to be included in Title I. This act is significant because it established by precedent the definition of a standing commission. Though no definition was written into the canons at the time, standing commissions differed from joint commissions in that the former had a canonical mandate and, therefore, continued in perpetuity until they were removed from the canons. By 1979, eight such standing commissions were enshrined in Title I, and the Standing Commission on Church Music had been added to Title II.<sup>6</sup>

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<sup>2</sup> *Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America, otherwise known as The Episcopal Church, 1981 edition*, ed. Edwin A. White and Jackson A. Dykman, 2 vols. (New York: Seabury, 198), 1:170, 456.

<sup>3</sup> White and Dykman, *Annotated Constitution and Canons*, 1:170.

<sup>4</sup> *Constitution and Canons* (1967), 4-5.

<sup>5</sup> *Journal of the General Convention* (1970), 727.

<sup>6</sup> White and Dykman, *Annotated Constitution and Canons*, 1:172.

The difference between standing commissions and joint commissions was codified in 1979, when Canon I.1.2 was overhauled to better incorporate its many new provisions. This version indicated that standing commissions were established by canon to “study and make recommendations...on major subjects considered to be of continuing concern to the Church.” Joint commissions were charged to do the same for “specific matters of concern during a single [triennium.]”<sup>7</sup> The reference to joint committees (i.e., bodies composed solely of bishops and deputies) was eliminated from Canon I.1.2, but remained in the Joint Rules of Order of the House of Bishops and the House of Deputies.<sup>8</sup>

Even though clear definitions were emerging and later codified, the General Convention continued to amend Canon I.1.2 in a non-uniform fashion. In 1976, the mandate for the Joint Commission on Constitution and Canons was added to Canon I.1.2.<sup>9</sup> In the 1980s, two additional “joint commissions” were added to the canon, one for evangelism and renewal, and the other for HIV/AIDS.<sup>10</sup> When these three bodies were added to the canon, they should have been reclassified as “standing commissions,” but their names were not changed. In 1991, the Structure Commission successfully proposed a resolution that amended the canon to state explicitly, “Joint Commissions shall cease to exist at the end of the single interval for which they are created unless extended by action of the General Convention.”<sup>11</sup> In 1997, all canonical references to “joint commissions” were dropped.<sup>12</sup>

With the possibility of short-term joint commissions removed, Structure recommended that the Joint Rules be amended to allow for the creation of task forces that would “consider and make recommendations...on specific subjects of major importance to the Church and its ministry and mission

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<sup>7</sup> White and Dykman, *Annotated Constitution and Canons* .1:152.

<sup>8</sup>“Rules of Order of the House of Bishops and the House of Deputies” in *Constitution and Canons* (1979), 163.

<sup>9</sup> *Constitution and Canons* (1976), 15.

<sup>10</sup> General Convention Resolutions 1985-B003 and 1988-B018.

<sup>11</sup> General Convention Resolution 1991-A220.

<sup>12</sup> General Convention Resolutions 1997-A155 and 1997-A156.

requiring special attention and competence not otherwise provided for in the Canons and/or Joint Rules.”<sup>13</sup> In essence, this action reestablished the 1979 definition of a joint commission under a new name, and reestablished the pre-1967 practice of regulating temporary interim bodies under the authority of the Joint Rules rather than the canons.

Even with all of this clarifying work accomplished, confusion remained. In 1970, the Structure Commission described the committee and commission system a “bewildering maze of numerous disjointed, yet somehow related bodies.”<sup>14</sup> When the Structure Commission reevaluated the system in 2006, after nearly forty years of revision, it described it as a “Hydra with overlapping parts, inconsistent names, and unclear mandates.”<sup>15</sup> When the General Convention received reports from its interim bodies in 2009, the “Hydra” included the Executive Council, four standing committees of the Executive Council, eleven committees of the Executive Council, fourteen standing commissions, three joint standing committees, three task forces, four single-house committees, and seven semi-autonomous boards and agencies.<sup>16</sup>

#### The General Convention 2009

In its 2009 report, the Structure Commission proposed to eliminate all “non-policy functions” from the mandates of the standing commissions. It also proposed to reserve the designation “committee of the Executive Council” for those interim bodies that “relate directly to the governance work and fiduciary responsibilities of the Executive Council.”<sup>17</sup> In order to bring about these changes, Structure proposed Resolutions A115,

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<sup>13</sup> General Convention Resolution 1997-A180.

<sup>14</sup> “Report of the Joint Commission on the Structure of the Church.” *Journal of the General Convention* (1970), 726.

<sup>15</sup> “Report of the Standing Commission on the Structure of the Church.” *Reports to the 75<sup>th</sup> General Convention, Otherwise known as the Blue Book*. (New York: Church Publishing, 2006), 284, 292.

<sup>16</sup> “Table of Contents.” *Reports to the 76<sup>th</sup> General Convention, Otherwise known as the Blue Book* (New York: Church Publishing, 2009), iii-iv.

<sup>17</sup> “Report of the Standing Commission on the Structure of the Church.” *Reports to the 76<sup>th</sup> General Convention*, 615-16.

which was adopted, and Resolution A119, which was adopted with some minor amendments. In passing these resolutions, the General Convention made three important statements: First, standing commissions exist to craft policy. Second, Executive Council committees exist to assist the Council with its fiduciary responsibilities. And, third, no other interim bodies are intended to perform either of those functions.

When the Structure Commission recommended that Executive Council committees be barred from doing policy work, it needed to decide what to do about the several Executive Council committees that had been formed specifically for the purpose of doing policy work. Structure proposed that the work of the Committee on the Status of Women be absorbed into the Standing Commission on National Concerns, that the work of the Committee on HIV/AIDS be absorbed into the Standing Commission on Health, and that the work of the Jubilee Advisory Committee be handled administratively.<sup>18</sup> Furthermore, it proposed that the Committee on Anti-Racism and the Committee on Science, Technology and Faith be reclassified as standing commissions, and have their mandates added to Canon I.1.2.<sup>19</sup>

While simply reclassifying these two Executive Council committees as standing commissions would not have increased the total number of interim bodies, there is an inherent inefficiency in adding a new standing commission to the canons. The original version of Canon I.1.2 assumed that joint commissions would expire triennially unless the General Convention took action to continue them; the current version of the same canon assumes that they will continue in perpetuity unless the General Convention takes action to abolish them. This is a significant development. While the relationship of science, technology, and faith may of “continuing concern” in 2009, it may not be of “continuing concern” in twenty or thirty years. Our history shows that matters of great importance emerge and

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<sup>18</sup> “Report of the Standing Commission on the Structure of the Church.” *Reports to the 76<sup>th</sup> General Conventino*, 617-18.

<sup>19</sup> General Convention Resolution 2009-A118.

subside over time. Neither the church, nor the issues facing the church, will remain static.

Inevitably and rightly, some commissions will need to be created, some combined, and some dissolved in response to changing circumstances. However, the rigidity of the canons does not allow for this fluidity. If the Standing Commission on Science, Technology and Faith had been established in 2009, members would have been appointed and funds would have been appropriated until the General Convention amended the canons to disband it. The time at which a standing commission becomes unnecessary may or may not be congruent with the time at which it is politically expedient for the canons to be amended.

Furthermore, an assumption has begun to emerge that a one-to-one link between standing commissions and programmatic offices is necessary. This can be seen in the enabling resolution for the Standing Commission on Lifelong Christian Education and Formation: "Youth are a priority of this Church, and yet the Ministries with Young People Cluster at the Church Center is not currently served by a Standing Commission charged to craft policy recommendations relative to its work."<sup>20</sup> The same assumption is at work in Resolution 2003-A124, which called for the reinstatement of the Standing Commission on Health, and for the appointment of a staff person "with background in and knowledge about health care policy to assist this commission."

If this assumption persists, the number of standing commissions will continue to grow. In the past, the General Convention has displayed a willingness to create new standing commissions in order to accommodate evolutions in the organization of the Presiding Bishop's staff. However, it has been reticent to abolish standing commissions. No standing commissions has been removed from Canon I.1.2 since 1997, and

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<sup>20</sup> General Convention Resolution 2006-A105.

one of the standing commissions that was abolished in that year was reestablished in 2003.<sup>21</sup>

The addition of three more standing commissions in 2009 –two proposed by the Structure Commission, and one on the environment proposed by the Standing Commission on Anglican and International Peace with Justice Concerns – would have only contributed to the exploding number of standing commissions that serve the General Convention. Canon I.1.2 was amended at three out of the four regular General Conventions following its creation, and in that time went from including no standing commission mandates to including eight. Fourteen standing commissions were listed in the 2006 edition of the canons, and as many as seventeen could have appeared in the 2009 edition, had a legislative committee not intervened.

In 2009, the General Convention’s Legislative Committee on Structure (known commonly as “Committee 6”) declined to endorse the recommendation that three new standing commissions be created. Instead, they introduced a substitute resolution recommending that no new standing commissions be created in 2009, and that a “Group” be established to reevaluate the entire standing commission system.<sup>22</sup> The legislative committee’s substitute was concurred, and no changes were made to the five Executive Council committees that Structure had wanted to disband or reclassify.

In 2009, the General Convention succeeded in clarifying the existing language of Canon I.1.2, but it failed to bring its existing committees and commissions into compliance with its new standards and definitions. Confusion and inconsistency remain.

#### Future Reform

The Structure Commission’s 2009 report to the General Convention seeks to clarify the role of standing commissions, draw greater distinctions between different types of interim

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<sup>21</sup> The Standing Commission on Health was removed from Canon I.1.2 in 1997 (cf., Resolution 1997-A162), and was reestablished as part of the same canon in 2003 (cf., Resolution 2003-A124).

<sup>22</sup> General Convention Resolution 2009-A035 (final version).

bodies, and eliminate overlapping functions. These goals are admirable. However, these are the same goals that the Mutual Ministry Commission had in 1967 when they proposed the creation of Canon I.1.2. These are the same goals that the Structure Commission had when it proposed adding itself to that canon in 1970. And, these are the same goals that the General Convention had when it dropped the “joint commission” designation from that canon in 1997.

Canon I.1.2 never delivered the clarity it was intended to provide. After nearly forty years of tinkering, the committee and commission system was in such disarray that the 2006 Structure Commission was unable to publish a glossary of nomenclature without an accompanying resolution that called for its review and correction.<sup>23</sup> With regard to its interim bodies, the General Convention refuses to be regulated. The Church needs a new approach, not additional regulations.

Presently, each standing commission is composed of twelve members, an Executive Council liaison, and a representative from the Presiding Bishop’s staff. Also, the Presiding Bishop and the President of the House of Deputies both have the option of appointing a personal representative to each standing commission, if they wish.<sup>24</sup> With fourteen standing commissions, there are between 196 and 224 people traveling to between three and six commission meetings every three years, exclusive of any subcommittee work that may be required. In other words, as many as 224 people will work and travel in order to produce sections of the so-called “Blue Book.” In the last triennium, the budget for this work was \$742,000, not including liaison costs or translation services.<sup>25</sup>

The General Convention has a stewardship obligation to consider whether the reports generated by its standing commissions are worth their cost, both in terms of financial

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<sup>23</sup> General Convention Resolution 2006-A112.

<sup>24</sup> *Constitution and Canons* (2009), Canon I.1.2(a), Canon I.1.2(d), Canon I.1.2(e).

<sup>25</sup> This figure reflects the sum of individual standing commission budgets as reflected in the *Journal of the General Convention* (2006), pages 828-29. The total allocation for all interim bodies (including the Executive Council and its committees) was \$2,192,600.

expenditure and the environmental impact of extensive travel. However, since the canons assume that each standing commission will be continued in perpetuity, the resources for this work are often allocated without any meaningful review of each commission's usefulness. A new paradigm is needed.

One possibility is the abolition of Canon I.1.2, and the introduction of a system by which the General Convention issues a single resolution every three years indicating what committees and commissions will be established for the upcoming triennium. This is the same system by which the budget is created: The Joint Standing Committee on Program, Budget and Finance receives all of the requests for funding from the concurred resolutions of the General Convention, and prepares a single budget resolution that may or may not include all of the requests. A similar legislative committee could be empanelled to consider the merits of all the suggested interim bodies, weigh them against the availability of funds, and then present a single resolution for consideration near the end of each regular meeting of the General Convention. Standing commissions that needed to be continued would be continued, and those that had outlived their usefulness would be dissolved. Such a system would allow the General Convention to prioritize the issues it wanted to have studied, and consider openly the various costs involved.

The General Convention needs to end its system of automatically continuing so many of its interim bodies. Such a system necessitates the expenditure of time and money, but does not call for any consideration of whether the expense is either necessary or worthwhile. There are more effective and efficient ways of studying important issues.

In recent years, the General Convention has dramatically reduced the amount of money it appropriates for the work of its standing commissions. However, the General Convention has not considered reducing the total number of commissions or the work that the commissions were expected to perform.<sup>26</sup> Rather

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<sup>26</sup> The 2006 General Convention did, however, limit the size of commissions to twelve. Prior to that time some standing commissions had considerably more



than choosing to fund poorly an antiquated policy making system, the General Convention should design a lean, flexible, and efficient system that its budget can afford to support.

The General Convention's 2009 decision to recommend the creation of a "Group" that would review the entire standing commission system was remarkable. It created a long-awaited opportunity for creative thinking and meaningful reform. However, the General Convention's budget included no funding for this group, and no members were ever appointed. The Episcopal Church is left to hope that its Structure Commission will have the time to engage these important conversations, and make creative recommendations to the next General Convention.

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members. There were, for example, 24 members of the Standing Commission on Ministry Development. See Resolution 2006-A104.

## The Sixteenth-Century Background to the Current “Oath” of Conformity of the Episcopal Church

Jonathan Michael Gray<sup>1</sup>

Article VIII of the current constitution of the Protestant Episcopal Church in the United States of America mandates that during their ordination services all bishops, priests, and deacons must make and subscribe to the following declaration: “I do believe the Holy Scriptures of the Old and New Testament to be the Word of God, and to contain all things necessary to salvation; and do solemnly engage to conform to the doctrine, discipline, and worship of the Episcopal Church.”<sup>2</sup> This last clause of this declaration has troubled some members of the Episcopal Church who dislike the direction General Convention is moving on controversial issues such as the uniqueness of Christ, the authority of Scripture, and human sexuality, particularly same-sex blessings and the ordination of non-celibate gay and lesbian persons. By solemnly engaging to conform to the doctrine, discipline, and worship of the Episcopal Church, are ordinands binding themselves to assent to the current and future resolutions of General Convention? Can someone who opposes the ordination of non-celibate gay and lesbian persons still make this declaration? What exactly do “the doctrine, discipline, and worship of the Episcopal Church” comprehend? In response to these questions, the Right Reverend Mark Lawrence and the Standing Committee of the Diocese of South Carolina have adopted the practice of reading aloud a letter in the ordination service before the aforementioned declaration is made. The letter reads: “In the Diocese of South Carolina, we understand the substance of the ‘doctrine, discipline and worship’ of the Episcopal Church to mean

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<sup>2</sup> Edwin Augustine White and Jackson A. Dykman, eds., *Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United State of America otherwise known as The Episcopal Church* (New York: Seabury, 1982), 1:109.

that which is expressed in the Thirty-Nine Articles, the Creeds, the Chicago-Lambeth Quadrilateral and the theology of the historic prayer books.”<sup>3</sup>

Although some members of the Episcopal Church may consider the current situation of ordinands in the Diocese of South Carolina as novel and unprecedented, this is not the first time that ordained ministers in the Anglican tradition have had to struggle with the ramifications of a requisite profession. In fact, the very circumstances that led to the establishment of an Anglican tradition independent from Roman Catholicism also raised the issue of clerical oaths as Henry VIII, Edward VI, and Elizabeth I enforced their reformations on their clerical subjects through a variety of oaths and declarations. This article will explore the sixteenth-century background of ordination oaths. By examining the content, form, and manner of swearing of the various professions of sixteenth-century England, we will be able to understand better the current declaration of conformity of the Episcopal Church and the Diocese of South Carolina’s approach to the declaration.

### The Clerical Professions of the Sixteenth Century and Their Content

Let us start with the pre-reformation clerical professions. There is very little data on whether deacons or priests swore an oath at their consecrations. By contrast, early sixteenth-century episcopal registers make it abundantly clear that priests swore an oath of canonical obedience to their bishop whenever they were instituted to a new benefice.<sup>4</sup> Vicars (as opposed to rectors) often swore an

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<sup>3</sup> The Diocese of South Carolina, “The 5 Proposed Resolutions for the South Carolina Special Convention,” TitusOneNine: The Weblog of the Rev. Canon Dr. Kendall Harmon, <http://www.kendallharmon.net/t19/index.php/t19/article/25391/> (accessed May 14, 2010). For the initial suggestion by Bishop Lawrence, see his “Address to the Diocese of South Carolina,” 13 August 2009, available at the Diocese of South Carolina’s website: <http://us1.campaign-archive.com/?u=4961327fa871e140b6aefc0e&id=8bebd61beb> (accessed May 14, 2010). The Rev. Canon Jim Lewis has verified the current practice of the Diocese of South Carolina: Jim Lewis, e-mail message to Robert Prichard, May 11, 2010.

<sup>4</sup> This oath of canonical obedience was originally limited to clerics with administrative responsibilities. See Aemilius Friedberg, ed., *Corpus iuris canonici* (Union, NJ:

additional oath of continual residence in their parish, while institutional clergy (members of a cathedral, hospital, or college) usually swore an oath to observe the customs of their institution as well.<sup>5</sup> Heads of monasteries or convents swore more detailed oaths with further clauses specifying obedience to their rule, their duty in an episcopal visitation, and their refusal to alienate monastic property without the bishop's consent.<sup>6</sup> Individual monks, nuns, and hermits also took the standard vows of poverty, chastity, and obedience.<sup>7</sup>

A flurry of oaths accompanied the consecration of a new bishop. The new bishop first swore an oath of fealty to the pope. An archbishop swore this twice—once upon his consecration and once when he received the pallium, a special vestment representing metropolitan authority.<sup>8</sup> The version of this oath codified in medieval canon law had seven clauses. The bishop-elect first swore fidelity to St. Peter, to the holy church of Rome, and to the pope and his lawful successors. He then promised never to consent to the pope losing life or limb or being taken in any trap. He pledged to keep the pope's counsel secret and to defend and maintain the papacy and the rules of the holy fathers. In the final clauses, the bishop-elect agreed to attend a council when summoned, to treat the pope's legate honorably, and to visit the see of Rome, either personally or

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Lawbook Exchange, 2000), X.I.33.3, vol. 2, pg. 196; X.2.24.5, vol. 2, pg. 360. (Henceforth cited as *CIC*, with the volume and page number following "Friedberg.")

<sup>5</sup> For examples of these institutional oaths, see Lambeth Palace Library, Reginald Pole's Register, fols. 67<sup>r</sup>-82<sup>r</sup>; Gladys Hinde, ed., *The Registers of Cuthbert Tunstall Bishop of Durham 1530-59 and James Pilkington Bishop of Durham 1561-76*, Surtees Society, vol. 161 (1946) (Durham: Andrews & Co; London: Bernard Quaritch, 1952), xxiii, 5, 8, 74, 121, 140, passim.

<sup>6</sup> Guildhall Library MS. 9531/10 (Tunstall's Register), fols. 49<sup>v</sup>-50<sup>r</sup>, 57<sup>r</sup>, 63<sup>v</sup>, 113<sup>r</sup>, 117<sup>r</sup>, 119<sup>r</sup>, 130<sup>r</sup>, passim; Guildhall Library, MS 9531/11 (Stokesley's Register), fols. 61<sup>r-v</sup>, 67<sup>r-v</sup>, 97<sup>v</sup>.

