

Where Is The Locus Of Authority Within The Episcopal Church?

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Where is the locus of authority within in the Episcopal Church? Do dioceses (and/or even parishes) have inalienable governing rights and procedures that the national church cannot override? Do dioceses (and/or even parishes) have the right to secede if they disagree with decisions of the General Convention? If dioceses (and/or parishes) do leave, should the courts of the United States rule that the property belongs to the departing entities, or to the Church in the General Convention? These are extremely controversial questions now, regrettably dividing families, friends and neighbors primarily (but not exclusively) because of profound disagreements over the centrality of same-sex behavior and male leadership in the faith, doctrine, and practices of the Church.

As a result of very detailed research I conducted many years ago,² recently revisited and updated,³ I believe the answers are very, very clear: Final authority

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² James Allen Dator, "The Government of the Protestant Episcopal Church in the United States of America: Confederal, Federal or Unitary," (Ph.D. diss.: American University, 1959).

³ James Dator with Jan Nunley, *Many Parts, One Body: How the Episcopal Church Works* (New York: Church Publishing, 2010). Portions of this book are used in this article with permission from the publisher.

in the Episcopal Church rests now and has always rested in the General Convention. Dioceses and parishes do not have any governing rights that General Convention cannot override by following proper procedures. Dioceses and parishes certainly do not have an inherent right to secede. Unless they change the long-standing basis of their decisions in matters of church governance, the courts of the US should be expected to rule that departing entities have no right to the property they occupied when they were members of The Episcopal Church.

I.

Criteria for analyzing the constitution of the Church

Political scientists classify government in relation to the concentration versus the dispersion of political power as being unitary, federal, or confederal.⁴ To define or explain any one of these three types is impossible without reference to the other two. The normal, default type of governmental organization is unitary. Kenneth Wheare, one of the great students of federalism, says:

It is commonly assumed that federal government is called upon to justify its existence. The unitary form of government is regarded as normal and self-explanatory and self-justifying; if there is to be government at all for an area, it is assumed that, unless strong

⁴ William Anderson, *Federalism and Intergovernmental Relations* (Chicago: Public Administration Service, 1946), 6.

reasons to the contrary can be shown, that government will and should be unitary.⁵

Certainly, unitary nations in the world vastly outnumber the few nations that are federal, and there appear to be no nations now that are confederal in form. It should be added that whether a government is confederal, federal, or unitary has nothing to do with whether it is democratic or not. The rate of incidence of unitary national governments has no direct effect on the forms chosen by churches; it is, however, suggestive of the governmental models with which the founders of The Episcopal Church would have been acquainted.

Characteristics of Unitary Government

The overwhelming majority of governments in the world are unitary. Henry Sidgwick defined this form of government as one “in which the ordinary exercise of the highest powers of government belongs to a central organ or organs, exercising control over all the members of the state; while only matters of secondary importance are handed over to the independent management of local governing bodies.”⁶

It must be emphasized that these “matters of secondary importance are handed over” by the central government. They are not possessed by inherent right by the local governments. Thus, all political decisions

⁵ Kenneth C. Wheare in Geoffrey Sawer, *Federalism. An Australian Study* (Melbourne: F.W. Cheshire, 1952), 110.

⁶ Henry Sidgwick, *The Elements of Politics* (Second Edition; London: Macmillan, 1897), 331-32. See also, Herman Finer, *Theory and Practice of Modern Government* (Revised Edition; New York: Henry Holt, 1949), 166. Albert V. Dicey, *Introduction to the Study of the Law of the Constitution* (Eighth Edition; London: Macmillan, 1924), 153.

are ultimately referable to a single, territorially inclusive, all-powerful, and, if explicitly limited at all, self-limited central government. The principle of unitary government is that of the legal supremacy of a central government over all other exercisers of power in a given geographic area.

Decision-making authority in a unitary government may be highly centralized--in which case considerable power is held and exercised by the central government--or decentralized--so that the local governments possess a great deal of discretion by permission of the central authority. This sometimes confuses observers who may conclude that the local governments possess inherent powers *vis-à-vis* the central government, which, even in a decentralized unitary government, they do not.