<sup>7</sup> Centre for Kentish Studies, Maidstone, Microfilm Z3 (John Fisher's Register), fols. 78<sup>r</sup>, 179<sup>v</sup>-180<sup>r</sup>, 162<sup>v</sup>; Herbert Chitty, ed., *Registra Stephani Gardiner et Johannis Poyntet*, intro. Henry Elliott Malden and Herbert Chitty, Canterbury and York Society, vol. 37 (Oxford: Oxford University Press, 1930), 39.

<sup>8</sup> Medieval canon law included a specific decree answering the objections to the requirement of an oath to the pope in exchange for the pallium; *CIC*, X.1.6.4, Friedberg, 2:49-50.

by a representative, on a regular basis.<sup>9</sup> The form of this oath did not remain static. By the beginning of the sixteenth century, this oath had evolved to contain additional clauses wherein the bishop-elect swore to avoid plotting against the pope in word or deed; to reveal to the pope anyone he knew to be involved in such a plot; never to sell, alienate, or give away any of the possessions belonging to the bishopric; to promote, increase, and defend the rights, honors, privileges and authority of the Church of Rome and the pope; to observe and cause all men to observe the rules of the holy fathers and the apostolic decrees, ordinances, sentences, dispensations, and commands; and to persecute all heretics, schismatics, and rebels.<sup>10</sup> After this oath to the pope, the bishop-elect then swore an oath of canonical obedience to his archbishop.<sup>11</sup> Next the bishop-elect swore an oath (or oaths) to the king renouncing any clauses in his papal bull of consecration that might be prejudicial to royal authority, professing fealty to the king, and requesting restoration of the bishopric’s temporalities (material property and/or temporal jurisdiction), which the bishop declared to hold from the king alone.<sup>12</sup> Finally, at the new bishop’s enthronement, the members of

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<sup>9</sup> CIC, X.2.24.4, Friedberg, 2:360.

<sup>10</sup> For examples of the exact form of this oath, see David Wilkins, ed., *Concilia Magnae Britanniae et Hiberniae . . . [MD]CCXVII* (Henceforth cited as *Concilia*), (London, 1737), 3:647; Lambeth Palace Library, Stafford’s Register, fols. 15<sup>v</sup>-16<sup>r</sup>; Lambeth Palace Library, CM 51, #23; Lambeth Palace Library, Cranmer’s Register, fols. 1<sup>v</sup>-2<sup>r</sup>; Lambeth Palace Library, Stafford’s Register, fols. 4<sup>v</sup>-5<sup>r</sup>; British Library Cotton MS. Cleopatra E vi, fol. 53<sup>r-v</sup>; Edward Hall, *Hall’s Chronicle; containing the History of England, during the Reign of Henry the Fourth, and the Succeeding Monarchs, to the End of the Reign of Henry the Eighth, in Which Are Particularly Described the Manner and Customs of Those Periods* (London: J. Johnson et al., 1809), 788-789.

<sup>11</sup> See various examples in Lambeth Palace Library, Warham’s Register, fols. 2<sup>r</sup>-26<sup>v</sup>; Lambeth Palace Library, Cranmer’s Register, fols. 1<sup>v</sup>-5<sup>r</sup>; Lambeth Palace Library, Pole’s Register, 3<sup>v</sup>-12<sup>v</sup>; Wilkins, *Concilia*, 3:154-155, 647.

<sup>12</sup> Gilbert Burnet, *History of the Reformation of the Church of England*, ed. Nicolas Pocock (1865; reprint, Westmead, Farnborough, Hants., England: Gregg International Publishers, 1969), 1:37, 4:3-7; *Hall’s Chronicle*, 788-789; *The book of oaths, and the severall forms thereof, both antient and modern. Faithfully collected out of sundry authentike books and records, not heretofore extant, compiled in one volume. Very useful for all persons whatsoever, especially those that undertake any office of magistracie or publique employment in the Common-wealth. Whereunto is added a perfect table* (1649), 243-244; Wilkins, *Concilia*, 3:755; Thomas Rymer, ed., *Foedera, conventiones, literae, et cujuscunque generis*

the chapter of his cathedral, the clergy in his city and diocese, and all his vassals would swear canonical obedience to him.<sup>13</sup>

Most of the clerical oaths of canonical obedience continued to be sworn throughout the sixteenth century. Yet the conflict between Henry VIII and the papacy necessitated some changes. The Act Restraining the Payment of Annates (1534) abolished the episcopal oath of fealty to the pope. Throughout 1534 and 1535, Henry then administered a variety of oaths and declarations to his clergy. It is beyond the scope of this paper to go into the details of all these professions.<sup>14</sup> To summarize, however, in these professions the clergy of England did three things; first, they rejected Henry's marriage to Katherine of Aragon and recognized the validity of Henry's new marriage to Anne Boleyn and the succession of the crown through her heirs; second, they repudiated the authority of the pope; and third, they acknowledged Henry's supremacy over the church in England. In 1536, Parliament passed An Act for Extinguishing the Authority of the Bishop of Rome, and this act mandated that "all and every religious person, at the time of his or their profession or entry into religion, and every other ecclesiastical person at the time of his taking of orders" must take a new oath of supremacy. In this new oath, the swearer again denied papal authority, recognized Henry's headship of the church, pledged to uphold all parliamentary statutes concerning papal and royal authority, and rejected any previous oaths sworn to the pope.<sup>15</sup> The penalty for refusing this oath was treason. It is clear that all new

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*acta publica, inter reges Angliæ et alios quosvis imperatores, reges, pontifices, principes, vel communitates, ab ineunte sæculo duo-decimo, viz ab anno 1101, ad nostra usque tempore habita aut tractata; ex autographis, infra secretiores Archivorum regionum thesaurarias, per multa sæcula reconditis, fideliter exscripta* (1726-35) 14:428-429.

<sup>13</sup> Herbert Chitty, ed., *Registra Stephani Gardiner et Johannis Poyntet*, intro. Henry Elliott Malden and Herbert Chitty, Canterbury and York Society, vol. 37 (Oxford: Oxford University Press, 1930), 1-5; W. H. Frere, ed., *Registrum Johannis Whyte, Episcopi Wintoniensis, A.D. MDLVI-MDLIX*, Canterbury and York Society, vol. 16 (London, 1914), 5-6.

<sup>14</sup> For further details, see Jonathan Michael Gray, "So Help Me God: Oaths and the English Reformation" (PhD diss., Stanford University, 2008), 117-158. It is the hope of this author that a revised version of this dissertation will soon be published.

<sup>15</sup> *Statutes of the Realm*, 28 Hen. 8, c. 10, 3:665.

bishops consecrated after July 31, 1536, took this oath.<sup>16</sup> It is less clear exactly when new parish priests and other holders of lower benefices began taking this oath, but records of institutions and ordinations contained in episcopal registers indicate that it was being administered by the early 1540s.<sup>17</sup> The last change in clerical oaths of Henry’s reign happened in 1544, when Parliament passed a new act which replaced the oath of supremacy of 1536 with a new, more expanded oath of supremacy that contained additional clauses on the succession of the realm and the imperial status of Henry’s supremacy over the church in all of his dominions.<sup>18</sup>

Henry’s children continued to change the clerical ordination oaths. Under Edward VI, the 1549 ordinal and the 1552 Book of Common Prayer codified the administration of an oath of supremacy during ordination services of all deacons, priests, and bishops. These services form the basis of the current ordination services in the 1979 Episcopal prayer book. In fact, the current Episcopal “oath” of conformity takes place in the same approximate place of the service as did the oath of supremacy in the Edwardian liturgies.<sup>19</sup> The actual form of the Edwardian oath, however, was

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<sup>16</sup> See for example the oaths of Nicholas Heath (Rochester) or Edmund Bonner (London) in Lambeth Palace Library, Cranmer’s Register, fols. 259<sup>r</sup>, 260<sup>v</sup>. Identical oaths follow throughout Cranmer’s register.

<sup>17</sup> Guildhall Library MS. 9531/12 (Bonner’s Register), fol. 145<sup>r</sup>, 171<sup>v</sup>; Lambeth Palace Library, Cranmer’s Register, fol. 388<sup>r</sup>, *Registers of Cuthbert Tunstall Bishop of Durham*, 102; Margaret Bowker, *The Henrician Reformation: The Diocese of Lincoln under John Longland 1521-1547* (Cambridge: Cambridge University Press, 1981), 172-173.

<sup>18</sup> *Statutes of the Realm*, 35 Hen. 8, c. 1, 3:956. For examples of specific clergy actually swearing this oath (as well as the old oath of 1536), see Lambeth Palace Library, Cranmer’s Register, fols. 315<sup>r</sup>-316<sup>v</sup>, 326<sup>r-v</sup>, 328<sup>r-v</sup>, 331<sup>r-v</sup>, 332<sup>v</sup>, 333<sup>r-v</sup>, 334<sup>v</sup>-335<sup>r</sup>.

<sup>19</sup> In the current 1979 prayer book, the ordinand makes his declaration of conformity directly after his or her presentation; *The Book of Common Prayer and Administration of the Sacraments and Other Rites and Ceremonies of the Church . . . According to the Use of the Episcopal Church* (New York: Church Hymnal Corporation, 1979), 513, 526, 538. In the 1549 ordinal and 1552 Book of Common Prayer, the bishop-elect took his oath directly after his presentation, and the future priest took his oath directly after a collect following the presentation. In the Edwardian liturgies, the future deacon still took his oath after his presentation, but the presentation and the administration of the oath were separated by the litany, suffrages, and Scripture readings; Joseph Ketley, ed., *The Two Liturgies, A.D. 1549, A.D. 1552: with Other Documents Set Forth by Authority in the Reign of King Edward VI*, (Cambridge: Cambridge University Press, 1844), 168-169,

much closer to the Henrician oath of supremacy than to the modern “oath.” The exact Edwardian text read:

I from henceforth shall utterly renounce, refuse, relinquish, and forsake the Bishop of Rome, and his authority, power, and jurisdiction. And I shall never consent nor agree, that the Bishop of Rome shall practice, exercise, or have, any manner of authority, jurisdiction, or power within this realm, or any other the king’s dominions, but shall resist the same at all times, to the uttermost of my power. And I from henceforth will accept, repute, and take the King’s Majesty to be the only supreme head in earth, of the church of England: And to my cunning, wit, and uttermost of my power, without guile, fraud, or other undue mean, I will observe, keep, maintain and defend, the whole effects and contents of all and singular acts and statutes made, and to be made with this realm, in derogation, extirpation, and extinguishment of the Bishop of Rome, and his authority, and all other acts and statutes, made or to be made, in reformation and corroboration of the King’s power, of the supreme head, in earth, of the church of England: and this I will do against all manner of persons, of what estate, dignity or degree, or condition they be, and in no wise do nor attempt, nor to my power suffer to be done or attempted, directly, or indirectly, any thing or things, privily or apertly, to the let, hinderance, damage or derogation thereof, or any part thereof, by any manner of means, or for any manner of pretence. And in case any oath be made, or hath been made, by me, to any person or persons, in maintenance, defence, or favour of the Bishop of Rome, or his authority, jurisdiction, or power, I repute the same as vain and annihilate, so help me God, all saints and the holy Evangelist.<sup>20</sup>

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175, 182, 338-339, 344, 350. This same order of service was replicated in the 1559 Book of Common Prayer; William Keatinge, ed., *Liturgies and Occasional Forms of Prayer Set Forth in the Reign of Queen Elizabeth* (Cambridge: Cambridge University Press, 1847), 281, 288, 293-294.

<sup>20</sup> *Two Liturgies*, 168-169, 338-339.



Following this oath, Edwardian bishops-elect then took an oath of canonical obedience to their archbishop.<sup>21</sup> When Mary came to power, her Parliament rescinded all the Reformation legislation passed under Henry and Edward.<sup>22</sup> This meant that ordinands no longer swore an oath of supremacy at their ordinations or institutions. Instead, bishops-elect once again swore an oath of fealty to the pope.<sup>23</sup> Upon Elizabeth’s ascension, she abolished the episcopal oath of fealty to the pope and re-inserted a new oath of supremacy within the ordination service.<sup>24</sup> Again, the form of Elizabeth’s oath varied from that of Henry and Edward. Elizabeth’s oath read:

I A.B. do utterly testify and declare in my conscience that the queen’s highness is the only supreme governour of this realm, and of all other her highness’ dominions and countries, as well in all spiritual or ecclesiastical things or causes, as temporal; and that no foreign prince, person, prelate, state, or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm: and therefore I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities and authorities, and do promise that from henceforth I shall bear faith and true allegiance to the Queen’s highness, her heirs and lawful successors, and to my power shall assist and defend all jurisdictions, privileges, pre-eminences, and authorities granted or belonging to the Queen’s highness, her heirs and successors, or united and annexed to the imperial crown of this realm, so help me God, and the contents of this book.<sup>25</sup>

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<sup>21</sup> *Two Liturgies*, 182, 350.

<sup>22</sup> *Statutes of the Realm*, 1 & 2 Phil. & Mary, c. 8, 4:246-254. See especially page 247.

<sup>23</sup> Lambeth Palace Library, Cardinal Pole’s Register, 8<sup>r</sup>-12<sup>v</sup>.

<sup>24</sup> *Statutes of the Realm*, 1 Eliz. 1, c. 1, 4:350-355.

<sup>25</sup> *Liturgies and Occasional Forms of Prayer Set Forth in the Reign of Queen Elizabeth*, 281.

The oath of supremacy was not the only profession required of Elizabethan clergy. In the early 1560s, individual bishops sometimes used visitations to demand that their diocesan clergy subscribe to a statement accepting the Act of Supremacy, the Act of Uniformity, the Royal Injunctions, and even a set of doctrinal articles.<sup>26</sup> There is no evidence, however, that these initial professions were demanded to new clergy at their ordinations or institutions. In 1566, Archbishop Matthew Parker issued a set of “protestations to be made, promised and subscribed by them that shall hereafter be admitted to any office, room or cure in any church or other place ecclesiastical.”<sup>27</sup> These protestations were aimed at nonconformist Puritans and included promises to “use sobriety in apparel” in common prayer “according to the order appointed” and “to observe, keep and maintain such order and uniformity in all external policy, rites and ceremonies of the church, as by the laws, good usages, and orders are already well provided and established.”<sup>28</sup> Five years later, Parliament passed An Act to Reform Certain Disorders Touching Minister of the Church, which stated that “no person shall hereafter be admitted to any benefice with cure . . . nor shall be admitted to the order of deacon or ministry” unless he first “assent and subscribe to all the articles of religion which only concern the confession of the true Christian faith and the doctrine of the sacraments, comprised” in the Thirty-Nine Articles.<sup>29</sup> Finally, in the fall of 1583, Archbishop John Whitgift issued a proclamation that “none be permitted to preach, read, catechize, minister the sacraments or to execute any

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<sup>26</sup> For examples see Walter Howard Frere, ed., *Visitation Articles and Injunctions of the Period of the Reformation* (London: Longmans, Green & Co, 1910), 3: 64-66, 131; W. M. Kennedy, *The 'Interpretations' of the Bishops & Their Influence on Elizabethan Episcopal Policy* (London: Longmans, Green Co, 1908), 18-19, 22-23.

<sup>27</sup> Frere, *Visitation Articles*, 179.

<sup>28</sup> Frere, *Visitation Articles*, 180.

<sup>29</sup> *Statutes of the Realm*, 13 Eliz. 1, c. 12, 4:546-547. It is uncertain whether the wording of this statute was a deliberate attempt by Puritan sympathizers in the House of Commons to compel subscription *only* to the articles concerning the doctrine and faith of church. It is clear, however, that the bishops actually demanded subscription to all of the Thirty-Nine Articles; Patrick Collinson, *The Elizabethan Puritan Movement* (Berkeley and Los Angeles: University of California Press, 1967), 60, 117-118; T. E. Hartley, *Elizabeth's Parliaments: Queen, Lords and Commons 1559-1601* (Manchester and New York: Manchester University Press, 1992), 96.

other ecclesiastical function . . . unless he first consent and subscribe” to three articles.<sup>30</sup> Articles one and three were not new; they simply recognized royal supremacy and acquiesced to the Thirty-Nine Articles of Religion. Article two, however, declared that the Book of Common Prayer “containeth nothing in it contrary to the Word of God” and bound the subscriber to use only the Book of Common Prayer in public services.<sup>31</sup> This article offended Puritans, and after much controversy (described below), Whitgift finally retreated in the summer of 1584 and declared that in the future, “subscription would be required only of those who were about to be ordained or admitted to livings.”<sup>32</sup> This practice was eventually codified in the Canon 36 of the Canons of 1603/1604, and this is where Daniel B. Stevick, author of *Canon Law: A Handbook* (1965), located the origin of the modern declaration of conformity of the Episcopal Church.<sup>33</sup>

Let us conclude this section by comparing the clerical professions of the sixteenth century to the modern declaration of conformity in the Episcopal Church. The first obvious point is that the number of professions and of clauses within the professions were much greater in the sixteenth century than today. Current ordinands in the Episcopal Church have to make only one declaration, and this declaration contains only two clauses. This is a far cry from the multiple, detailed professions of the sixteenth century.

Next, the primary end of the sixteenth-century professions was to secure obedience to one’s superior. The oaths of canonical obedience, the episcopal oath of fealty to the pope, and the various oaths of supremacy were all oaths of submission. These oaths delineated the hierarchy of the church and bound the swearer to remain loyal to his superior. By contrast, the modern declaration of

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<sup>30</sup> “Archbishop Whitgift’s Articles, 1583,” in Gerald Bray, ed., *Documents of the English Reformation* (Minneapolis: Fortress Press, 1994), 397.

<sup>31</sup> “Whitgift’s Articles,” in Bray, *Documents*, 398.

<sup>32</sup> Collinson, *Elizabethan Puritan Movement*, 264.

<sup>33</sup> “The Canons of 1603 (1604),” in Gerald Bray, ed., *The Anglican Canons 1529-1947* (Woodbridge: Boydell, 1998), 318-321; Daniel B. Stevick, *Canon Law: A Handbook* (New York: Seabury Press, 1965), 111.

conformity is not an oath of submission; the ordinand is not bound to be obedient to a specific superior or general body (such as General Convention). The ordinand is bound to be obedient to the “discipline” of the Episcopal Church, but this lacks the clarity and the specificity of the sixteenth-century oaths.<sup>34</sup> To the sixteenth-century mind, the vagueness of the modern oath would vitiate its purpose by opening it up to multiple, potentially subversive interpretations. It is also interesting that the letter read before the declaration in the Diocese of South Carolina actually increases the extent to which the declaration becomes an oath of obedience, though only slightly. In South Carolina, the “doctrine, discipline, and worship” of the Episcopal Church is defined as “the Thirty-Nine Articles, the Creeds, the Chicago-Lambeth Quadrilateral and the theology of the historic prayer books.” Article Thirty-Seven of the 1571 version of the articles named the queen as the chief governor of the English church, so are ordinands in South Carolina recognizing royal supremacy in England? The answer is of course no, for the version of the Thirty-Nine Articles in the modern Episcopal prayer book significantly changes Article Thirty-Seven. Still, it might be argued that the diocese of South Carolina should specify which version of the Thirty-Nine Articles they feel themselves bound to by the declaration of conformity. As for the historic prayer books, the Diocese of South Carolina is more careful, stating that they are bound only to the “theology” of the historic prayer books, which of course means that the parts of the historic prayer books on royal supremacy are irrelevant. Finally, by mentioning the Chicago-Lambeth Quadrilateral, ordinands in South Carolina are binding themselves to the historical episcopate, but this is a far cry from being bound to a specific superior as was the case in the sixteenth century.

This section has also shown that Elizabethan ordinands were eventually required to assent and subscribe to the Thirty-Nine Articles and to conduct worship according to the form set down in the 1559 Book of Common Prayer. These again are definite

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<sup>34</sup> The “word” discipline was added to the declaration of the Episcopal Church in 1901. See White and Dykman, *Annotated Constitution and Canons*, 111.

boundaries. As such, the Diocese of South Carolina’s interpretation of “doctrine of the Episcopal Church” as the Thirty-Nine Articles and theology of the historic prayer books represents a move towards specificity consistent with the sixteenth-century professions. Conversely, the Diocese of South Carolina’s letter of interpretation does not bring further clarity to the “worship of the Episcopal Church,” for by limiting their assent to the theology of the historic prayer books, ordinands in South Carolina by no means bind themselves to the ceremony of the historic prayer books. Considering the diversity of worship in the Episcopal Church, I suspect that sixteenth-century Puritans who chafed at signing Whitgift’s Three Articles would have no problem making the current profession of conformity of the Episcopal Church.

Finally, it should be noted that the first clause of the modern declaration—“I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation”—has no precedent in the aforementioned sixteenth-century oaths. Part of this statement is found in Article Six of the Thirty-Nine Articles. Yet the original predecessor to this first clause of the modern declaration of conformity is not the Thirty-Nine Articles but rather the 1549 Edwardian ordinal. In the ordination services for priests and bishops, the following question and answer were part of the examination section of the ordination service:

BISHOP/ARCHBISHOP: Be you persuaded that the holy scriptures contain sufficiently all doctrine, required of necessity for eternal salvation, through faith in Jesus Christ?

...

ANSWER: I am so persuaded, and have so determined by God’s grace.<sup>35</sup>

This question is not in the ordination service of the 1979 Book of Common Prayer. It seems, then, that the Episcopal Church has

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<sup>35</sup> *Two Liturgies*, 177, 183. This question and answer remained constant in the 1552 and 1559 prayer books.

removed this question and answer from the examination section of the ordination service and instead made it part of the declaration of conformity.

### Sixteenth-Century Insight into the Form of Clerical Professions

Article VIII of the Constitution of the Episcopal Church refers to the profession all ordinands must make and subscribe to as a “declaration.”<sup>36</sup> Canon IV.1.1 of the canons adopted by the 2006 General Convention of the Episcopal Church consistently refers to person’s “ordination vows,” while canon IV.4.1(c) of the new canons adopted by the 2009 General Convention of the Episcopal Church makes reference to “the promises and vows made when ordained.”<sup>37</sup> Finally, in his address to the clergy of the Diocese of South Carolina on August 13, 2009, Bishop Mark Lawrence referred to this same profession as both an “oath of conformity” and a “vow.” In fact, he used the terms interchangeably. Thus, it seems that there is a lack of clarity on whether the profession of conformity is an oath, vow, or declaration. Is there actually any distinction between these terms? In the sixteenth century, there was a definite distinction between an oath, vow, and declaration. An oath was not the same as a vow or declaration, and the actual form of the profession (whether it was an oath, vow, or declaration) mattered greatly.

According to medieval and early modern clerical writers, an oath was the citing God as witness to the truth of one’s statement or promise.<sup>38</sup> An oath by definition must have God as witness, for only God is omniscient and omnipotent; only God has the knowledge of whether the statement or promise is true and only God has the power to punish the swearer if his or her statement or promise is

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<sup>36</sup> White and Dykman, *Annotated Constitution*, 1:109.

<sup>37</sup> *Constitution & Canons . . . of . . . the Episcopal Church* (New York: General Convention Office and Church Publishing, 2006), 119-120; *Constitution & Canons . . . of . . . the Episcopal Church* (New York: General Convention Office and Church Publishing, 2009), 127. I am indebted to Robert W. Prichard for bring this point to my attention.

<sup>38</sup> John Calvin, for example, defined an oath as the “calling God as witness to confirm the truth of our word”; John Calvin, *Institutes of the Christian Religion*, ed. John T. McNeill, trans. Ford Lewis Battles (London: S.C.M. Press, 1961), book 2, chap. 8, para. 23.

untrue. Thus, John Hooper, the Edwardian reformer and bishop of Gloucester and Worcester, wrote: “To swear is to protest and promise the thing we swear to be true before him that knoweth the thoughts and cogitations of the heart: that knoweth onely and solely God.”<sup>39</sup> To swear by somebody or something other than God (what sixteenth-century writers called “creatures”) was a form of idolatry, for it was to recognize in the creature omniscience and omnipotence, characteristics of God alone. A proper oath must invoke the name of God. In fact, the majority of oaths in the sixteenth century ended with a variant of the phrase “So Help Me God.”<sup>40</sup>

If an oath was a statement or promise made *before* God to men, a vow was an advisable, willing promise made *to* God for his honor or glory.<sup>41</sup> For example, Thomas Aquinas wrote:

A vow and an oath are not the same; through a vow we direct an act to God’s honour, and thus what we do under vow becomes an act of religion. An oath, on the other hand, shows reverence for the divine name by confirming a promise, but what is confirmed by the oath does not for that reason become an act of religion, because moral acts get their specific nature from their purpose.<sup>42</sup>

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<sup>39</sup> John Hooper, *Early Writings of John Hooper*, ed. Samuel Carr, Parker Society, vol. 20 (Cambridge: Cambridge University Press, 1843), 477.

<sup>40</sup> For much more details on sixteenth-century oath theory, see Gray, “So Help Me God,” 19-72.

<sup>41</sup> For a sample of sixteenth-century definitions of vows, see Peter Martyr Vermigli, *Defensio D. Petri Martyris Vermiglii Florentini diuinarum literarum in schola Tigurina professoris, ad Riccardi Smythaei Angli, olim theologiae professoris Oxoniensis duos libellos de caelibatu sacerdotum, et votis monasticis* (Basel, 1559), 7, 9-10; Richard Smyth, *Eiusdem D. Richardi Smythaei confotatio quorundam articulorum de votis monasticis Petri Martyris Itali, Oxoniae in Anglia theologiam profitentis*, in *Celeberrunu sacrae theologiae professoris D. Richari Smythaei, in achademia Oxoniensi sacras literas profitentis de coelibatu sacerdotum liber vnus. Eiusdem de votis monasticis liber alter, nunc primum typis excusi* (Louvain, 1550), sig. F4r; Thomas Martin [Stephen Gardiner?], *A traictise declaryng and plainly prouyng, that the pretensed marriage of priestes, and professed persones, is no marriage, but altogether vnlawful, and in all ages, and al countreies of Christendome, bothe forbidden, and also punished. . . .* (1554), sig N4r.

<sup>42</sup> Thomas Aquinas, *Summa Theologiae*, II-II, q. 89, a. 5. This quote is the translation of Kevin D. O’Rourke, from vol. 39 of the Blackfriars’ edition of the *Summa* (New York: McGraw-Hill, 1964).

In other words, an oath glorified God only by invoking and venerating God's name. The actual behavior promised before God in an oath was not an act of worship. By contrast, the condition or activity promised to God in a vow was of its own accord an act of religion or worship. To use the language of medieval Catholicism, a vow was a work of supererogation—an act over and above the basic requirements of a Christian life that earned a person merit, for it bound to the vower to perform an action (like not marrying) otherwise not necessary for salvation. This was why Martin Luther attacked vows but not oaths. Because vows were promises made to God, they bound the vower to do a work for God, thus making a work necessary for salvation. This was a form of works righteousness. Yet because oaths were promises to men with God as witness, they bound the swearer to do a work for men, and this, according to Luther, was the proper motivation for good works.<sup>43</sup> Of course, this subtle distinction was lost on many sixteenth-century writers. In England particularly, oaths and vows were often confused.<sup>44</sup>

A declaration differed from both an oath and a vow in that it did not invoke the name of God. This meant that declarations were not as serious. God was the power behind oaths, and God was not cited as a witness in these weaker professions. Oaths were thus placed on a higher plain than oathless promises or declarations. For example, John Downname, an Elizabethan and Jacobean priest who was a prolific author of popular devotional treatises, claimed that while the person to whom you made a promise could release you from your obligation, he could not release you from a promissory oath since an oath invoked the unchanging name of God.<sup>45</sup> The

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<sup>43</sup> Martin Luther, *The Judgment of Martin Luther on Monastic Vows* (1521), trans. James Atkinson, in *The Christian in Society I*, ed. James Atkinson, vol. 44 of *Luther's Works* (Philadelphia: Fortress Press, 1966).

<sup>44</sup> See Jonathan Michael Gray, "Vows, Oaths, and the Propagation of a Subversive Discourse," *Sixteenth Century Journal*, forthcoming.

<sup>45</sup> John Downname *Four treatises, tending to dissuade all Christians from foure no lesse hainous then common sinnes; namely, the abuses of swaering, Drunkenesse, Whoredome, and Briberie* (1608), 65-66.



standard medieval gloss on Hebrews 6 read, “just as men [are bound] profusely by promises, [they are bound] more profusely by oaths.”<sup>46</sup> Even Augustine of Hippo (of great influence in the sixteenth century) recognized that while some people allowed simple lies in certain circumstances, no one condoned confirming a lie with an oath:

Only in the worship of God may they grant that we must not lie; only from perjuries and blasphemies may they restrain themselves; only where God’s name, God’s testimony, God’s oath is introduced, only where talk of divine religion is brought forth, may no one lie, or praise or teach or enjoin lying or say that lying is just.<sup>47</sup>

Augustine was admitting that everyone knew that professions where God was not cited as witness were less solemn and less binding than oaths. A false declaration was a sin, but a false oath was worse, for then the swearer took God’s name in vain, and as the ten commandments so clearly stated, “the Lord will not hold him guiltless that taketh his name in vain.”<sup>48</sup> In fact, sixteenth-century literature is full of stories of God punishing people who took his name in vain by swearing false or vain oaths.<sup>49</sup> Some writers even

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<sup>46</sup> *Biblia Latina cum glossa ordinaria*.

<sup>47</sup> Augustine, *Contra mendacium*, trans. Harold B. Jaffee, in Roy J. Deferrari, ed., *St Augustine: Treatises on Various Subjects* (Washington D.C.: The Catholic University Press, 1952), 173, 175. A similar though truncated statement is found in Andrew Chertsey’s *The crafte to lyue well and to dye well* (1505): “and yet it shole be worse yf a man affermed y<sup>e</sup> lesynge by othe for than a ma[n] sholde forswere hym”; fol. 31<sup>v</sup>. Finally, English casuists in the seventeenth century made a similar distinction between simple lying (which was sometimes licit) and perjury (which was never licit). See David Martin Jones, *Conscience and Allegiance in Seventeenth Century England: The Political Significance of Oaths and Engagements* (Rochester, NY: University of Rochester Press, 1999), 90-91.

<sup>48</sup> Exodus 20:7. This is Tyndale’s translation. The NRSV reads: “the Lord will not acquit anyone who misuses his name.”

<sup>49</sup> See for example Richard Whitford, *A werke for Householdiers*, vol. 5 of *Richard Whytford’s The pype or tonne of the lyfe of perfection*, ed. James Hogg (Salzburg: Institut für Anglistik und Amerikanistik, Universität Salzburg, 1979), 23-31; Edmond Bicknoll, *A Swoord agaynst swearyng, containing these principal poyntes. 1 That there is a lawful vse*

asserted that perjury was the second greatest sin after idolatry, for perjury affected the majesty of God himself.<sup>50</sup> Yet none of this applied to simple declarations, for in declarations God was not cited as witness.

If we apply these definitions to the current profession of conformity of the Episcopal Church, we immediately see that it is a declaration, not an oath or vow. It is neither a promise to God (a vow) nor is God cited as witness (an oath). Indeed, the name of God is not invoked in the declaration required of ordinands in the Episcopal Church. The exception to this statement is the profession of a bishop-elect. Unlike those of deacons and priests, the 1979 Book of Common Prayer mandates that a bishop-elect commence his promise of conformity with the words, "In the Name of the Father, and of the Son, and of the Holy Spirit."<sup>51</sup> Another interesting point to note is that in the examination of an ordinand according to the Edwardian and Elizabethan liturgies, the ordinand was often required to invoke the name of God in his response. A common response was "I will so do, the Lord being my helper."<sup>52</sup> Although I have encountered no sixteenth-century writer who explicitly claimed that this was an oath, it would certainly be possible to interpret it as such. After all, "the Lord being my helper" is very similar to the phrase "so help me God." Curiously, since the 1979 revision of the ordinal, current ordinands to the diaconate or presbyterate do not

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*of an oth, contrary to the assertion of the Manichees and Anabaptistes. 2 Howe great a sinne it is to sweare falsly, vainely, rashly, or customably. 3 That common or vsual swearing leadeth vnto periurie. 4 Examples of Gods iuste and visyble punishment vpon blasphemers, periurers, and such as haue procured Gods wrath by cursyng and bannyng, whiche we call execration* (1579), fols. 30<sup>v</sup>-47<sup>r</sup>; John Foxe, *Acts and Monuments* (1583), 2101-2105.

<sup>50</sup>Thomas Basille [Thomas Becon], *An inuectyue agenst the moost wicked and detestable vyce of swearing* ([1543]), sig. C1r; John Bradford, *The Writings of John Bradford*, ed. Aubrey Townsend, PS, vol. 4 (Cambridge: Cambridge University Press, 1848), 11; Cambridge University Library MS. li. i. 39 (Thomas Wygenhale's *Speculum iuratoris*), fol. 4<sup>v</sup>. See also a quote from Augustine (codified in medieval canon law) which states that the sin of perjury is greater than the sin of homicide: CIC, C. 22 q. 4 c. 1, Friedberg, 1:883-884.

<sup>51</sup>*Book of Common Prayer* (1979), 513. For the declarations of priests and deacons, see pages 526 and 538.

<sup>52</sup>*Two Liturgies*, 169-170, 177-178, 183-184, 339, 340, 346-347, 352-353; *Liturgies . . . of Queen Elizabeth*, 282-283, 289-291, 295-296.

invoke the name of God in their responses. They simply answer: “I will.”<sup>53</sup> Bishops-elect, however, continue to include in their answers the names of one of the persons of the Trinity.<sup>54</sup> This means that, with the exception of bishops, ordinands in the current Episcopal Church do not have to swear any oaths. To our sixteenth-century predecessors, the form of our modern profession of conformity would seem less solemn, and therefore less binding and more flexible than a formal oath.

#### Swearing with a Protestation in Sixteenth-Century England

The final section of this paper will deal with the manner of swearing. In the Diocese of South Carolina, a letter is read aloud before the ordinand makes his or her profession. In essence, this letter openly declares the diocese’s interpretation (and presumably the ordinand’s interpretation) of the declaration of conformity. The ordinand thus makes his or her profession with a protestation explaining what is meant by his or her subscription to “the doctrine, discipline and worship” of the Episcopal Church. This conditional manner of professing was also practiced in the sixteenth century. Although many examples could be cited, for purposes of brevity, this paper will limit its exploration to two prominent illustrations.

The first is that of Thomas Cranmer’s oath of fealty (also referred to as an oath of canonical obedience) to the pope. With the death of William Warham in August 1532, Henry VIII needed a new archbishop of Canterbury. Henry’s primary concern was to select one who would grant him an annulment to his marriage to Katherine of Aragon, but the person Henry selected, Thomas Cranmer, had concerns about the oath he was required to swear to the pope at his consecration and ordination. According to John Foxe (who based his account on Cranmer’s answer to Bishop Brokes during Cranmer’s treason trial under Mary), Cranmer initially refused Henry’s summons to return to England from Germany in order to accept the archbishopric because Cranmer considered that

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<sup>53</sup> *Book of Common Prayer* (1979), 531-532, 543-544.

<sup>54</sup> *Book of Common Prayer* (1979), 518.

“the means he must have it,” notably the oath of canonical obedience to the pope, “was clean against his conscience.”<sup>55</sup> When Henry persisted in his desire to make Cranmer archbishop, Cranmer explained to the king that his conscience forbade him to take the archbishopric at the pope’s hand, for Henry was the supreme governor of the church in England. After a few more conversations with Henry, “the king himself,” according to Cranmer, “called doctor Oliver and other civil lawyers, and devised with them how he might bestow it upon me, enforcing me to do nothing against my conscience.”<sup>56</sup> Henry then informed Cranmer that he could receive the archbishopric “by the way of protestation, and so one to be sent to Rome, who might take the oath, and do every thing in my name.”<sup>57</sup>

Cranmer decided that Henry’s recommended course of action was valid, stipulating only that Henry “should do it *super animam suam* [over his own soul].”<sup>58</sup> Accordingly, on March 30, 1533, in the chapterhouse of the College of St. Stephens at Westminster, in the presence of the notary John Clerk and witnesses Thomas Bedyll, Richard Gwent, and John Cocks, Cranmer made the following protestation:

In the name of God Amen. In the presence of you witnesses here present of authentic character and worthy of faith, I Thomas, bishop-elect of the archbishopric of Canterbury, allege, say and protest, openly, publicly, and expressly with these writings, that since an oath or oaths are accustomed to be sworn by the archbishop-elect of Canterbury to the highest pontiff . . . it is not nor will it be my will or intention by such oath or oaths, no matter how the words placed in these oaths seem to sound, to bind myself on account of the

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<sup>55</sup> *Miscellaneous Writings and Letters of Thomas Cranmer*, 223.

<sup>56</sup> *Miscellaneous Writings and Letters of Thomas Cranmer*, 224.

<sup>57</sup> *Miscellaneous Writings and Letters of Thomas Cranmer*, 223-224.

<sup>58</sup> *Miscellaneous Writings and Letters of Thomas Cranmer*, 224. By saying that Henry should proceed with this course of action *super animam suam*, Cranmer probably meant that Henry had to accept responsibility before God for having Cranmer sworn in this manner.

same to say, do, or attempt anything afterwards which will be or seems to be contrary to the law of God or against our most illustrious king of England, the commonwealth of his kingdom of England, or the laws and prerogatives of the same. And that I do not intend by such an oath or oaths to bind myself in any way that prevents me from freely speaking, counseling and consenting to all and singular things concerning the reformation of the Christian religion, the government of the church of England, the prerogative of the same crown, or that prevents me from carrying out and reforming these things in the Church of England which seem to me to need reformation. And I protest and profess that I will swear the said oaths according to this interpretation and this understanding and not otherwise nor in another way. And furthermore I protest that whatever oath my proctor swore formerly to the highest pontiff in my name, that it was not my intention or will to give him any power by virtue of which he could have sworn any oath in my name contrary or repugnant to the oath sworn by me or to be sworn by me henceforward to the most illustrious king of England. And in case he [my proctor] swore any such contrary and repugnant oath, I protest that he swore it without my knowledge or authority and I want it to be null and invalid. I want these protestations to be repeated and reiterated in all clauses and sentences of the said oaths, and from these [protestations] I do not intend to withdraw nor will I withdraw in any way by anything done or said by me, but I want these to remain always in effect for me.<sup>59</sup>

Immediately after making this protestation, Cranmer left the chapterhouse and proceeded to the high altar of the same college to

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<sup>59</sup> Lambeth Palace Library, Cranmer's Register, fol. 5<sup>r</sup>. This translation from Latin is my own. John Strype printed the Latin of this profession in his *Memorials of the Most Reverend Father in God Thomas Cranmer, Sometime Lord Archbishop of Canterbury* (Oxford: Clarendon Press, 1812), 2:683-684. It is also included with a few errors of transcription in the "Process contra Thomam Cranmer," *Miscellaneous Writings and Letters of Thomas Cranmer*, 560.

receive his consecration at the hands of the bishops of Lincoln, Exeter, and St Asaph. After John Longland, Bishop of Lincoln, read Cranmer his consecration oath, Cranmer declared he would take the oath only according to the protestation he had just made. He then swore the oath. Again, before taking a similar oath upon reception of the pallium, Cranmer reiterated that he swore this oath under the protestations made in the chapterhouse. Finally, a third time, he required those present to bear witness that he took these oaths according to his protestation.<sup>60</sup>

Although Cranmer's use of a protestation allowed him to take his oaths to the pope in a manner that did not offend his conscience, this method of swearing was dubious to say the least. The appointment of a proctor to go to Rome to take the oath of canonical obedience before the pope was not the problem. Proctors often took oaths on behalf of someone else. Because of the distance between Rome and England, English bishops-elect rarely if ever journeyed to Rome themselves to make the oath in the pope's presence. The making of a nullifying protestation before an oath, however, was quite controversial. Before swearing to the Treaty of Madrid in 1525, Francis I of France had made two secret protestations to the effect that the treaty oath he was about to swear would not bind him, and Francis's actions created an international polemical debate over the validity of a pre-oath protestation.<sup>61</sup> This episode was certainly known in England since Hall made a reference

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<sup>60</sup> The source for this episode is a copy of the notarial instrument of the proceedings in Cranmer's Register; Lambeth Palace Library, Cranmer's Register, fols. 4<sup>r</sup>-5<sup>v</sup>.