Attributes of Confederal Government

Actual confederacies are rare. The Articles of Confederation (1781-89) under which the American states related to one another prior to adoption of the U.S. Constitution provided one of a very limited number of historical examples of confederal national governments. Despite its rarity, this form of government is clear in principle. A confederacy is an association of independent polities that have agreed to delegate to a common governmental authority the exercise of certain of their governmental powers. Though the association is often intended to be permanent, the associated governments each retain the right to nullify acts of the common government agency, and to secede from the association at will. Supreme power thus lies in the member governments severally. The powers of the

common government are usually partial, and are related to those problems that are the overarching concern of the confederacy as a whole. Thus, to some extent, a confederacy is an independent entity itself and to some extent it is nothing more than a rather rigid alliance of polities that have set up a common governmental system over some matters.⁷

Characteristics of Federalism

Since the United States has a federal structure, many Americans may assume that federations are more common than they actually are; in fact, only a handful of governments today are federal. Federal government lies between a closely-knit confederacy and a decentralized unitary government and must be defined in reference to these two systems.⁸ Federalism is a principle of governmental organization, designed to be permanent,⁹ which manifests a constitutional division of governmental powers between a central (common, national, or general) government and two or more regional (constituent or associated) governments.

⁷ Westel W. Willoughby, *The Fundamental Concepts of Public Law* (New York: Macmillan, 1924), 189-96.

⁸ Edward A. Freeman, *A History of Federal Government in Greece and Italy* (Second Edition; New York: Macmillan, 1893), 1: "Federal government . . . is, in its essence, a compromise between two opposite political systems. Its different forms occupy the whole middle space between two widely distant extremes. It is therefore only natural that some of these intermediate forms should shade off imperceptibly into the extremes of either side. Controversies may thus easily be raised both as to the correct definition of a federal government, and also whether this or that particular government comes within the definition." See also Carl J. Friedrich, *Constitutional Government and Democracy*, rev. ed. (New York: Ginn, 1950), 190.

⁹ Albert H. Hart, *Introduction to the Study of Federal Government* (Boston: Ginn, 1891), 17.

Conceptually these three forms of government are quite distinct. A note of caution is needed, however. Historically, the use of the words “federal” and “confederal” has not always been precise. Especially in the early part of the United States’ history – at least before the Civil War period – the terms were used interchangeably in discussions about national government, and did not always convey the distinction that has been stated in the foregoing section.¹⁰ The same is true in early discussions in The Episcopal Church. Thus, it may be possible to find instances when the Church is called “federal” or “confederal” even in the *Journals of the General Convention*. But simply calling The Episcopal Church a confederation does not mean that it actually exhibits the governmental structure which confederal governments, by definition, must have. It is primarily to the structural realities of the Church, rather than to vocabulary used about the Church’s structure, that this article is directed.

II.

Arguments about Church Governance in Books and Journals.

A researcher looking in literature written for and about The Episcopal Church for a simple description of the governance of the denomination will soon be

¹⁰ For a good example, see Alexander Hamilton, *et al.*, *The Federalist* (Modern Library Edition; New York: Random House, [N.D.]), especially Federalist Number 9 and Number 39, as well as *passim*. The interchangeable use of the two words is most striking in this volume which is now taken as the most powerful early statement of federal, as opposed to unitary, government, as defined above.

frustrated.¹¹ Some sources have said The Episcopal Church is federal, others that it is confederal, and still others state that it is unitary. Here are some examples over the Church's history.¹²

- Actually the Episcopal Church was a federal union of independent diocesan units, and each diocese a federation of independent parishes, rather than a single, closely-knit ecclesiastical institution.¹³
- As all trained churchmen know, the Episcopal Church in the United States came into being and still exists as a federated union of dioceses, in which each diocese is a "sovereign diocese," with the right and the power to enact canon laws for its own government; and in which the several dioceses have established a central or

¹¹ This was the case even before the current disputes between the General Convention, dioceses, and parishes. When I began my research, the issue of the locus of authority was not in any particular dispute, and I had no interest whatsoever in what my conclusion would be. Rather, I was attracted to the matter because I found there were many conflicting claims about the formal structure of The Episcopal Church. As a young graduate student in political science attending Virginia Theological Seminary for one year as a special student, and looking for a topic for a doctoral dissertation, this was an intriguing puzzle and an opportunity to write on "private government," nothing more.

¹² For additional examples see Dator, *Many Parts, One Body*, 1-6.