<sup>61</sup> For the text of these two protestations, see M. Aimé Champollion-Figeac, ed., *Collection de documents inédits sur l'histoire de France publiés par ordre du roi et par les soins du ministre de l'instruction publique* (Paris: Imprimerie Royal, 1847), 300-304, 466-478. Francis's apology for his actions as well as the response of Emperor Charles V (who felt cheated by Francis's protestations) are printed in *Pro divo Carolo Romanorum Imperatore Invictissimo, pio, felice, semper Augusto, Patrepatriae, in satisfactionem quidem sine talione eorum quae in illum scripta, ac pleraque etiam in uulgum aediat fuere, Apologetici libri duo nuper ex Hispaniis allati cum alijs nonnullis, quorum catalogos ante cuiusque exordium reperies* (Anvers, 1527), 113-122, 125-182. For background on this episode, see Henri Hauser, "Le traité de Madrid et la cession de la Bourgogne à Charles-Quint: étude sur le sentiment national Bourguignon en 1525-1526," *Revue Bourguignonne* 22 (1912): 1-180.

to it in his *Chronicle*,<sup>62</sup> and the controversial nature of a pre-oath protestation was probably the reason that Cranmer did not make the contents of his protestation public.<sup>63</sup> Indeed, when what Cranmer had done became public knowledge during Mary’s reign, Reginald Pole blasted Cranmer for entering into his archbishopric “by a feigned oath, by fraud, and dissimulation.” What else did Cranmer’s protestation serve “but to testify a double perjury, which is to be forsworn afore you did swear? Other perjurers be wont to break their oath after they have sworn, you break it afore.”<sup>64</sup> Thomas Martin agreed, boldly proclaiming at Cranmer’s heresy trial: “He [Cranmer] made a protestation one day, to keep never a whit of that which he would swear the next day, was this the part of a Christian man?”<sup>65</sup> At the same time, the bishop of Gloucester derisively compared Cranmer to a man who killed another but thought himself safe because he had protested before the deed that it was not his will to kill.<sup>66</sup> Finally, Francis I could at least excuse himself with the contention that his oath to the Treaty of Madrid was taken in fear under constraint and force, for Francis was the prisoner of Charles V at the time of the treaty oath. Cranmer, however, could not claim even this “delusion,” for as Pole observed in his letter to Cranmer: “Whereunto you were not driven, neither *vi* [force], nor *metu* [fear], as you were not in this your case.”<sup>67</sup> Cranmer’s protestation was thus not without controversy.

Our second illustration is Archbishop Whitgift’s subscription campaign to his three articles in 1583 and 1584. The first diocese to be administered these articles was Chichester. Some Puritan ministers there refused to subscribe outright, instead

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<sup>62</sup> *Hall’s Chronicle*, 712.

<sup>63</sup> Cranmer of course publicly declared three times at his consecration that he took his oaths to the pope according to his protestation, but the notarial instrument documenting the episode does not state that Cranmer read the actual contents of his protestation (made earlier in the chapterhouse) at his consecration.

<sup>64</sup> *Miscellaneous Writings and Letters of Thomas Cranmer*, 538.

<sup>65</sup> Foxe, *Acts and Monuments* (1583), 1876.

<sup>66</sup> [Nicolas Harpsfield?], *Bishop Cranmer’s Recantacions*, ed. Lord Houghton, intro. J. Gairdner (Philobiblon Society Miscellanies 15, 1877-84), 33-34.

<sup>67</sup> *Miscellaneous Writings and Letters of Thomas Cranmer*, 539. Also see [Harpsfield?], *Bishop Cranmer’s Recantacions*, 46.

journeying to London to meet with Whitgift and other ecclesiastical officials. According to the Puritan account of what happened next, the ministers were allowed subscribe to the articles with the following protestation:

their subscription was not required to any other sense then [*sic*] such as was not against the word of God and agreeable to the substance of religion now professed in this church of England and by law established, and according to the analogy of faith, and that their subscription is not required to any thing not expressed in the said book, and thereupon they did voluntarily subscribe.<sup>68</sup>

The bishops' account of what happened, however, differs in that claims that the ministers subscribed "without any protestation." Instead, they subscribed with a condition excepting certain points in the Book of Common Prayer to which they were unwilling to consent, such as the use of "the cross in baptism and private baptism."<sup>69</sup> When Whitgift later found out that the Puritan ministers had claimed to have subscribed with a protestation, he was upset, exclaiming to a few of the ministers: "And indeed, you have no protestation, but I have allowed you a declaration how far your subscription shall extend."<sup>70</sup>

Whitgift's encounter with the Chichester Puritans seems to have hardened his resolve not to allow any further conditional subscriptions or protestations. As a result of Whitgift's hard-line stance, three to four hundred Puritan ministers refused to subscribe to his articles and were deprived.<sup>71</sup> Yet some ministers continued to offer limited subscriptions. For example, on February 18, 1584, fifteen London ministers subscribed in a circumspect manner. For the second article on the Book of Common Prayer, they declared that

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<sup>68</sup> Albert Peel, ed., *The Seconde Parte of a Register: Being a Calendar of Manuscripts under That Title Intended for Publication by the Puritans about 1593, and Now in Dr Williams's Library, London* (Cambridge: Cambridge University Press, 1915), 1: 218.

<sup>69</sup> Peel, *Seconde Parte*, 218.

<sup>70</sup> Peel, *Seconde Parte*, 219. See also, Collinson, *Elizabethan Puritan Movement*, 249-250.

<sup>71</sup> Collinson, *Elizabethan Puritan Movement*, 253.



they were “content to use it, for the peace of the church”—omitting all mention of whether there was anything in it contrary to Scripture—while for the third article they consented to the Thirty-Nine Articles “so much as concerneth faith and sacraments therein.”<sup>72</sup> Eventually, after strong pressure from Elizabeth’s privy council (particularly Lord Burghley and Sir Francis Walsingham), Whitgift relented and allowed subscriptions with protestations or conditions. Thus, a group of Leicester ministers subscribed to a promise “to receive the same Book [of Common Prayer] and none other, to administer the holy sacraments and to use the prayers therein contained.” They also attached a protestation to their subscription declaring their understanding that the Book of Common Prayer “alloweth not three distinct orders in the ministry, but that all are in the ministry of the word and sacraments *paris* [equally], and that the distinction is in government political, to avoid division, and to maintain peace.”<sup>73</sup> In the end, then, Whitgift’s subscription campaign failed to bring about the uniformity for which he had hoped, for many Puritans ministers subverted his designs through the means of limited subscriptions or subscriptions with protestations.

In comparison to the two sixteenth-century examples discussed above, the manner of protesting in the Diocese of South Carolina is rather mild. First, unlike Cranmer, who made his protestation in the chapterhouse before his consecration, the actual content of the protestation is read openly in the ordination service itself. Whereas Pole could censure Cranmer for having brought forth “a privy protestation, made with privy witnesses,” no such criticism can be leveled at the Diocese of South Carolina.<sup>74</sup> Second, the protestations of both Cranmer and the Puritans were designed to annul the contents of their professions. Cranmer obviously did not want to bind himself to be obedient to the pope. The Puritans

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<sup>72</sup> Peel, *Seconde Parte*, 221. We do not know if the bishops accepted this subscription.

<sup>73</sup> Collinson, *Elizabethan Puritan Movement*, 264. For another example of a limited subscription, see Roland G. Usher, ed., *The Presbyterian Movement in the Reign of Queen Elizabeth as Illustrated by the Minute Book of the Dedham Classis, 1582-1589* (London: Royal Historical Society, 1905), 91.

<sup>74</sup> *Miscellaneous Writings and Letters of Thomas Cranmer*, 538.

certainly did not want to admit that the Book of Common Prayer contained nothing contrary to the Word of God. They utilized their protestations to subvert the original interpretation of the designers of their professions. Yet the original design of the modern declaration of conformity in the Episcopal Church is not at all clear. Because its interpretation is doubtful, it would be hard to argue that the protestation read in the Diocese of South Carolina was designed to subvert the declaration of conformity. Furthermore, in South Carolina, the diocese itself, that is, the bishop, deans, and standing committee, are the impetus behind the reading of the protestation. It is not a case, as it was in 1583 and 1584, of ministers seeking to subvert their ordinary. In South Carolina, the ordinary—not the ordinand—is behind the protestation! Finally, we should recognize that unlike Cranmer’s profession but like the subscriptions of 1583 and 1584, the profession of the conformity in the Episcopal Church is a simple declaration. As such, it is more flexible than an oath. Whitgift himself realized this in 1584. He initially insisted that the same rules that applied to oaths applied to his subscriptions. In particular, Whitgift claimed:

So the othe which is to be taken before a magistrate must be receaved in that sense . . . so likewise these thinges [Whitgift’s articles to which he was demanding subscription] which are sett forthe by authoritie must be taken in that meaninge which those that be in authority & have the same comitted vnto them doe sett downe and not in that sense which every one shall imagine.<sup>75</sup>

When he realized that his three articles were being subverted through limited subscriptions with protestations, he changed strategy and abandoned the use of a simple declaration in favor of a series of incriminating questions administered to Puritans after they had taken an explicit *oath* to answer all questions truthfully. When

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<sup>75</sup> British Library Additional MS. 48064, fol. 165<sup>r-v</sup>. Whitgift probably had in mind a specific decree in canon law that sought to preclude equivocation under oath by declaring that God understood oaths in the manner understood by the administrator of the oath, not the swearer. See, *CIC*, C. 22 q. 5 c. 9, 13; Friedberg, 1:885-886.

bound by an oath, Puritans had less wiggle room, and Whitgift’s use of this *ex officio mero* oath [an oath administered by office alone] became a much more effective way of suppressing the Puritan underground.<sup>76</sup> This shows that an oathless profession, be it Whitgift’s three articles or the declaration of conformity of the Episcopal Church, is more open to modification through the use of a protestation.

### Conclusion

What has our tour of the sixteenth-century clerical professions taught us about the current declaration of conformity in the Episcopal Church and the exact manner of profession of ordinands in the Diocese of South Carolina? First, compared to sixteenth-century standards, the modern declaration of conformity is vague. Unlike the professions of the sixteenth century, today’s profession does not bind the ordinand to be obedient to a specific individual, to hold precise doctrine, or to follow detailed ceremonies. Second, the form of the Episcopal profession is not an oath or vow but rather a simple declaration. As such, it lacks both the solemnity and stringency of a profession that invokes the name of God. A clergy person in the Episcopal Church who violates his or her ordination profession cannot be accused of perjury in the traditional, theological sense. Finally, the reading aloud of a letter stating the diocese’s interpretation of the profession is innocuous compared to similar methods of swearing with a protestation in the sixteenth century. By sixteenth-century standards, the current practice of the Diocese of South Carolina is valid. As for our original question of whether the declaration of conformity binds ordinands to accept current and future resolutions of General Convention, let me first observe that traditional canon law clearly stated that unless the cleric specifically swore to observe all *future* statutes of a church, a standard oath to follow the statutes of one’s church does not bind

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<sup>76</sup> For more details here, see Collinson, *The Elizabethan Puritan Movement*, 266 and following; Leonard W. Levy, *Origins of the Fifth Amendment: The Right Against Self-Incrimination* (Chicago: Ivan R. Dee, 1968), 142-168; Gray, “So Help Me God,” 486-503.

the swear to follow any statutes enacted after his oath.<sup>77</sup> By this interpretation, the declaration of conformity of the Episcopal Church does not bind ordinands to follow future resolutions and canons of General Convention. But what about resolutions or canons passed by General Convention before the ordinand made his or her profession? Because ordinands in the Diocese of South Carolina define “the doctrine, discipline, and worship” of the Episcopal Church as the Thirty-Nine Articles, the Creeds, the Chicago-Lambeth Quadrilateral and the theology of the historic prayer books, their declaration does not technically bind them to any resolutions or canons of General Convention. If the Episcopal Church desires to use the declaration of conformity as a means to enforce the resolutions and canons of General Convention, it should issue its own definition of the “doctrine, discipline, and worship” of the Episcopal Church as including the resolutions and canons of General Convention. Yet without further definition, the current declaration of conformity of the Episcopal Church is vague and ambiguous, and our survey of sixteenth-century clerical professions has taught us that vague professions are open to multiple interpretations.

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<sup>77</sup> *CIC*, X 2.24.35, Friedberg, 2: 373. I am indebted to the anonymous reader for this information.



## DOCUMENTS

### Francis Lister Hawks on the Constitution

Francis Lister Hawks (1797-1866) was a prolific nineteenth-century clergyman, historian, and canonist.<sup>1</sup> His first career was as a lawyer. After graduation from the University of North Carolina (1815) he read for the bar and entered into private practice. He also served in the state legislature and as a reporter of the North Carolina Supreme Court.



*Francis L. Hawks*

Hawks switched careers a decade later, reading for orders and entering the ordained ministry in 1827. Most of the remainder of his life was devoted to parish ministry in a succession of congregations in New Haven (assistant at Trinity Church), Philadelphia (assistant at St. James's), New York City (rector at various times of St. Stephen's, St. Thomas's, and Calvary), New Orleans (rector, Christ Church), and Baltimore (rector, Christ Church). Yet he found time for academic pursuits, serving as professor of Divinity at Trinity College, Hartford (1830-31); Conservator of Books, Manuscripts, etc. belonging to the [General]

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<sup>1</sup> The image of Hawks is from James Grant Wilson and John Fiske, *Appletons' Cyclopaedia of American Biography*, 6 vols. (New York: D. Appleton and Company, 1888), 3:121.

Convention (1835-41), and Historiographer of the Episcopal Church (1851-1866).<sup>2</sup>

Hawks believed that good history was based on the collection and publication of documentary resources. In his early career as reporter for the North Carolina Supreme Court he oversaw the publication of *Reports of Cases adjudged in the Supreme Court of North Carolina* (1823-28). As Conservator and Historiographer he prepared three volumes that relied upon careful compilation of evidence, much of which he collected on a research trip to England.<sup>3</sup> The volumes traced the history of church in Virginia (*A Narrative of Events Connected with the Rise and Progress of the Protestant Episcopal Church in Virginia*, 1836-39), Maryland (*A Narrative of Events Connected with the Rise and Progress of the Protestant Episcopal Church in Maryland*, 1839), and Connecticut (*Documentary History of the Protestant Episcopal Church in the United States of America, containing numerous hitherto unpublished documents concerning the Church in Connecticut*, co-edited with William Stevens Perry, 1863-64).

Perry followed a similar method in his published works on canon law. In 1841, he published the first significant commentary on the Constitution and Canons of the Episcopal Church: *The Constitution and Canons of the Protestant Episcopal Church in the United States: the whole being chronologically arranged, with notes and remarks*

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<sup>2</sup>Hawks convinced the General Convention of 1835 to create the position of Conservator, a forerunner of the present day Archivist. The convention of 1838 asked Hawks and Samuel Farmar Jarvis of the General Theological Seminary faculty to write volumes of history. The House of Bishops named Farmer as "Historiographer" and affirmed Hawks as "Conservator." Some members of the House of Deputies may have assumed that both men occupied the role of Historiographer, however, for the minutes of the Deputies noted only that both men were asked "to prepare an Ecclesiastical History" and the Index to the 1838 journal records the election of both men to the position of Historiographer. The 1841 Journal made it clear, however, the two men held different titles, with Hawks as the Conservator and Jarvis the Historiographer. With the death of Jarvis in 1851, Hawks assumed the title of Historiographer. See *Journal of the General Convention* (1835): 65, 89-91, 100; *Journal of the General Convention* (1838): 4, 79, 89, 113; *Journal of the General Convention* (1841): 79, 97-98; Wilson and Fiske, *Appleton's Cyclopedia*, 3:121-22; and William Stevens Perry, "Preface" to *The History of the American Episcopal Church, 1587-1883*, 2 vols. (Boston: James R. Osgood and Company, 1885), viii.

<sup>3</sup>Wilson and Fiske, *Appleton's*, 3:121.

*historical and explanatory, and reports of such cases as have arisen and been decided under the canons.* Twenty years later he and William Stevens Perry collected and published an annotated set of General Convention Journals: *Journals of the General Conventions of the Protestant Episcopal Church, in the United States of America, 1785-1853, inclusive, published by order of the General Convention, with illustrative historical notes and appendices* (1861).

Hawks's commentary is of interest to some modern canonist because of his opinions on the relationship between the individual dioceses and the General Convention. Hawks concluded that once a diocese joins the General Convention it forfeits a degree of autonomy, including the ability to ever withdraw from participation. On the other hand, he argued strenuously that the General Convention had no right to alter the Episcopal Church's Constitution without the consent of the individual dioceses. His conclusions were not universally shared. His contemporary Thomas Vail (1812-89) reached a different conclusion, for example, on the right of an individual diocese to withdraw from General Convention.<sup>4</sup>

Hawks's introduction and the entirety of his comments on the Constitution follow from the Swords, Stanford & Co. edition that was published in New York City in 1841. The volume carried two title pages, the first for a projected (but never completed) series-- *Contributions to The Ecclesiastical History Of The United States Of America*—and the second for the individual volume— *The Constitution And Canons of the Protestant Episcopal Church in the United States; The Whole being Chronologically Arranged with Notes and Remarks Historical and Explanatory, and Reports Of Such Cases as have Arisen and been Decided under the Canons.* The existence of the double title page is occasionally the cause of misunderstanding.

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<sup>4</sup> See Thomas Vail, *The Comprehensive Church or, Christian Unity and Ecclesiastical Union in the Protestant Episcopal Church* (first edition 1841, second edition 1879).



[v ]

## Introduction

In presenting to his brethren the present volume the author deems it necessary to prefix to it a few explanatory remarks. The book forms one of the series originally contemplated by the writer, when he undertook the task of preparing a history of the several dioceses of the Protestant Episcopal Church, in the United States. It was his purpose, however; to have delayed the appearance -of this volume, until he should have given to the Church the narrative of each diocese. It was his design, when that was accomplished, to complete his work by a -volume or two, embracing such: topics of general interest as belonged exclusively to no single diocese, but were interesting and important to all. Under; this head, a work on the Constitution and Canons, and on the general institutions of the Church, such as the General Missionary Society, the General Theological Seminary, the Sunday School Union, the history of the American Prayer Book, the efforts to obtain the Episcopate before the Revolution, etc. etc., would properly fall.

The cause of the present appearance of this work is to be found in the request of many of the clergy, including several of the bishops of the Church. They were pleased to say that the information it contains was much needed among us ; and each of the author's purposed volumes will form, in

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fact, a distinct work, the harmony of his plan, as they truly alleged, would not be interrupted by the immediate publication of this book. To these representations and requests, the author yielded, and now offers to the Church, what the reader will perceive is in truth, one of the last volumes of the contemplated series. The intermediate volumes are in progress, and should life be continued to the writer, will, from time to time, be published, with as little delay as is consistent with laborious research, and the desire to secure accuracy of narrative. The task, it is obvious, is not one to be performed in a day.

Were the author much wiser than he presumes to think himself, he would still submit to his brethren, a work of this kind with unfeigned diffidence. The proper interpretation of law, is in itself a science; the policy of a law is a question of sound judgment. As to the first of these, the author has endeavored to follow rules which were once familiar' to him, and which he hopes are not entirely forgotten: he does not, however, dare to suppose that he has entirely escaped erroneous interpretation. He can only say, that he has labored hard to do so, and in that distrust of himself which he honestly feels, he has sought the correction of his errors by submitting his manuscript to some of the ablest jurists among the laity, and some of the most experienced and wisest of the clergy of the Church, and has gladly availed himself of their suggestions and amendments. As to the policy of any law, animadverted on in the following pages, the author has but expressed his private opinions, honestly entertained, in love to the Church: it is very possible that though honest, they may be mistaken: in such case the hope is entertained that wiser men will detect the mistake, and prevent it from doing injury. In no sense is the book put forth as *authority*; it may however contribute in some measure to promote, throughout the dioceses, uniformity of opinion in interpreting our body of canon law. Like a pioneer in an untravelled

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territory, it may 'make a road in the wilderness, which, though rough, will not be useless to future travellers. In the preparation of the work, three great objects have been kept in view. The first was to present what gentlemen of the bar would call an edition of the statutes at large. Every canon that has ever been passed by any General Convention, will be found printed at length in this work. They are arranged in chronological order, under their appropriate titles; and the means of comparison are thus made easy. To trace the history of legislation, by tracing the changes from time to time, in the phraseology and provisions of the laws on any given subject, is one of the greatest aids to correct interpretation. In the arrangement of titles or heads, the author has followed the order of canons as

adopted in the revision of 1832. It was necessary to follow some arrangement, and upon reflection, this seemed best. That revision was most carefully made, after long deliberation, and on the committee were some of the best jurists in our country. The body of canons they presented, embraced every subject on which there had ever been any legislation, and the few canons passed in the General Convention of 1835 and 1838, fell naturally under some one or other of the heads embraced in the revision of 1832. The numbering and titles of the canons here set forth, it will be understood, therefore, are according to that revision. And here it seems not improper to repeat the advice of the venerable father, Bishop White, on the subject of new canons. He suggests two things: first, that instead of repealing a clause or adding a clause to any existing canon, it is better to draw the canon entirely anew, preserving or adding what is desired, and in the close *or* the new canon entirely to repeal the old one. This will certainly simplify our canon law. His other suggestion is, that canons should be numbered as of the convention in which they were passed, and not continuously as of the last revision. Thus the first canon of 1835 should be so numbered, and not as canon LVII.

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If these two suggestions are borne in mind, it will be easy to continue the chronological history of our legislation, on the plan pursued in this work.

A second object before the author was, in all cases, when the subject of legislation admitted of it, to show the conformity of our legislation with the laws of the primitive Church. There are, of course, many of our canons in modern times for which no precedent can be found in earlier ages. Where, however, resemblances existed, they have been pointed out. It is part of the creed of an Episcopalian, that it is best -when circumstances permit, *ambulare super antiquas vias*.<sup>5</sup>

A third object of the author was to make, as far as he could, a book of reports of adjudged cases. Whenever, therefore, a question

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<sup>5</sup> To walk upon old roads. [Editor's note]

has arisen in any diocese, on any canon, he has given the best report of the case in his power, to show what has been held to be the true interpretation of the law. He has added also, all that he could gather from any and every source, of the facts and reasons; that have led to the passage or alteration of any law.

Having thus explained his aims and wishes, the author respectfully and modestly submits it to the candor of his brethren; to determine how far he has succeeded in his undertaking.

[1]

CONSTITUTION  
OF THE PROTESTANT EPISCOPAL CHURCH  
IN THE UNITED STATES

BEFORE presenting to the reader the Constitution of the Church, with the changes it has from time to time undergone, it may conduce to perspicuity, and serve as an auxiliary in the interpretation of the instrument itself, to call attention to a brief historical sketch of the condition in which the war of the revolution left the Church, and of the measures pursued by the several independent states of the infant confederacy. When the war commenced there were Episcopal Churches in New-Hampshire, Massachusetts,(including Maine,) Rhode Island, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

In Maryland, Virginia, and the Carolinas, the Church was the establishment, and in all of these States, except North Carolina, possessed a considerable share of strength, and consequent influence. In the New-England States, New Hampshire, Massachusetts, Rhode Island, and Connecticut, it had always encountered the opposition of a large part of the inhabitants, who adhered either to independency, or some

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other form of dissent from the Church of England; and in this region of our country, it was never strong. In New-York, the Church could not properly be called the establishment, though there were laws which purported to confer privileges upon it. In the city indeed, it derived support from the countenance afforded by the governors, and others connected with the administration of public affairs: out of the city, the churches were not only few, but incapable of sustaining themselves without aid from the mother country. In New-Jersey were some of the oldest congregations on the continent, but they also were feeble, and looked for support to the society in England for propagating the gospel. Pennsylvania, with the lower counties that now make Delaware, was not as favorably situated as New-York. In the city of Philadelphia were four clergymen, and out of it not more than six or eight; all of the latter being missionaries from England, and deriving support from that country.

At the close of the revolutionary war, the Church had still an existence in each of the States above named, though in some of them, it had become but little more than nominal. The first inquiry that presents itself, in the prosecution of our subject, is into the relation which the Church, in these several States, bore to each other. Were they one Church and but one; or were they several distinct portions of the Church Catholic?

While the States were colonies, all were alike subject in ecclesiastical matters, to the jurisdiction of the Bishop of London. They were consequently one, and but one, in the particular of episcopal authority.

Professedly they were one also in rites, ceremonies and doctrine, and but one. The *union* and the *unity* of the Church (for it will at once be seen that they are different things,) were therefore both preserved, during our colonial existence. The first, by means of subordination to the same ecclesiastical law, and a common ecclesiastical ruler : the

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last, by an adherence to the same common faith of the Gospel.

The effect of the revolution could be felt in but one of these particulars of union and unity. The reason is obvious. The one was the creation of conventional arrangement among men, and rested only upon an agreement, entered into, or acquiesced in, under a given state of circumstances. The union of the churches, in any country, must be the act of man, for man must make the regulations by which different Christian Churches consent to adopt one system of government or polity. The other, unity, depends on an adherence to what God has declared to be his truth, and no political convulsions can alter that truth, or release man- from his obligations to obey it; and thus the revolution not only could not, by any necessary consequence, destroy the unity existing among the churches in the several colonies on this continent; but it did not disturb it, as between them and the Church of the mother country, from which, politically, they were just severed. The Church of England and the Protestant Episcopal Church in the United States, are now both "in the unity of the Catholic Church," though under different systems of polity.

The revolution did however destroy the union of our churches with the Church of England; for subordination to the canons of that Church, and to the Bishop of London, was impossible, without a violation of that Christian duty of allegiance and obedience to the law, which the churchmen of America owed to their own country. Relations, created originally by human appointment merely, were completely changed by circumstances, and human wisdom might therefore, lawfully enter upon the task of devising new relations, and forming new bonds for their establishment. "When in the course of Divine Providence," (thus speaks the preface to our Book of Common Prayer,) "these American States became independent with respect to civil government, their ecclesiastical independence was necessarily included." Did

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the severance of the union between the colonial churches and that of the parent land, destroy also the union *among themselves*? It could not do otherwise, for it removed the only bond of union they had, viz: a

common ruler and the same laws. While therefore the unity of the Church was unimpaired, its union was completely destroyed; and a sense of the value and importance of that union, led very soon to measures for its renewal.

We are thus brought to the question: - In what attitude did the churches in the several States stand to each other, in entering on this work of once more uniting? The question is one of fact; and the testimony would seem to leave no doubt that in each State, the Church considered itself an integral part of the Church of Christ, perfectly independent, in its government, of any and every branch of the Church in Christendom. Such all opinion would the more readily be adopted, from the fact, that the several states considered themselves in their civil relations, as independent sovereignties, and as such, sought to find a bond of union, first in the articles of confederation, and afterward in the Federal Constitution, Many of those who were employed in laying the foundations of our civil polity, were also aiding by their councils in the establishment of our ecclesiastical system; and hence it is not surprising that there should be found not a few resemblances between them. We present now the facts, that show the sense of independence, entertained by the Churches in the several States.

The Constitution was not finally adopted until October 1789. Let us examine the steps that preceded it: and first, as to the independent action of the States. As early as March 1783, before any general meeting had been held, or any proposition made from any quarter for a union, the Church in Connecticut proceeded to organize itself; and to carry out its purposes, the clergy of that State elected Dr. Seabury their Bishop, and he proceeded to Europe

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for consecration. This he obtained in November 1784, at the hands of the Bishops of the Scottish Episcopal Church, and returning to this country, he was recognized by the clergy of Connecticut as their Bishop, in August 1785.

In August 1783, Maryland moved in the business of her organization. This also was before any general meeting, or any

proposition for such a meeting. The principal work of this Convention in August, was the setting forth "a declaration .of certain fundamental rights and liberties of the Protestant Episcopal Church *in Maryland*." The first clause of this declaration, places the opinion of the Church in Maryland, as to her independent character, beyond all doubt. It is as follows: " We consider it as the undoubted right of the said Protestant Episcopal Church, in common with other Christian churches under the American revolution, to complete and preserve herself as an entire Church, agreeably to her ancient usages and professions; and to have a full enjoyment and free exercise of those purely spiritual powers, which are essential to the being of every Church or congregation of the faithful, and-which, being derived from Christ and his apostles, are to be maintained independent of every foreign or other jurisdiction; so far as may be consistent with the civil rights of society." In June 1784, Maryland repeated her declaration, and acted on her independent principles.

In May 1784, Pennsylvania acted, and appointed "a standing committee of the Episcopal Church *in this State*," and authorized them "to correspond and confer with representatives from *the Episcopal Church in the other States*, or any of them: and assist in framing an ecclesiastical government." This was the first step taken toward an union of the churches in the States generally. At this meeting also Pennsylvania set forth her fundamental principles. In September 1784, Massachusetts acted as an independent Church, in framing certain articles, in which the right of each State *separately* to apply abroad for the episcopate, is

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distinctly asserted. This also was before any general meeting of the churches from the States.

The standing committee appointed by Pennsylvania, did correspond and confer with Churchmen in the other States; so that on the 6th of October 1784, the first *general* meeting of Episcopalians, to adopt measures' for an union, was held in New-York. At this meeting, representatives were present from Massachusetts, Rhode Island, Connecticut, New-York, New-Jersey, Pennsylvania,



Delaware and Maryland. From Virginia, Dr. Griffith was present by permission. He could not sit as a delegate, because Virginia (a State which, through its whole' ecclesiastical history since the revolution, has always asserted its independent diocesan rights,) had forbidden by law her clergy to interfere in making changes in 'the order, government, worship or doctrine of the Church. Virginia asserted the entire independence of the Church within her limits of all control but her own.

At this meeting for conference (it was nothing more,) but one opinion prevailed, as to the light in which the Churches in the several states were to-be viewed. It was recommended to the states represented, and proposed, to those not represented, 'to organize or associate "themselves in the states to which they respectively belong, agreeably to such rules *as they shall think proper:*" and when this was done, not before; they further recommended and proposed, that all "should unite in a general ecclesiastical constitution." As the basis of this constitution, they proposed certain "fundamental principles," in which the independent character of the Church in each State, is fully recognized. They also invited the churches in the' several states to send delegates to a future general meeting, for the purpose of accomplishing an union. Pursuant to this recommendation and proposal, some of the other States acted.

Early in 1785, the clergy of South Carolina met, and agreed to send delegates to the next general meeting, but in comply-

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ing with the invitation to cooperate in the measures necessary to effect a general union, they accompanied their compliance with an unequivocal proof of their sense of the independence of the South Carolina Church, for they annexed to it an understanding that *no bishop* was to be settled in that State. In the summer of 1785, New-York and New-Jersey appointed their respective delegates, and in September of that year the general meeting was held.

At this meeting, the proceedings were such as show that the churches in the several states were deemed independent. Thus the first vote of the assembled body was taken *by States*, and the

principle was formally recognized of voting, not .individually, but by states. A committee was appointed, consisting of one clergyman and one layman, from each State represented, to prepare and report an ecclesiastical constitution, "for the Protestant Episcopal Church in the United States of America:" and this is the second instance, in which the whole of the Episcopal churches in this country, are spoken of collectively as one body, or religious community, the first being in the fundamental articles proposed in October 1784.

The instrument then proposed and adopted, in conformity with the "fundamental principles," before propounded at the first meeting, is the basis of our present constitution, and repeatedly speaks of the " church in each State," and in its final article, provides that "this general ecclesiastical constitution, when ratified by the Church, in the different States, shall be considered as fundamental, and shall be unalterable by the Convention of the Church in any State." This general .constitution, however, as Bishop White informs us, did not form a bond of union among the churches throughout the land, for it stood upon recommendation only; and the real and only bond, by which all the Episcopal congregations in the country were held together, until 1789, was in the common recognition of the thirty-nine articles.

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It would seem then, that the churches" of the several states came together as independent churches duly organized, and so considered each other, for the purpose of forming some bond whereby they might be held together as one religious community throughout the whole United States.

We have said the churches of the several states convened: from this remark, however, Connecticut must be excepted, for she had pursued her own course as an independent part of the Christian Church; having sought (as she had a right to do,) the episcopate for herself; and after obtaining it, she ~ furnished one of the plainest proofs of the general sense of American Episcopalians to the independent character of the churches in the states: for it was after negociation with the General Convention in 1789, that Connecticut

came into union as a Church fully and duly organized with a bishop, priests, and deacons.

We next inquire what was the mode by which they proposed to accomplish this desirable end? Did they merely purpose to establish a *concordat* or mutual and fraternal acknowledgment of each other, among these independent churches? Did they mean to make nothing more than a league between them, thus forming them into a simple confederacy? They went far beyond this: they designed to do so, and most wisely. What was it that the revolution had destroyed? Not unity, but union. They had been but one church, their wish was to return to union, and to supply the bond for that purpose, of which the casualties of war had deprived them. They declared that they came together "in order to *unite*," and placed this declaration as a preamble to the very instrument, by which they sought to accomplish their end. To unite in what? They answer for themselves;--"in a constitution of ecclesiastical government:" that is, in a system of polity to be of general force and application. Indeed, there was nothing else in which they could unite, for in all other matters they were already one. It is

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an error of dangerous tendency, to the harmony and stability of the Protestant Episcopal Church in the United States, to take any other view of the plans and purposes of those who met to form her constitution.

But an union between parties perfectly independent may be formed upon various terms and conditions. Every independent right may be surrendered, or some only may be given up : so, too, a greater or less equivalent may be given for such surrender ; we next ask therefore, what were the terms of the union agreed on ? In other words, what is the true meaning of the constitution? The instrument itself can of course be expected to do no more than present certain great general principles. It cannot provide by express declaration for each case specifically, for this would make it rather a statute book than a constitution; whereas, its true purpose is to furnish certain guides to action, in the future formation of a statute book. Its

interpretation, therefore, should be liberal, and rather according to its general spirit, than to its strict letter, when the rigor of literal interpretation would tend to defeat the great end of *union*, contemplated by its framers. Let it never be lost sight of, that in all such matters, as fairly arise under this general constitution, the polar star in interpretation is, that it was made for the purpose of binding us all to "walk by the same rule." And yet it must also be remembered, that no liberality of interpretation should so stretch its powers, as virtually to destroy those diocesan rights, that are as essential to our well-being, as union itself. The experience of our civil history, shows that few points are more difficult of adjustment, than the respective rights and powers of the state and general governments. A similar difficulty to some extent, exists in the system of polity adopted by the Protestant Episcopal Church in the United States: for the analogy between the two forms of government, is in some particulars very close, and was made so intentionally. In the government of the United States an ultimate arbiter in

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interpretation is provided in the Supreme Court. In the Church, however, we possess no such advantage, for we have no tribunal that can authoritatively declare to the whole Church what the meaning of the constitution is. The House of Bishops may indeed express an opinion if it pleases, and the churches generally respect it, as they should do : but such opinion is neither law, nor authorised judicial exposition of law. Hitherto there has been practically but little difficulty, but it is easy to foresee, as our numbers increase, the certainty of future conflict. It is difficult to lay down a general principle on this delicate subject, of the respective rights of the Church at large, and the churches in the several dioceses. What is desirable is, .on the one hand, to promote such an union as is compatible with diocesan independency; and on the other, so to uphold the just rights of the latter, as to prevent their merger in the former.

What then did the several; dioceses retain under the constitution ? They retained very clearly the following rights :

1. To organize as a distinct Church within the territorial limits of each State, district or diocese.

2. To elect their own ecclesiastical head.

3. To hold the sole and exclusive jurisdiction in the trial of offending clergymen within their respective limits: and to prescribe the mode of trial.

4. To hold their own ecclesiastical legislatures and make all such laws as they might deem necessary for their wellbeing, provided they did not defeat the purpose of union, by contravening the constitution, and constitutional enactments of the Church general.

5. To have an equal voice in the general legislation of the Church at large.

6. To have their respective bishops subject to no other prelate, and to be interfered with in the discharge of their duty by no other bishop; but in all things belonging to their office, to be equal to every other bishop in the Church.

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7. To have their several bishops of right entitled to a voice in the councils of the Church, not as representatives of dioceses, but individually as Christian bishops.

What did they surrender? As we apprehend, the following things :

1. Such an exercise of independency as would permit them to withdraw from the union at their own pleasure, and without the assent of 'the other dioceses.

2. They surrendered the right of having the bishop whom they might elect, consecrated without the assent of the Church at large.

3. They surrendered the right of sole and unrestricted legislation for themselves, in the dioceses alone, but consented that part of their laws should be made in a general legislature of which they were members.

4. They surrendered the right of framing their own liturgy, and agreed through all the dioceses to use the same, when all should have ratified it.

5. They surrendered the right of making separately any alteration in the great compact or charter of union.

These things, as it seems to us, were done by the proposed constitution of 1786. But this instrument was not binding on the Church as its constitution, for it was yet to be ratified by the Conventions of the several States. It was accordingly sent to them for that purpose, and much diversity of opinion prevailed in the dioceses concerning its adoption. In June 1786, a Convention was held of delegates from New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, and South Carolina, and the constitution of the previous year underwent revision and alteration in that body. It still, however, remained to be ratified by the several State Conventions, and it was accordingly recommended to them, that they should authorize and empower their deputies to the first General Convention, meeting after a bishop or bishops had been consecrated, to confirm and ratify a general constitution.

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They did so, and the first convention after obtaining the episcopate was held in July 1789. At this meeting the delegates declared themselves authorized by their respective conventions, to ratify a constitution; and it was referred to a committee of one from each State, to consider the constitution proposed in 1786. It underwent much discussion, and finally, on the 8th of August, 1789, the constitution was formally adopted, and became the fundamental law of the Protestant Episcopal Church in the United States. The work commenced at the first general meeting of Episcopalians in October 1784, was thus consummated in August 1789, and during the intervening period there was no bond holding the churches on this continent together, but the bond of a common faith.

We now proceed to the Constitution itself.

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CONSTITUTION  
OF THE, PROTESTANT EPISCOPAL CHURCH IN  
THE UNITED STATES

ARTICLE I.