¹³ Powel Mills Dawley, *Chapters in Church History* (New York: The National Council, 1950), 222. See also, William S. Perry, *History of the Constitution of the American Church* (New York: T. Whittaker, 1891), 99, 118; Samuel D. McConnell, *History of the American Episcopal Church* (Milwaukee: Young Churchman, 1916), 264; and William W. Manross, *A History of the American Episcopal Church*, 2d ed. (New York: Morehouse-Gorham, 1950), 190.

federal government having such powers only as have been delegated to it by the dioceses.¹⁴

- It will be perceived, that there is a very manifest and beautiful analogy between the ecclesiastical institutions of the Protestant Episcopal Church of the United States, and the civil institutions of the United States.¹⁵
- Just as thirteen independent states became fused into one nation, so thirteen independent church provinces became dioceses of one church under a written constitution, Diocesan Conventions answered to State Conventions, and General Convention to Congress.¹⁶

Many statements have also been made from time to time that deny that there is any significant similarity between the government of the United States and that of the Church, as far as their constitutional structure is concerned:

- Any supposed analogy between the two Constitutions is in my judgment groundless, fanciful, and misleading.¹⁷
- There is no parallel between the Constitution of the Church in the United States and the Civil

¹⁴ G. MacLaren Brydon, *Shall We Accept the Ancient Canons as Canon Law?* (Richmond: Virginia Diocesan Library, 1955), 32-33.

¹⁵ Thomas H. Vail, *The Comprehensive Church* (Hartford: H. Huntington, 1841), 103.

¹⁶ Edwin G. White, *Inter-relation of Personality and Institution as Exemplified in the Membership of the Protestant Episcopal Church* (East Lansing: University of Michigan, 1934), 27.

¹⁷ Hill Burgwin, "The National Church and the Dioceses," *Church Review* 45 (1885), 438.

Constitution of the United States, except in so far as both are intended to set forth the fundamental principles for the government of each.¹⁸

- It is nonsense to say that [the Church's] governing power is patterned after that of the Republic.¹⁹
- The few resemblances between the Church and the nation sink into insignificance, however, when we compare the differences between them.²⁰

Other authors have contented with equal certainty that the government of the Episcopal Church is confederal:

- In the days of [William] White and [Samuel] Seabury it was the prevailing opinion that the Church was a confederation of independent dioceses, just as the nation was a confederation of the independent states, and no national

¹⁸ Henry Mason Baum, "The Law of the Church in the United States, Chapter VIII. Scope and Powers of the Constitution," *Church Review* 50 (1887), 767.

¹⁹ John H. Stotsenburg, "The Governing Power in the Church," *Virginia Seminary Magazine* 4 (1891), 322-23.

²⁰ Edwin A. White and Jackson A. Dykman, *Annotated Constitution and Canons for the Government of the Protestant Episcopal Church*, 2 vols. (Greenwich, Connecticut: Seabury, 1954), 1:140. See also, Murphy Hoffman, *A Treatise on the Law of the Protestant Episcopal Church in the United States* (New York: Stanford & Swords, 1850), 105; and Francis Vinton, *A Manual Commentary on the General Canon Law and the Constitution of the Protestant Episcopal Church in the United States* (New York: E.P. Dutton, 1870), 48, 75.

executive was provided for in the Church's Constitution.²¹

- The great importance of securing uniformity of faith and worship for our entire communion in the United States alone induced any of these dioceses to waive even in part the practical assertion of their independence, and to enter into any Articles of Confederation.

In the very act, however, of so confederating, and in the Articles of Confederation themselves, the pre-existing, separate and independent organization of the several dioceses was fully and expressly recognized, and the continuance of such independence was provided for, except (and except only) so far as such independence was limited by the transfer of delegated powers to a General Convention of the confederating dioceses. That General Convention was and still is the freely constituted creature of the several independent dioceses, and not the dioceses of the General Convention.²²

Finally, there have been many authors who have stated that the National Church or the General Convention is supreme, thus showing that The Episcopal Church is unitary:

²¹ James A. Muller, *The Government of the Episcopal Church* (Cambridge, Massachusetts: Episcopal Theological School, 1929), 19.

²² J.S. Hanckel, "On Diocesan Autonomy and Federal Relations," In *Journal of the Eighty-Third Annual Council of the Protestant Episcopal Church in Virginia* (Richmond: Clemmitt and Jones, 1878), 67. By "Articles of Confederation" is meant the Church's Constitution.

- The history of the legislation of General Convention since its formation shows that the Convention has again and again taken to itself powers which once belonged to the diocese, and in some case to the individual parish. This fact demonstrates the correctness of the theory, as we have before stated, upon which the General Convention has ever acted from the beginning of its history: that it has the power to legislate on any subject unless expressly forbidden to do so by the Constitution. The General Convention not only makes the Constitution and amends it, but it interprets the Constitution. The General Convention limits its own power, and it can remove that limitation. It assumes that all power is in the General Convention which the Constitution itself does not limit. The one conclusion that follows from these facts is, that the General Convention is the ultimate seat of authority in American Church government.²³
- The General Convention possesses the acknowledged power of supreme legislation, as a corollary of the supreme and sole authority to make, and to alter the Constitution of the Protestant Episcopal Church in the United States.²⁴
- When, however, we examine the printed Constitution of our Church we find ourselves

²³ White and Dykman, *Annotated Constitution and Canons*, 1:142. See also 1: 33, 92-94, 100, 139-142; and 2: 55-56.