THERE shall be a General Convention of 'the Protestant Episcopal Church in the United States of America, at such time in every third year, and in such place, as' shall be determined by the Convention; and in case there shall be an epidemic disease, or any other good cause to render it necessary to alter the place fixed on for any such meeting of the Convention, the presiding Bishop shall have it in his power to appoint another convenient place (as near as may be to the place so fixed on,) for the holding of such Convention; and special meetings may be called at other times, in the manner hereafter to be provided for; and this Church, in a majority of the dioceses which shall have adopted this Constitution, shall be represented, before they 'Shall proceed to business; except that the representa-

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tion from two dioceses shall be sufficient to adjourn r and in all business of the Convention, freedom of-debate shall be' allowed.

In the "fundamental articles" proposed by the Convention' of 1784, as the basis of union, the first was as follows:.. "That there shall be a General Convention of the Episcopal Church in the United States of America."

The article as set forth, however, in the first draft of the Constitution, made in October, 1785, was not in the words given above. It stood thus:

1785.

"There shall be a General Convention of the Protestant Episcopal Church in the United States of America, which shall be held in the city of Philadelphia on the third Tuesday in June, in the year of our

Lora, 1786, and for ever after, once in three years, on the third Tuesday" of June, in such place as shall be" determined by 'the Convention; and special meetings may be held at such other .times and in such places as shall be hereafter provided for; and this Church, in a majority of the States aforesaid shall be represented before they shall proceed to business; except that the representation of this Church from two States shall be sufficient to adjourn: and in all business of the. Convention, freedom of debate shall be allowed."

In 1786, when the instrument underwent revision, the only change in this article was in the time fixed for the meetings

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of the Convention. Instead of the third Tuesday in June, the fourth Tuesday in July was substituted. In August, 1789, as we have stated, the delegates came together with full powers to adopt a Constitution, and at that meeting the first article was put in the following form:

1789.

"There shall be a General Convention of the Protestant Episcopal Church in the United States of America, on the first Tuesday of August, in the year of our Lord, 1792, and on the first Tuesday of August in every third year afterwards, in such place as shall be determined by the Convention; and special meetings may be called at other times, in the manner hereafter to be provided for; and. this Church, in a majority of the States which shall have adopted this Constitution, shall be represented before they shall proceed to business, except that the representation from two States shall be sufficient to adjourn: and in all business of the Convention, freedom of debate shall .be allowed."

At the adjourned Convention, held in September and October of the same year, (1789,) the time was again altered from the first Tuesday of August to the second Tuesday of September, and no other change was made in the article. At the Convention of 1804, it



was once more altered to the third Tuesday in May, and in the Convention of 1823, it was put substantially into the form that stands at the head of this article.

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The difficulty in fixing a time of meeting agreeable to all the members from the different States, is obvious from the frequent changes in that particular; hence the article left to each Convention to settle the time and place of the next meeting, and it is commonly now arranged by amicable conference, between the two houses. The insertion of the clause giving to the presiding bishop power to alter the place of meeting, because of epidemic disease or other sufficient reason, arose from the fact that in September, 1798, the Convention could not meet in Philadelphia, owing to the prevalence of the yellow fever. At that time the bishops had authority, when requested by a Standing Committee of the General Convention, to summon the Convention to meet at another time, and accordingly called it together in June, 1799. A rule had, however, been subsequently adopted by the House of Bishops making one of their number their presiding officer, and it was thought best to confer the power alluded to on him. The mode of calling special meetings of the General Convention is provided for by canon, as may be seen under canon XLIX. of this work.

In the Convention of 1838, a small change was made by a substitution of the word "dioceses" for "States."

## ARTICLE II.

THE Church in each diocese shall be entitled -to a representation of both the Clergy and the Laity, which representation shall consist of one or more deputies, not exceeding four of each order, chosen by the Convention of the diocese; and in all questions, when required by the Clerical and Lay representation from any diocese, each order shall have

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one vote; and the majority of suffrages 'by dioceses shall be conclusive in each order, provided such majority comprehend a majority .of the dioceses represented in that order. The concurrence of both orders shall be necessary to constitute a vote of the Convention. .If the Convention of any .diocese should neglect or decline to appoint Clerical deputies, or if they should neglect or decline to appoint Lay deputies, or if any of those of either order appointed, should neglect to attend, or be prevented by sickness or any other accident, such diocese shall nevertheless be considered as duly represented by such deputy or deputies as may attend, whether Lay or Clerical. And if, through the neglect of the Conventions of any of the Churches which shall have adopted, ~ may hereafter adopt, this Constitution, no deputies, either Lay or Clerical, should attend at any General Convention, the Church in such diocese shall nevertheless be bound by the acts of such Convention. The "fundamental articles" proposed in 1784, furnish -us with the basis of this. We proceed to trace its history. . The second of these articles was as follows: "That the Episcopal Church in each State send deputies to the Convention, consisting of the clergy and laity." The sixth is in these words:-"That the clergy and laity assembled in Convention shall deliberate in one body, but shall vote separately: and the concurrence of both shall be necessary to give validity to every measure."

In 1785, the article as proposed in the Constitution then drawn up, was in the following language

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1785

"There shall be a representation of both Clergy and Laity of the Church in each State, which shall consist of one or more deputies, not exceeding four, of each order; and in all questions, the said Church in each State shall have one vote; and a majority of suffrages shall be conclusive."

In 1786, no change was proposed in this article. In 1789, when the Constitution was adopted, it was put nearly in the form in which It now stands, as the second article presented above. We have said nearly, inasmuch as in 1838 a change was made (as in the first article,) by substituting for the words " State" and " States," " -diocese" and "dioceses."

Certain great principles of our' ecclesiastical polity are here fixed.

1. That those who are to be affected by ecclesiastical laws, have a right by their representatives, to a voice in making them.

2. That this right belongs to the *laity* no less than to the clergy. This was one of the dividing points in the organization of the Church. Bishop Seabury, in accordance with the principles and views of the Scottish Episcopal Church, from which he obtained his consecration, was opposed to the admission of the laity in the counsels of the 'Church, and his 'clergy concurred in his opinion of its impropriety, as involving a .departure from primitive usage. By far the larger part of American Episcopalians, however, 'believed their admission to be scriptural and primitive, and Bishop Seabury finally yielded. The Church 'in this country could never have been organized on the principle of excluding the 'laity from a voice in its legislation. Judging from past experience, as a mere measure of policy, it would have been most unwise to exclude them; for they have been of great service in the deliberative

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assemblies of the ·Church. No evil worth mentioning has resulted from their admission. Many of them love the Church, and in their spheres, labor for it with as much zeal as the clergy. It is true, perhaps, that occasionally a layman may be found in Conventions, whose zeal exceeds his wisdom and discretion, and who, hastily adopting the vulgar opinion that a clergyman must *ex necessitate*,<sup>6</sup> be utterly ignorant of the men and business of this world, ·talks oracularly, and sometimes dogmatically, of the value of an

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<sup>6</sup> Of necessity. [Editor's note]

acquaintance with human nature; and such an one may perchance, at times, be supercilious toward a clergyman very far his superior both in good sense and modesty ; but we must say such instances are exceedingly rare, and find no encouragement in their exhibition, from the general conduct of the lay delegates in Conventions. On the contrary, men of understanding, really acquainted with human nature, act on the principle that good sense is not the exclusive possession of any profession; and therefore they listen to the clergyman who, respecting himself, utters good sense with becoming respect for the feelings and understandings of others. In truth, there is commonly a more punctilious courtesy shown to the clergy in Conventions, from the sacred character they bear; and hence a measure of respect is sometimes paid to the calling which could hardly be claimed on the score of understanding. At any rate, it would be difficult to show the case in our history, where the Church has yet suffered from the presence of the laity in her legislative bodies. Our system is a representative one throughout, from the election of vestries by congregations, up to the election of bishops, and of delegates to the General Convention. It is probably as simple and as equitable a system as human infirmity will permit. It has never been complained of in the Church, for it has operated well in practice; and the grand feature in that system is to put it in the power of those who are of the Church, be they clerical or lay, to correct what they deem amiss, not by a turbulent

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Outbreak of rebellious opposition to wrong, but by the more peaceful process of a vote. Once a year the congregation can quietly remove a bad vestry, and the vestry can at any time, by a proper proceeding, remove a bad minister, and the State Conventions can displace bad delegates to the General Convention. Admit that the power may sometimes be abused; that objection is applicable to all grants of power to man. The true question to be settled, is whether the advantage resulting from having in existence a quiet corrective power, be not worth the hazard of its possible abuse, and be not incomparably better than the injustice of withholding all right to be

heard in Church legislation, from those who are most deeply affected by it.

3. The ratio of representation is here fixed; not on the principle of wealth, or size, or numbers, but, on the ground of entire parity of rank in our dioceses, be they great or small. Bishop White has often been heard by the author to say, that on no other ground would the dioceses ever have come into union. Diocesan equality is therefore here asserted, and further, diocesan independency in all matters not surrendered for the great end of union; for any diocese may demand a vote by dioceses.

4. A mutual check of clergy and laity on each other is also fixed by this article, as a salutary and necessary provision. Any diocese may demand a vote by orders. If, therefore, there should at any time be, or seem to be, conflicting interests of the clergy and laity, involved in any question, each class has a check on the other, as the concurrence of both is essential. This is a wise provision, and serves so effectually to produce a mutual respect for each other's rights, as between clergy and laity, that the bare fact of its existence renders a resort to its exercise seldom necessary.

5. The representation of dioceses *as such*, founded on their existence as independent portions of the Church, though bound in a general union with the sister dioceses is distinctly

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recognized. Indeed, dioceses, as such, are nowhere represented but in the House of Clerical and Lay delegates. The Bishops sit *virtute officii*,<sup>7</sup> in the House of Bishops, and do not represent their respective dioceses. But in the other Houses if a diocese has but a part of its complement of delegates present, or delegates of but one order, nay, if she has but a single delegate of either order, upon a call for a vote by dioceses, that diocese has a voice in that order that may chance to be present, equal to that of the largest diocese with all its eight delegates. And this clause was not inserted by accident. The subject was one which had been considered; for in the Convention of

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<sup>7</sup> By virtue of their office. [Editor's note]

October, 1785, the question was proposed whether that body could, consistently with its fundamental articles, admit a State to be represented by a clerical or lay deputy only," and it was decided in the negative. In 1789, upon full deliberation and discussion, the proviso was inserted as it now stands.

6. While, however, the rights of dioceses were thus sedulously guarded, the rights of the whole united Church were protected with equal care. The union was not sacrificed to diocesan independence. If any diocese sees fit to neglect its privilege of representation, and sends no delegates, it is, nevertheless, as much bound by the acts of the General Convention, as if it had its full complement of representatives in the House.

### ARTICLE III.

THE Bishops- of this Church, when there shall be three or more, shall, whenever General Conventions are held, form a separate House, with a right to originate and propose acts, for the concurrence of the House of Deputies, composed of Clergy and

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Laity; and when any proposed act shall have passed the House of Deputies, the same shall be transmitted to the House of Bishops, who shall have a negative thereupon; and all acts of the Convention shall be authenticated by both Houses. And in all cases, the House of Bishops shall signify to the Convention their approbation or disapprobation (the latter with their reasons in writing,) within three days after the proposed act shall have been reported to them for concurrence; and in failure thereof, it shall have the operation of a law. But until there shall be three or more Bishops, as aforesaid, any Bishop attending a General Convention shall be a member *ex officio*, and shall vote with the Clerical Deputies of the diocese to which he belongs; -and a Bishop shall 'then preside.

By the 5th of the fundamental articles proposed in 1784, it was provided, "that in every State where there shall be a Bishop

duly consecrated and settled, he shall be considered as a member of the Convention *ex officio*."

In the draft of a Constitution made in 1785, the fifth article declared that--

1785.

"In every State where there shall be a Bishop duly consecrated and settled, and who shall have acceded to the articles of this General Ecclesiastical Constitution, he shall be considered as a member of the Convention, *ex officio*."

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In 1786, the article was put in these words :

1786.

"In every State where there shall be a Bishop duly consecrated and settled, and who shall have acceded to the articles of this Ecclesiastical Constitution, he shall be considered as a member of the General Convention', *ex officio*: and a Bishop shall always preside in the General Convention, if any of the Episcopal order be present."

In the Constitution as adopted' in 1789, the article stood as follows:

1789.

The Bishops of this Church, when there shall be three or more, shall, whenever General Conventions are held, form a House of Revision, and when any proposed act shall have passed in the General Convention, the same shall be transmitted to the House of Revision for their concurrence. And if the same shall be sent back to the Convention with the negative or' non-concurrence of the House of Revision, it shall be again considered in the General Convention; and if the Convention should adhere .to the said act by a majority of three-fifths of their body, 'it shall become a law to all intents and purposes, notwithstanding the non-concurrence of the House of Revision; and all acts of the Convention shall be authenticated

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by both Houses. And in all cases, the House or Bishops shall signify to the Convention their approbation or disapprobation; the latter with their reasons in writing, 'within two days after the proposed act shall have been reported to them for concurrence, and in failure thereof, it shall have the operation of a law. But until there shall be three or more Bishops as aforesaid, any Bishop attending a General Convention shall be a member *ex officio*; and shall vote with the Clerical Deputies of the State to which he belongs: and a Bishop shall then preside

In the General Convention of September, 1789, Bishop Seabury, with the churches under his care: came into the union, but not until a change had been made in this article. They made it a condition that this article should be so modified, as "to declare explicitly the rights of the Bishops, when sitting in a separate House, *to originate and propose acts* for the concurrence of the other House of Convention: and to *negative* such acts proposed by the other House as they may disapprove." This modification was agreed to, and thus to Bishop Seabury belongs the merit of having made the Bishops an equal and coordinate power in the work of our general ecclesiastical legislation. Instead of a mere council of revision, he made the Bishops a senate or upper house, holding their places for life; thus more effectually upholding, as was proper, the dignity and respectability of the Bishops, giving more stability to the legislation of the great council of the Church, and guarding against the dangers of enactments made hastily under temporary excitements.

The article as altered stood thus:

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1789.

The Bishops of this Church, when there shall be three or more, shall, whenever General Conventions are held, form a separate. House, with a , right to originate and propose acts for the concurrence of the



House of Deputies, composed of Clergy and Laity; and when any proposed act shall have passed the House of Deputies, the same shall be transmitted to the House of Bishops, who shall have a negative thereupon, unless adhered to by four-fifths of the other House; and all acts of the Convention shall be authenticated by both Houses. And, in all cases, the House of Bishops shall signify to the Convention their approbation or disapprobation, the latter, with their reasons in writing, within three days after the proposed act shall have been reported to them for concurrence; and in failure thereof, it shall have the operation of a law. But until there shall be three or more Bishops, as aforesaid, any Bishop attending a General Convention shall be a member *ex officio*, and shall vote with the Clerical Deputies of the State to which he belongs; and a Bishop shall then preside.

Immediately after this change in the article, Bishop Seabury signed the constitution; when it was resolved "that agreeably to the constitution of the Church as altered and confirmed, there is now in this Convention a separate House of Bishops." Bishop Provoost was absent, so that but two of the three

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Bishops of the Church, were in the Convention. Bishops White, and Seabury, then withdrew, and formed the first House of Bishops under the constitution. And here, may properly be recorded the fact, that the rule adopted as to the office of presiding bishop, was to make it depend on seniority of consecration. This was afterward altered for a time, but subsequently was readopted, and is now the rule.

In 1808, another and important change was made. It will be observed in the article of 1789, before Bishop Seabury came into the union, that notwithstanding a non-concurrence of the bishops, in any measure proposed by the other House, it might still be passed by a vote of three-fifths; and in the article as altered, on the suggestion of the bishop, an adherence of four-fifths, would render of no effect the negative of the bishops.

As early as 1792, an effort was made to alter the article 80 as to render' the consent of the bishops necessary to the adoption of every measure, and to take from the House of Delegates the right to pass it, contrary to the opinion of the bishops, by a vote of four-fifths. This was violently opposed by the House, and some of the State Conventions gave specific instructions to their representatives to vote against it. Still the effort was renewed in 1789,<sup>8</sup> and again in 1804. Finally in 1808, the change was made, and the words "unless adhered to by four-fifths of the other House," were stricken out. The article was then left in its present form, as already set forth. Thus was a veto given to the House of Bishops.

At the Convention of 1808, a question of some interest seemed at one time likely to arise, under this article : it was, whether a single bishop (there being three in the Church,) could constitute a House. Upon this question Bishop White informs us, he was prepared to support the affirmative, as being most agreeable to the letter of the constitution, and also, because on the contrary supposition, nothing could have been done.

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In 1838, the word "diocese" was inserted in lieu of the word "State" at the close of the article.

#### ARTICLE IV.

THE Bishop or Bishops in every diocese shall be chosen agreeably to such rules as shall be fixed by the Convention of that diocese: and every Bishop of this Church shall confine the exercise of his Episcopal office to his proper diocese, unless requested to ordain or confirm, or perform any other act of the Episcopal office, by any Church destitute of a Bishop.

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<sup>8</sup> This appears to be an error in the text as printed. The date should read 1798. [Editor's note.]

This is an article of which the basis is not furnished by the fundamental propositions of 1784. They are silent on the topics embraced in it.

By article sixth, of the proposed constitution of 1785, it was provided that--

1785

"The Bishop or Bishops in every State shall be . chosen agreeably to such rules as shall be fixed by the respective Conventions; and every Bishop of this Church shall confine the exercise of his Episcopal office to his proper jurisdiction; unless requested to ordain or confirm by any Church destitute of a Bishop."

In 1786 it was proposed in the words following:

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1786.

"The Bishop or Bishops in every State shall be chosen agreeably to such rules as shall be fixed by the Convention of that State: and every Bishop of this Church shall confine the exercise of his Episcopal office to his proper jurisdiction : unless requested to ordain, or confirm, or perform . any other act of the Episcopal office, by any Church destitute of a Bishop."

In 1789, it was adopted in these words:

1789.

The Bishop or Bishops in every State shall be chosen agreeably to such rules as shall be fixed by the Convention of that State: and every Bishop of the Church shall confine the exercise of his Episcopal office to his proper diocese or district, unless requested to ordain or confirm, or perform any other act of the Episcopal office, by any Church destitute of a Bishop

The Convention of 1838, striking out the words "or district," and for "State" substituting "diocese" placed the article in its present form.

It will be perceived that this article contemplates the office of a bishop as necessarily connected with some field over which he is to exercise jurisdiction. Hence it has sometimes been argued, that one of our bishops cannot constitutionally resign his jurisdiction, for the American Church does not contemplate the possibility of a bishop at large. This

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construction, however, seems to go too far. Bishops in all ages have had jurisdiction within certain limits, and yet in all periods of the history of the Church, there are instances of the resignation of bishops. The article, as it seems to us, has nothing to do with the question of resignations, but prescribes what shall be the conduct of a bishop who has not resigned. We are confirmed in this opinion, by the legislation of the Church, which, as will be seen hereafter, has made provision, by canon, for resignations. It has therefore been decided that resignations are not unconstitutional. Another question, however, has arisen under this article, not less important than that mentioned above. When Virginia elected the Right Rev. Dr. Meade, as assistant to Bishop Moore, it was expressly declared by the Convention of that diocese that should the Assistant survive the Bishop, the right of succession was not of course to be his, but depended on the will of the Convention. It will at once be perceived, that under this state of things, it was possible (though highly improbable,) that Bishop Meade might be left a Bishop at large, without jurisdiction over anyone; inasmuch as Virginia might elect some one else as its diocesan, on the demise of Bishop Moore. There were many who thought that such a condition as was annexed by the Virginia Convention, to the election of Dr. Meade, did violate the *spirit* of this article. On this ground alone, some felt constrained to vote against the consecration of Bishop Meade; others who did not vote against it, yet had their fears, and yielded reluctantly. The Bishops felt that it was a dangerous precedent, and therefore while

they determined to consecrate, yet accompanied the act with a protest against its being made a precedent.