²⁴ Vinton, *Manual Commentary*, 124. Italics in source.

confronted with what looks very much like parliamentary absolutism.²⁵

Clearly, authors writing about the Episcopal Church are not of one mind about the form of government that the Church has adopted.

III.

Distinguishing Forms of Government

Despite this lack of agreement among authors writing about The Episcopal Church, it is possible to distinguish unitary, federal, and confederal forms of government by looking for certain basic clues. The most important single place to look is at the Church's Constitution. Indeed, throughout history, the Church literature has clearly framed the debate over forms of government as a "constitutional" question: the matter of where authority lies and how it is divided is to be found in the written Constitution of The Episcopal Church (just as the Constitution of the United States serves as the first and final source for answering questions of decision-making authority in the United States central government and the constituent states). A constitution provides clues on multiple levels: in its distribution of powers, in its identification of its own status, in its method of adoption and amendment, and in its provision, if any, for withdrawal.

²⁵ Francis Wharton, "How Far We Are Bound by English Canons," in William S. Perry, *The History of the American Episcopal Church, 1587-1883*, 2 vols. (Boston: James R. Osgood, 1885) 2: 398ff. However, Wharton cites several allegedly confederal features of the Church's government only in order to show that the Church is not confederal, but instead unitary.

As William S. Livingston noted in *Federalism and Constitutional Change* “nearly every writer who addresses himself to the question” has agreed that “the real key to the nature of a federation is in the distribution of powers Federalism implies the existence of two coordinate sets of government operating at two different levels in two different spheres.”²⁶ Each must be supreme, independent, and coordinate in its own sphere. There is no necessary formula of how the division is to be made, what powers each shall have, or whether the local or central governments have residual or enumerated powers. However, the powers of both central and local governments should be substantial and not merely trivial.²⁷ If there is no such division of powers, the government is not federal and is unitary or confederal.

In a federal system the general government and the member governments should each possess a complete complement of governmental institutions such as an independent executive, legislature, and judiciary.²⁸ The presence of dual systems does not prove that a system is federal, but the absence of a complete system suggests that the system is not.

In a federal system the separateness and independent political power of the associated governments as such should find substantial expression in the central government, especially by representation of the governments-as-such in part or all of the central legislature. There should also be a genuine legal

²⁶ William S. Livingston, *Federalism and Constitutional Change* (Oxford: Clarendon, 1956), 10.

²⁷ Arthur V. Macmahon, *Federalism, Mature and Emergent* (Garden City, New York: Doubleday, 1955), 4; and Kenneth C. Wheare, *Federal Government* (London: Oxford, 1947), 3.

²⁸ Willoughby, *Fundamental Concepts*, 276.

equality among the constituent governments themselves.²⁹ Associated governments should also participate in the election of the central executive.³⁰

In a federal system, the governmental powers of the central government must be able to extend directly to the persons in the member governments rather than indirectly to them through the component governments.³¹ There should be dual citizenship or membership, moreover. A person should be a citizen, or member, of both the federation and of the member governments, rather than of one or the other only.³²

One can also look to budgetary provisions for clues as to the form of government. In a federal system, the central government and the several governments each should possess constitutionally sufficient human and other resources to carry out the constitutional powers and duties allotted to each jurisdiction. Thus, neither a constituent government nor the central government should be forced by the constitution to be dependent financially upon the other components for the exercise of its constitutional authorities and requirements. If the central government is dependent on the constituent governments, the structure may be confederal. A unitary government may, however, allow

²⁹ Marriott, *Federalism and the Problem*, 96. Macmahon, *Federalism*, 5.

³⁰ Livingston, *Federalism and Constitutional Change*, 11.

³¹ Freeman, *History*, 9. Sidgwick, *Elements*, 538. Macmahon, *Federalism*, 5. Wheare, *Federal Government*, 2. But see, to the contrary, Willoughby, *Fundamental Concepts*, 198-200.