Virginia supposed that in the exercise of her rights, as an independent Church, she had authority to annex the condition; and so she would have had, under the first clause of the article, permitting her to fix her own rules in electing a Bishop, had this proviso been one relating at all to the *mode* of election :

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in fact it had nothing to do with modes; but; after the election was actually made according to rules, long before fixed in Virginia, it purported to produce an effect at a subsequent period, when Bishop Meade would have been perhaps for a long time acting under the election. The General Convention had no authority to say one word as to the mode or form of electing; that was not a part of her sovereign, independent rights that had been ceded or surrendered by Virginia: but she had surrendered the right of having; if she pleased; within her borders; a bishop wandering up and down in a sort of ecclesiastical vagrancy; without power and without respect. Her Bishop, though chosen for Virginia, and acting in Virginia only, Was yet a Bishop of the whole Protestant Episcopal Church, in the United States. He might have performed an Episcopal act in any diocese of the Union, if requested by its Bishop. The credit and character of the whole Church therefore, was involved in his respectability. A diocese may indeed make canons and regulations; by which the Bishop thereof will be bound; but no diocese has authority to make such laws, as strip him of his proper spiritual functions, still less, to prostrate completely all his authority, and leave him an object of contempt instead of respect. Virginia meant to do no such thing in the case of Bishop Meade, for .he was, and is, universally and deservedly esteemed; but a door was left open, through which it was possible such results might enter. The matter was however amicably adjusted, as may be seen on our future pages, and the possibility of its recurrence is guarded against. Vide post canon VI.

## ARTICLE V.

A Protestant Episcopal Church in any part of the United States, or any Territory thereof not now represented, may, at any time hereafter; be admitted

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on acceding to this Constitution; and a new diocese to be formed from one or more existing dioceses, may be admitted under the following restrictions. No new diocese shall be formed or erected within the limits of any other diocese, nor shall any diocese be formed by the junction of two or more dioceses or parts of dioceses, unless with the consent of the the [sic] Bishop and Convention of each of the dioceses concerned, as well as of the General Convention.

No such new diocese shall be formed, which shall contain less than eight thousand square miles in one body, and thirty Presbyters' who have been for at least one year canonically resident within the bounds of such new diocese, regularly settled in a parish or congregation, and qualified to vote for a Bishop. Nor shall such new diocese be formed, if thereby any existing diocese shall be so reduced as to contain less than eight thousand square miles, or less than thirty Presbyters who have been residing therein, and settled and qualified as above mentioned.

In case one diocese shall be divided into two ' dioceses, the diocesan of the diocese divided may elect the one to which he will be attached, and shall thereupon become the diocesan thereof. And the Assistant Bishop, if there be one, may elect the one to which he will be attached; and if it be not the one elected by the Bishop, he shall be the diocesan thereof.

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Whenever the division of a diocese into two dioceses shall be ratified by the General Convention, each of the two dioceses shall be subject to the Constitution and Canons of the diocese s~ divided, except as local circumstances may prevent, until the same may be altered in either diocese by the Convention thereof. And whenever a

diocese shall be formed out of two or more existing dioceses, the new diocese shall be subject to the Constitution and Canons .of that one of the said existing dioceses, to which the greater number of Clergymen shall have belonged prior to the erection of such new diocese, until the same may be altered by the Convention of the new diocese.

As originally framed in 1789, the article was in the following words:

1789.

A Protestant Episcopal Church in any of the United States, not now represented, may at any time hereafter, be admitted, on acceding to this Constitution.

In 1838, it was put into its present form. As our dioceses in the infancy of the Church were, of necessity, large in extent of territory, it was reasonably to be expected that the increase of parishes and clergy would in due time render it impossible for a single bishop to exercise a proper oversight. The inconvenience was first felt most sensibly by the diocese of New-York. The Bishop himself brought it to the notice of his Convention. Among the remedies suggested two were

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prominent. The one was the appointment of an assistant, the other the division of the diocese. The General Convention in the adoption of a general rule preferred the latter remedy. It was the condition of New-York that caused the change in this article, and she availing herself of its provisions became two dioceses immediately after the action of the General Convention.

#### ARTICLE VI.

In every diocese the mode of trying Clergymen shall be instituted by the Convention of the Church therein. At every trial of ~ Bishop there shall be one or more of the Episcopal order present;

and none but a Bishop shall pronounce sentence of deposition or degradation from the ministry on any Clergyman, whether Bishop, or Presbyter, or Deacon.

In 1785, this article was proposed in the following terms:

1785.

“Every Clergyman, whether Bishop, or .Presbyter, or Deacon, shall be amenable to the authority of -the Convention, in the State to which he belongs, so far as relates to suspension or removal from office; and the Convention in each State shall institute rules for their conduct, and equitable mode of trial.”

In 1786, it was put in the form given above, and this clause was added:

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1786.

“And at every trial of a Bishop there shall be one or more of the Episcopal order present; and none but a Bishop shall pronounce sentence of deposition or degradation from the ministry on any Clergyman, whether Bishop, or Presbyter, or Deacon.

In 1789, the article was adopted in its present form, save that the word " State" occupied the place of "diocese" in the first line. The change to its present form was made in 1838.

This is the only clause in the Constitution relating to the important subject of the Judiciary. At the time it was adopted, had the effort been made, to leave the subject in the hands ~ of the General Convention, it would have produced strong feelings of opposition to union. Uniformity of judicial proceeding, and judicial decision, is of course not to be expected, under such an arrangement as this: and yet both are of great importance to the peace and prosperity of the Church. In fact, the weakest and most defective part of our whole ecclesiastical system, is in the department of the Judiciary. It has been felt to be so, and consequently efforts have



been made to amend it, by a *canon* which is now lying over in the hands of a committee, among the unfinished business of the General Conventions of 1835 and 1838. It is doubtful whether a canon can accomplish it while' this article is in force. . As we shall have occasion to return to this subject, we forbear for the present any further remark.

Under this clause, but few of the dioceses have acted. Many of them have no law touching the mode of trying a clergyman.

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#### ARTICLE VII.

No person shall be admitted to Holy Orders, until he shall have been examined by the Bishop, and by two Presbyters, and shall have exhibited such testimonials and other requisites as the canons, in that case provided, may direct. Nor shall any person be ordained until he shall have subscribed the following declaration: "I do believe the Holy Scriptures of the Old and New Testament to be the word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the doctrines and worship of the Protestant Episcopal Church in the United States." No person ordained by a foreign Bishop shall be permitted to officiate as a minister of this Church, until he shall have complied with the canon or canons, in that case provided, and have also subscribed the aforesaid declaration.

In 1786, this article was proposed in the following terms:

1785.

"No person shall be ordained or permitted to officiate as a minister in this Church, until he shall have subscribed the following declaration: "I do believe the Holy Scriptures of the Old and New Testament to be the word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the doctrines and worship

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of the Protestant Episcopal Church, as settled and determined in the Book of Common Prayer and administration of the Sacraments, set forth by the General Convention of the Protestant Episcopal Church in these United States."

In 1786, it was thus modified:

1786.

"No person shall be ordained until due examination had by the Bishop and two Presbyters, and exhibiting testimonials of his moral conduct for three years past, signed by the minister and a majority 'of the Vestry of the Church where he has last resided; or permitted to officiate as a minister in this Church until he has exhibited his letters of ordination, and subscribed the following declaration: "I do believe. the Holy Scriptures of the Old and New Testament to be the word of God, and to contain all things necessary to our salvation; and I do solemnly engage to conform to the doctrines and worship of the Protestant Episcopal Church in these United States."

In 1789, it was adopted in the form in which it now stands, at the head of this article.

#### ARTICLE VIII.

A Book of Common Prayer, Administration of the Sacraments, and other Rites' and Ceremonies of the

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Church, Articles of Religion, and a Form and Manner of Making, Ordaining and Consecrating Bishops, Priests and Deacons, when established by this or a future General Convention, shall be used in the Protestant Episcopal Church in those dioceses. which shall have adopted this Constitution. No alteration or addition shall be made in the Book of Common Prayer, or other. offices of the Church, or the Articles of Religion, unless the same shall be proposed in one

General Convention, and by a resolve thereof made known to the Convention of every Diocese, and adopted at the subsequent General Convention.

The following was among the “fundamental propositions” of 1784 :

1784.

“That the said Church shall maintain the doctrines of the Gospel, as now held by the Church of England: and shall adhere to the liturgy of the said Church, as far as shall be consistent with the American revolution, and the constitutions of the respective States.”

In 1785, the fourth article proposed was in these words :

1785.

“The Book of Common Prayer and administration of the Sacraments, and other rites and ceremonies

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of the Church according to the use of the Church of England, shall be used by the Church, as the same is altered by this Convention, in a certain instrument of writing passed by their authority, entitled ‘Alterations of the Liturgy of the Protestant Episcopal Church in the United States of America, in order to render the same conformable to the American revolution, and the constitutions of the respective States.’”

The ninth was as follows:

1785.

“And whereas it is represented to this Convention to be the desire of the Protestant Episcopal Church in these States, that there may be further alterations of the Liturgy than such as are made necessary by the American revolution ~ therefore , the Book of Common Prayer and administration of the Sacraments and other rites and ceremonies of the Church, according to the use of the Church of England, as

altered by an instrument of writing, passed, under the authority of this Convention, entitled 'Alterations in the Book of Common Prayer and administration of the Sacraments and other rites and ceremonies of the Church, according to the use of the Church' of England, proposed 'and recommended to the Protestant Episcopal Church in the United States of America,' shall be

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used in this Church when the same shall have been ratified by the Conventions which have respectively sent deputies to this General Convention."

In 1786, the article was again proposed in the words used in 1785.

In 1789, the following was adopted:

1789.

"A Book of Common Prayer, administration of the Sacraments, and other rites and ceremonies of the Church, articles of religion, and a form and manner of making, ordaining and consecrating bishops, priests and deacons, when established by this or a future General Convention, shall be used in the Protestant Episcopal Church in those States which shall have adopted this constitution."

In 1811, the second clause in the article was added, and it then assumed the form in which we have given it above, except that the word "States" was used in the first sentence where "dioceses" now occurs; and at the close of the second sentence, the words "or State" followed the word "diocese." The Convention of 1838 put it in its present form.

#### ARTICLE IX.

This Constitution shall be unalterable, unless in General Convention, by the Church, in a majority of the dioceses which may have adopted the same ; and all alterations shall be first proposed in one

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General Convention, and made known to the several Diocesan Conventions before they shall be finally agreed to, or ratified in the ensuing General Convention.

In 1785, the last article proposed was this:

1785.

“This General Ecclesiastical Constitution, when ratified by the Church in the different States, shall be considered as fundamental; and shall be unalterable by the Convention of the Church in any State.”

In 1786, it was thus framed:

1786.

“The Constitution of the Protestant Episcopal Church in the United States of America, when ratified by the Church in a majority of the States assembled in General Convention, with sufficient power for the purpose of such ratification, shall be unalterable by the Convention of any particular State, which hath been represented at the time of such ratification.”

In 1789: it was adopted in these words:

1789.

This Constitution shall be unalterable unless in General Convention, by the Church, in a majority of the States which may have adopted the same;

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and all alterations shall be first proposed in one General Convention, and made known to the several State Conventions before they shall be finally agreed to, or ratified in the ensuing General Convention.

In 1838 it assumed its present form.

Under this clause, important, because it touches the great bond of union, various questions arise, involving more or less; the respective rights and powers of the General and State Conventions. Here is an instrument, made by delegates from the several State Conventions, fully authorised by their respective constituents, in their names, to make it, called upon distinctly to declare that they have such power before they act,<sup>9</sup> and therefore, in all they did, to all intents and purposes, representatives 'of' the *Conventions* of this Church in the several States." The constitution was therefore made by the *State Conventions*, duly assembled for that purpose.

In this constitution, the State Conventions surrender some things and retain others. By mutual compact, each State Convention surrenders all power of altering this instrument, save in a particular place and a prescribed mode; but no State Convention surrendered the right of having a proposed alteration "made known" to it, and of having it made known too, a sufficient time to allow of calm deliberation.

As to the body *in* which' any proposed change must' be made, 'or "*finally agreed to,*" or "*ratified,*" it must be "*in* the General Convention." There, too, all changes must be first proposed. Whatever other reasons may exist for this, an all-sufficient one will be found in the fact that in no other body but the General Convention do representatives from all the State Conventions constitutionally come together.

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The answer therefore is plain to the question, *where* is the change to be made? The article says at its close, it may be "*finally agreed to, or ratified*" in, not *by* the General Convention. But what is to be agreed to, what to be ratified? Men agree to something that *has been done*, by others; they ratify commonly some act which others,

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<sup>9</sup> Bioren 48.

not themselves, *have performed*. *Ex vi termini*<sup>10</sup> therefore it would seem that action somewhere else than *in* the General Convention is presupposed. Where is this previous action? The article directs that "all alterations shall be first proposed in one General Convention and made known to the several *Diocesan Conventions* before they shall be finally agreed to." Does it direct them to be made known any where else? No where. The previous action then, if any where, must be in "the several Diocesan Conventions." Have *they* any special interest in the subject? They *made* the instrument originally, of which by some alteration it is now proposed to *make* a new or additional part. Their interest then is obvious.

*By* whom, *in* the General Convention, is a change to be made? The article answers – "by the Church, in a majority of the dioceses." What does it mean by "the Church?" Is it simply the members of the General Convention? Neither individually, nor as representatives, nor in any other way, are they *the Church*. Beside, if this only were meant, it would have been said the constitution shall be unalterable, except by a majority of the General Convention; and nothing would have been directed as to making it known to the State Conventions: perhaps, however, it. May be replied, a mere numerical majority was not meant, but a majority of dioceses: admit it; it then proves that all votes in General Convention, on proposed changes in the constitution, *must be by dioceses*; and this we believe; thought the practice has sometimes been otherwise: but it also proves, we think, that states, *quasi states or dioceses*, are alone competent to alter the instrument at all. This helps us to interpret the words in the article

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"by the Church in a majority of the dioceses." It means a majority of the several dioceses of the Protestant Episcopal Church in these United States. And on any other interpretation, the latter clause of the article is a dead letter, nay, worse than useless, positively

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<sup>10</sup> By the force of the term. [Editor's note]

mischievous, for it affects to respect, while it in truth mocks at diocesan independence.

We are the more confirmed in this interpretation of the words "the Church in a majority of the dioceses," from the use made of them in another clause of the constitution, where they unquestionably mean a majority of the dioceses. Thus in the first article establishing the General Convention, it is provided that the "Church in a majority of the dioceses which shall have adopted this constitution, shall be represented before they proceed to business: except that the representation from two dioceses shall be sufficient to adjourn." Upon the meeting of the General Convention, the question whether a quorum be present, is not settled by counting the members *individually*, but by an inquiry into the *number of dioceses* from which delegates are present.

But does the article indeed hold the word of promise to the ear, and break it to the sense? Let us see. Proposed alterations are to be made known to the several Diocesan Conventions, three years before they can be *finally* agreed to, or ratified in General Convention. Now one of the most natural, and at the same time perplexing questions is, *why* is this so, if, after all, the subject of change belongs entirely to the General Convention? The proposed alteration must be made known for one of two things; either for the mere purpose of giving information, or for the further purpose of inviting to some action, founded on such information. As to the first, mere information, the printed journal of the General Convention fully give that, and when this constitution was adopted such was the fact. But we are not without positive evidence of the purpose for which this communication is directed to be made to the Diocesan Conventions. In canon L.

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the purpose is declared to be, not information simply, it is more; for that canon declares that it shall be the duty of the secretary of the lower House, "whenever any alteration of the constitution is proposed, or any other subject submitted *to the consideration* of the



several Diocesan Conventions, to give a particular notice thereof to the ecclesiastical authority of this Church in every diocese."

It does therefore, seem to us at least, very plain that the information is given to the dioceses because a majority of the dioceses are expected to *consider* and to furnish that action which in General Convention is to "be finally agreed to or ratified." Construe the whole article together, and the words, "the Church in a majority of the dioceses," which occur in the first part, are fully explained by the words, "the several Diocesan Conventions," in the latter part. The matter which has been proposed to these several Conventions must indeed come back to the General Convention, and there must be finally disposed of : but it is to the General Convention sitting not so much in its ordinary legislative capacity, as in the character of a council composed of many independent dioceses, represented in the lower House, and met together to deliberate, not upon an occasional canon, but upon the great compact by which all alike, the strong and the weak 'dioceses, consented to make canons at all. Canons are the result of union *after it is formed*; the constitution is the bond that makes the *union itself*. But it may be said, the Bishops are part of the General Convention, and they do not sit as representatives of dioceses. True, but as part of the General Convention, they cannot alter the. constitution, unless "the Church in a "majority of the dioceses" in the lower House, consent thereto.

In all votes, 'therefore, in the lower House of the General Convention, on a proposed change of the constitution, we think that under the proper interpretation of this article, the question must be taken by dioceses or states: and we confess

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we see in this no more risk of dissolving the ecclesiastical union, than there is in any other vote by states, for which the delegation from any diocese may call on any question.

Delegates from dioceses may, or may not be instructed by their respective Conventions how to vote. That is a totally distinct subject. We think that dioceses as such, have a perfect right" to do as they please, with reference to the expression of an opinion on a

proposed change that has been made known to them. If they see fit in such case to instruct their delegates, they may do so, (though we do not think it judicious:) if to communicate their opinion of the proposed alteration, by directing a resolution approbatory or condemnatory, to be transmitted to the General Convention, by their secretary, they may do so; if by entire silence, to leave their acquiescence to' be presumed, as in such case it should be, they may do so; *but as dioceses, it is the right of each, if it pleases, to make known in some mode, to the' General Convention what the Diocesan Convention thinks of any proposed alteration either of the Constitution or Book of Common Prayer: and if' a majority of such Diocesan Conventions should make known that they disapprove, we do not 'think that it was designed under this article to permit the General Convention to make the alteration.*

We have said we do not think *it was designed*. The reason is, that; if it was designed, it presents an anomaly without precedent or parallel in this country of constitutions. Here is a high *legislative* council, deriving the very breath of its existence from this constitution; for without .it, it had never been at all : this constitution is, *quoad*<sup>11</sup> all the purposes to which it speaks, the supreme' sovereign authority in the government of the Church': no legislation is worth any thing if it be contrary to the great principles embodied in that instrument : it is the check, and the only check, provided against such legislation, as would prove oppressive or injurious· to the reserved rights of the dioceses, to their qualified inde-

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pendence, Now it is scarcely credible, that this creature of the State Conventions, (for it unquestionably was made by them,) should by design, be deliberately invested with the power, totally to disregard, if it please, the will of its creators, and by changes made in the constitution from time to time, actually to alter the character of the whole instrument, and thus destroy the only check the dioceses as such, have upon oppressive legislation. It is no answer to this, to say that one convention must propose and another act, and that they are

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<sup>11</sup> In so far as it goes. [Editor's note]

not likely to be the same individuals; and therefore, that if improper changes be proposed, such delegates will be elected as the State Conventions suppose will oppose it. The question is not what is *likely*, but what is *possible*. The constitution is designed to guard against possible injuries. There is not in our country, a civil constitution thus alterable by the legislative bodies it has created. A great and important distinction exists between ordinary legislation, and a change of the charter by virtue of which legislation takes place at all, and by means of which alone, such legislation is so directed as to prevent it from becoming regardless of rights that never have been given up by the dioceses. *The constitution is the sovereign authority* in our system; the people have voluntarily removed sovereignty from their own hands, to place it there for the common protection and the common good: the legislature is but a coordinate branch of the system; and it surely could not have been designed to put it in the power to the latter, to destroy the former.

It may, however, be supposed that the proper construction of this clause would admit of easy determination by resorting to precedents. The fact is that they do not throw much light on the subject. The point is one which has never been raised and thoroughly discussed in the General Convention; and in truth, in the absence of thorough research, this, like some other questions of importance, has been settled rather by accident than upon solemn consideration. The practice has not always been uniform under this clause.

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In 1804, an alteration was made, by a vote taken in the usual mode of legislation, and not by dioceses. No question appears to have been made as to the mode. The change concerned merely the time of holding the General Convention.

In 1808, a change was made of importance, giving an absolute negative to the House of Bishops. A vote by dioceses does not appear to have been called for; but the vote was by dioceses, as if it were a matter of course, on a proposed alteration of the constitution; and this, we think, was right. On this vote Pennsylvania

was divided, the clergy voting for, the laity against the' change. In a note to the journal, it is said' the laity were 'for the measure, but voted against it, because they. had not instructions from the Convention of Pennsylvania, which they considered necessary. Bishop White, however, in his Memoirs, says this is an error. The gentlemen declined voting for the measure, though they approved of it, because, from the Pennsylvania journal it did not appear that the measure had ever been submitted to the Convention of that diocese.

In 1811, a change proposed, or rather an addition of entirely new matter to the eighth article, was before the House, when it simply *resolved*, that the addition be agreed to. The vote was taken in the common mode.

Again in 1823, a change was made in the first article, and the vote was taken by dioceses. Such a vote does not, appear however, to have been .formally demanded.

In 1829, the eighth article was altered, and it seems, to have been done by 'a simple resolution, as in the instance in 1811.

In 1826, Bishop Hobart proposed certain changes in the liturgy. These were sent to the several Diocesan' Conventions. In 1829, before they were called up in the lower House, a resolution was received from the House of Bishops; that, under existing circumstances, it' was inexpedient to make the change, and the House concurred, so that no vote

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was taken. Bishop White however, in his Memoirs, commenting on this transaction, uses this language: "The alterations of this book proposed by the last General Convention, were not acted on by the present, *having been found unacceptable to the major number of the Diocesan Conventions.*" If anyone will examine the journals of those Diocesan Conventions; he will find a formal vote of dissent, in every instance, in the name of the Diocesan Convention, from Maine, Vermont, Massachusetts, Connecticut, New-Jersey, Virginia, North Carolina, South Carolina, Ohio and Mississippi : and in some instances, this dissent was directed to be communicated to the

General Convention. The State Conventions of these dioceses, seem therefore to have thought, that, as *State Conventions*, they had a right to be heard upon the subject in General Convention. If, however, the wishes of the dioceses as such, were not important and conclusive, but the vote was to be taken as upon any common question, it is no sufficient reason for not bringing it before the House, that it was "unacceptable to the .major part of the *Diocesan Conventions* :'" for it does not thence follow that it would of course be unacceptable to the major part of the House. If, in reply it should be said, that there was a reasonable presumption it would be so: this amounts to no more than saying that the House of Bishops were afraid of not carrying a change proposed by themselves, and therefore abandoned it: and this has nothing to do, that we can discover, with the question of the rights of the dioceses to be heard.

Suppose in the instance just stated, the delegates from each of the States above-named, had formally laid before the House, copies of the resolutions from their respective Diocesan Conventions; and that then a vote had been taken, from which it appeared that in utter disregard of the resolutions, the proposed change had received the sanction of a majority of the votes in the House: we ask what was it but mockery, to make it known to "the-several Diocesan Conventions" at all?

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They have declared their wishes, only to have them disregarded. Would the dioceses thus insulted, ever acquiesce in the change thus made? If they did, we fear the true rights and powers of a diocese and of its diocesan would soon vanish. Startling as is the case just put, it has been said, that in opposition to the known and expressed wishes of every diocese in the union; the General Convention may make the change. We deny it in toto. Nay, we go further, and say that no change' whatever can be made by the General Convention, as such. We affirm that there is not one syllable in the article which allows the General Convention any such power; but that on the contrary, it sedulously guards against it. It directs the change to be made by *the Church* in a majority of the dioceses; and by no other

power. The place for originating and consummating the act is indeed IN the General Convention, and IN that body, not BY it, can the act be finally agreed to or ratified.

Let it be remembered that from 1784 to 1789, was occupied in making this instrument, this invaluable bond of union; that it was sent down to the State Conventions, and again and again discussed and altered, before it was finally adopted, by delegates vested with express powers for that purpose : let it be remembered too, that to alter or to, add to it, is in effect to make; and then let the question be answered, whether it is probable that an instrument, intended to make us one, and prepared with so much anxious care, was designedly left to the mercy of mere common legislation; and, with no pre-requisite but that of simply saying to the State Conventions we propose a change, was intended to be alterable by a simple *resolution* of the General Convention, acted on with no more formality than if it were a motion to adjourn to dinner? We confess that in our eyes the instrument is too solemn to be thus treated. We value our ecclesiastical union too highly to subscribe to the doctrine that it has no stronger bond than the resolves of a General Convention. It is the

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sacredness of the instrument, its supremacy, its dignity, its authority as the representative of delegated sovereignty; its calm and passionless assertion of certain fixed principles; its almost intangible; character, that fits it to be a true' bond of union. If the General Convention, without regard -to the wishes of the dioceses, expressed in their Conventions, may alter at its pleasure, the very instrument by which it lives, then it may make a new constitution ; and under this fearful consolidation of ecclesiastical power, dioceses which once had rights, and which came into the union because those rights were preserved to them under the constitution as it stood, may find themselves so shorn and stripped of every vestige of former privileges, that even diocesan episcopacy may become but little more than an empty name. The Bishops in their House cannot save it, for they must at last yield to the oft-repeated assaults of their

clergy and laity, in a land where their best support is derived from popular opinion. If ever the union of our dioceses is dissolved, it will probably be accomplished by measures; the incipient steps of which will be changes in, the constitution. Let us then furnish no fatal facilities in such changes. It is our common interest to make alterations difficult of accomplishment; and to this end, let the voice of the *dioceses*, not of the General Convention, be necessary.

We have heard it said in -objection, that there is more likelihood of wisdom' and prudence in the General Conventions than in those of the dioceses. We do not believe it. In every diocese there are those who remain at home, with heads as sound; and hearts as- true; as any to be found in General Conventions; We think that in a three years' consideration of any change in Diocesan Conventions, there is far more probability of calm and. dispassionate examination, than in any other mode: far more than there is in the General Convention. But we are wandering into the question of expediency to meet an objection'; we come back to the instru-

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ment itself, and under this article we think, with all due deference to the wise and good who differ from us,

1. That-in all questions of constitutional or liturgical changes, the vote in the house of clerical and lay deputies *must* be taken by dioceses.

2. That any Diocesan Convention-has a right to make known its opinion of the proposed change in the General Convention.

3. That the assent of a diocese to a proposed change is to be presumed in General Convention, if it is silent, or has adopted no mode of making known its dissent.

4. If a majority of the Diocesan Conventions do make known their dissent to any change, the General Convention ought not, against such 'expression of dissent, to alter the Constitution.

Before we leave the constitution, it seems proper to speak briefly of the resemblances existing between the civil government of this country and our ecclesiastical system. These resemblances have often been referred to, and it is by no means strange that they should

exist. The war of the American revolution left the Protestant Episcopal Church in this country, in a position different from that of every other religious denomination in the -land. It alone was entirely Broken up -in its polity. "The other societies had systems involving no connexion with the English Church ; the war, therefore, could' not affect their' -government; at its close they had but to proceed according to the principles and rules' of an already existing organization; very slight modifications, .if any, were necessary to them.. Not' so, however, with the Protestant -Episcopal Church: it had been identified with the established church of the mother country, nay, was in one sense, part and parcel of it. By the war its government was entirely subverted; it had therefore: to commence *de novo*, the work or framing a system. The whole field was open' before it. Men were busy at that time in making civil

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constitutions; some of the same men were churchmen, and aided in making our ecclesiastical constitution; what wonder is it then that there should be found resemblances between them? It is too much, however, to say that these resemblances are complete throughout, as will be seen in what follows. Let us first consider the particulars in which there is likeness.

One of the most striking peculiarities in the civil institutions of the United States, consists in the fact of an individual or local legislature for each State, and at the same time a general legislature for the whole union. This double government we have reason to believe, is but imperfectly understood out of our own country :'\ the necessity is not apparent, for two legislative bodies, to those who live in kingdoms where but one law-making power is known; nor can such well comprehend how conflicting-legislation is to be avoided. We who see its effects in practice, are at no loss to understand and value the theory.

The first section of the first article of the Constitution of the United States, provides for a Congress composed of a Senate and House of Representatives.



The first article of the Constitution of the Church provides for a General Convention: and this was 'made as soon as possible, to consist also of two houses, viz., the House of Bishops, and the House of Clerical and Lay Deputies.

The Constitution of the United States recognizes the existence in each State of its own legislature by which the members of the Senate are appointed.

The Constitution of the Church, in like manner, recognizes State Conventions in each diocese, and by this the members of the House of Clerical and Lay Deputies are chosen; the bishops being, as it were, the senators, *virtute officii*.

The legislation of Congress is confined to a particular class of subjects touching the common interests of the whole union. The State legislatures may make any laws for their own

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States provided they do not contravene the Constitution and constitutional laws of the United States; and are not at variance with the State Constitution.

The legislation of the General Convention is also limited. There are some topics on which by the constitution, the State or diocesan Conventions can alone legislate for themselves. These Conventions: therefore make their own canons on many subjects, and may make them on any subject provided only that they do not contradict the constitution and canons of the General Convention.

Again, throughout the United States-whether we consider the whole union, or its several parts separately, the system is a *representative* one. Those to be governed by the laws made, have a voice in the election of the law makers. The qualifications of electors are regulated by each State for itself, but the theory is, in all, a choice of representatives by the people in some mode.

So, too, in the Church the plan is representative. The whole Church is composed of congregations. Beginning, then, with these, the members of the congregations duly qualified, by owning or renting pews in the church, being communicants, therein or regular attendants and worshippers there, or in some other mode, provided

commonly by the act of incorporation or by a law of the State legislature, elect once a year wardens and 'vestrymen for the Church. 'These wardens and vestrymen elect a clergyman, when a vacancy exists, and present him to the Bishop for' institution. 'They also agree with him as to the amount of his salary. 'To them also it belongs to elect the lay representatives to the State or Diocesan Convention, which meets yearly. They select these from among the members of that congregation in which they hold office. Every clergyman, doing duty, is entitled to a seat in the Diocesan Convention. In the State Conventions, the election is made of *clerical* and *lay* delegates to the General Convention, which, unless specially convened,

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assembles once in three years. Each diocese, be it great or small, is entitled to send four clergymen and four laymen of the diocese, as representatives to the General Convention. In the State Convention, also, a bishop is elected whenever that office is vacant, and the choice may be made from the clergy of any of the dioceses in the union. The whole scheme, therefore, it will be seen, is representative.

By the fourth article of the Constitution of the United States, full faith and credit is given by one State to the public acts, etc., of another. This is true also, to a certain extent, of our dioceses. The acts of discipline, for instance, of one diocesan, are communicated to the other bishops, and they respect them. A minister degraded by his bishop is degraded throughout the whole Church.

New States may be formed and admitted into the union of the United States. This is done by Congress, under certain regulations prescribed in the Constitution.

New dioceses may also be admitted by the General Convention into the ecclesiastical union, and the regulations under which this may be done are very similar to those provided for the direction of Congress in admitting States

Beside the State Legislature, in each State a governor is elected.

In each diocese, a Bishop is governor of the Church.

These are, briefly set forth, the more prominent points of resemblance between our civil and ecclesiastical systems.; and it is not a little remarkable, that the Church, which was once in this country, identified in the minds of many, with the most odious tyranny over the minds and consciences of men, should now be seen to be not at all incompatible with a system of polity framed very much on the model of our free civil institutions.

The dread in that day was of Bishops, and visions of the star chamber, perchance, haunted the over sensitive minds of men: but Bishops are, in themselves considered, quite as

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harmless as any body else, and a great deal more useful than many who are thrown into a pious panic by the spectacle of lawn sleeves. Whether bishops are dangerous, depends on the power given to them, or the chance afforded them of unlawfully acquiring power: but they are not necessarily alarming; and, fortunately, Episcopacy can as easily be accommodated to the free institutions of a republic, as to the system of a monarchy.

We now proceed to notice some important particulars, in which a difference exists between our civil ecclesiastical systems.

The Constitution provides for a President of the United States, and his assent is necessary to make laws.

We have no officer in the Church analogous to the President. We are without an archbishop or metropolitan, nor do we need one. The nearest approach to any office like that of President, is very slight. We have "a presiding bishop" in the House of Bishops; accident designates him, for it is always the bishop of senior consecration. His powers, too, are very few; and he has none which place him in point of official station above any other of the bishops. Thus, he presides in the House of Bishops, calls special meetings of the General Convention, when necessary; commonly is chief actor in consecrating bishops; and collects the opinions of the standing committees of the dioceses, in the case of a bishop elect, during the recess' of the General Convention. These are nearly all his powers as presiding bishop. He has a voice in making laws, but not, like the

President, as chief executive officer of the government. He makes them as a legislator simply, a member of one of the houses.

The President has a veto on laws submitted for his approval, and under certain circumstances, his veto may prevent the passage of a law. The veto of our bishops in General Convention, is precisely like the veto of the lower house: that is, both houses must concur, or a canon will not pass; and

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as we have seen, it was with no little difficulty even this was at last obtained for the bishops in 1808.

In one of the dioceses, and one only, a canon has been passed, giving the bishop an absolute veto on the acts of his own Convention; and this is the only instance to be found in our history of any thing analogous to the presidential veto. In Congress, however, two-thirds may pass a law, notwithstanding it has been returned with the veto of the President. In the diocese alluded to the veto of the bishop is conclusive, and a unanimous vote of the Convention would not pass the canon. It is easy to see how the veto power here may make the Convention a mere body .for registering episcopal edicts. A Bishop in his own diocese, however, is not like 'the President, but resembles the Governor of a State; and we know not at present of any State in this union in which the Governor has an unqualified veto. In many-he has' none at all, of any kind. It is said to be primitive: we should be happy to-see the journal of-a primitive Convention, assembling under a constitution like ours, solemnly guaranteeing to the clergy and-laity of a diocese a voice in legislation, in which an absolute veto was allowed or exercised, Primitive bishops, we think, knew but little of conventions like ours.

Another very important particular, in which resemblance fails entirely, is in the judiciary.

Under the Constitution of the-United States, the judicial power is vested in one Supreme Court, and such inferior courts, as Congress may establish. The jurisdiction of these courts embraces all cases arising -under the constitution and laws of the 'United States,

as well as many others. The jurisdiction of the Supreme' Court, in the two particular cases above stated, is appellate.

In the Church we may be said to have no judicial system. By the constitution, the mode of trying offending clergymen is to be regulated in each State by its own rules. Some dioceses have made no rules at all. Uniformity in judicial

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proceedings is therefore wanting. But there is a greater evil than this; it is the want of uniformity of interpretation. *Misera est servitus, ubi jus est vagum aut incertum.*<sup>12</sup> Better is it that the law should be interpreted erroneously, so that men may at least have certainty, than that it should be held to mean one thing to-day, and another to-morrow.

The mode as it at present exists operates thus. In the diocese of Massachusetts, for instance, before a court composed according to the canons there in force, some clause of the constitution, or some canon of the General Convention, receives a certain interpretation, and under it punishment is inflicted. In South Carolina, a different meaning is attached by the court there to the very same words, and acquittal follows; and thus it may be in some six or more dioceses. In vain will anyone ask what is the law? No man can say. The convict of Massachusetts, doubting, as well he may, under such circumstances, the propriety of his intended punishment, would fain appeal to some tribunal competent to adjust these conflicting interpretations. But where is such a tribunal? No where in the Church. If he brings his case, by way of petition, before the General Convention, that body has no right, under the constitution, to act as a court of appeals. If (as Ammi Rogers did,) he carries it before the House of Bishops, as little right "have they to sit as judges; and if they express an opinion on the case, such expression (as in Rogers' case,) may be viewed as a judicial decision. We need two things: first, a uniform mode of proceeding in constituting courts, and conducting trials in the dioceses. This, as the constitution now

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<sup>12</sup> Wretched is the servant where the law is vague and uncertain. [Editor's note]

stands, we cannot have, unless all the dioceses, by their several canons, adopt the same rules; and this is not to be expected. The General Convention cannot legislate on the subject, until the sixth article of the constitution is altered. Secondly, we need a court of appeals, with power authoritatively and finally, to settle the true interpretation of constitution and canons, *ut sit finis litium*.<sup>13</sup>

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How it should be constituted is a question practically of great difficulty. Indeed, we think this difficulty led the framers of the constitution to pass by the whole subject, and to attempt no resemblance here between the civil and ecclesiastical systems. It was probably supposed, and, as the result has proved, truly, that there would be little necessity, in the infancy of our existence, for any system at all ; but we have now wonderfully increased, and in all human probability questions of deep interest to our harmony, must grow out of our enlarged relations; and there should be a place where all may understand they will be peacefully and finally settled. It is better to make provision for such settlement before conflict arises, and therefore we cannot but earnestly hope the-wise and good of our communion, both clerical and lay, will direct their thoughts to this important subject. What is the best mode, we confess ourselves unable to say; but one thing we venture to suggest, that the court for finally settling the proper interpretation of law should be *selected*, in some mode, from fitness of qualification for the work: we \ mean no disrespect when we say, it is not a matter to be placed in the hands of gentlemen, *simply* on account of official station. Such station is indeed a high recommendation of anyone otherwise qualified; but too much is involved to leave the whole matter to be adjusted by *ex officio* wisdom.<sup>14</sup>

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<sup>13</sup> That there be an end to litigation. [Editor's note]

<sup>14</sup> In the original edition this section ends with a sentence pointing to the following portion of the work: "We now proceed to the canons."

## Notes and Resources

- The Episcopal Church's 2009 General Convention adopted Resolution 2009-A185, replacing the previous Title IV canons on Ecclesiastical Discipline. The new canons, which are significantly different from their predecessors, become effective July 1, 2011. The General Convention's web site currently post four documents that may be of assistance for those with a responsibility for disseminating information about the new canons: i) "Introducing the New Title IV," a power point by Duncan A. Bayne, vice-chancellor of the Diocese of Olympia; ii) "New Title IV Diocesan Canonical Changes," a second power point by Duncan Bayne, which outlines issues to be considered in aligning diocesan canons to accord with the national title IV changes; iii) "New Title IV Diocesan Canonical Changes List," a one page summary of needed diocesan changes; and iv) ".New Title IV Model Diocesan Canons," a short document with suggested text for adoption by dioceses. See <http://generalconvention.org/gc/publications>
- Since 2003 the canons of the Episcopal Church (IV.14.28 of the old Title IV canons; IV.19.30 in the new canons) have directed each church court to send "the original certified copy of its proceedings to the Archives of The Episcopal Church." To this point those who wished to consult those records needed to travel to Austin to the Archives. The Archives is currently, however, considering the possibility of making at least some portion of those records available on line. The website of the Archives is <http://www.episcopalarchives.org/>. The site also posts an electronic copy of the 1981 edition of White and Dykman's commentary on the constitution and canons.
- The Ecclesiastical Law Society in the U. K. maintains a web site at <http://www.ecclawsoc.org.uk/the-ecclesiastical-law->

[journal.html](#). The May 2010 issue of the society's magazine (the *Ecclesiastical Law Journal*) is devoted to issues arising as a result of immigration and religious pluralism.

- The Canon Law Society of America is dedicated to the study and application of canon law in the Roman Catholic Church. Its website (<http://www.clsa.org/>) carries current copies of the society's newsletter and links to an online bookstore.
- The February 2010 posting of the Anglican Communion Institute includes several papers on aspects of Episcopal Canon Law,. They can be accessed at <http://www.anglicancommunioninstitute.com/2010/02/>