³² Robert M. MacIver, *The Web of Government* (New York: Macmillan, 1947), 160-61; J. Rivero, "Introduction to a Study of the Development of Federal Societies," *International Social Science Bulletin* 4 (1952), 42; Marriott, *Federalism and the Problem*, 100; and Willoughby, *Fundamental Concepts*, 205, 273.

or require its constituent parts to acquire and spend money for themselves. Nevertheless, a unitary government has ultimate authority over all income, expenditures, and debts for itself and its parts.

The status of the constitution itself is also an indicator of the form of government adopted. In a federal system, sovereignty, or ultimate legal supremacy, lies in the federation as a whole rather than in either the local or the central governments alone, and the main expression of this sovereignty is found in the constitution of the federation (or other written document) that defines the distribution of governmental powers between the general and regional governments. This constitution or document has supremacy over all other acts and bodies. If, on the other hand, the central government possesses an authority superior to the constitution, the government would be unitary. If the local governments are superior, the government would be confederal.

A related question deals with the manner in which the constitution and laws of the central government can be changed. If there can be "nullification" by a component part of the acts of the central government, the government is confederal. On the other hand, if the central government unilaterally can eradicate or modify the structure or powers of the associated governments, the government is unitary.³³

In a federal system, the constitutional distribution of powers between and among the several governments cannot be modified by the central government or by a state government alone, but only by

³³ Robert M. MacIver, *The Modern State* (London: Oxford, 1926), 379-81; Willoughby, *Fundamental Concepts*, 210-18, 195-203; and Wheare, *Federal Government*, 91-92.

each operating independently and coordinately. This amending process not only must be substantially more difficult than ordinary legislative processes, but also must involve the concurrent consent of both the central and associated governments.³⁴

In a federal system, disputes between the regional and the general government or among the regional governments as to the meaning of the division and distribution of powers (that is, problems of constitutional interpretation) are settled by an authority independent of both local and central governments. However, if no authority is provided in the written constitution, the function belongs to the courts.³⁵

Finally, there is the question of departure. If a member government can depart from the central government, the system is confederal. This is not possible under a unitary system. It is also not permitted in a federal government; since sovereignty lies in the federation as a whole, secession of the member governments from the union is not permitted.

³⁴ Livingston, *Federalism and Constitutional Change*, 11-15. See also, George B. Adams, *Federal Government: Its Function and Method* (New York: Knickerbocker, 1919), 59, 83-101; Arthur B. Keith, *Federation: Its Nature and Conditions* (London: Wyman, 1942), 536; Friedrich, *Constitutional Government*, 6; Wheare, *Federal Government*, 10-11, 96; Sidgwick, *Elements of Politics*, 220; and Dicey, *Introduction to the Study of Law*, 140-53.

³⁵ John A. R. Marriott, *Federalism and the Problem of the Small State* (London: George Allen and Unwin, 1943), 90. See also, Adams, *Federal Government*, 84, 97-100; Wheare, *Federal Government*, 64-88; Dicey, *Introduction to the Study of Law*, 153-61; Livingston, *Federalism and Constitutional Change*, 14-15, 295-318; and Arthur W. Macmahon, "Federation," in Edwin R.A. Seligman, Editor, *Encyclopedia of the Social Sciences*, vol. 6 (New York: Macmillan, 1931), 175.

These distinguishing characteristics of federal, confederal, and unitary systems provide criteria for the examination of the constitutional structure of the government of The Episcopal Church. After describing the government of the Church and comparing its structure with these criteria, it is possible to conclude whether or not The Episcopal Church is confederal, federal, or unitary. Having made this determination, the problem of the supremacy of the National Church, in General Convention, over the dioceses (and/or parishes), or of the dioceses (and/or parishes) over General Convention can be affirmed or denied.³⁶

In the following portion of this paper, I will examine the current constituting documents of The Episcopal Church and then the many drafts and counterproposals that led up to the first constitution in 1789. I will also track subsequent changes made in that document, the debates in the official documents of the General Convention, and articles about the issue in the numerous magazines and scholarly journals of The Episcopal Church from 1789 onward.

³⁶ While the question of the status of parishes vis-à-vis their dioceses and the General Convention is not the central focus of this article, the matter is discussed in *Many Parts, One Body* and in the dissertation from which it is drawn. See *Many Parts* for sections on church membership (129-32), parish government (181-84), and on the creation of the original constitution of the Church, (Chapter 2). Here as elsewhere the evidence is clear: while parishes, through their vestries and rectors, have “considerable power over church property” (183), this power is given to them by the canons made by the General Convention that is “a single, sovereign, and only self-limited representative assembly”(182).

IV.

The Creation of The Episcopal Church in the United States

When the colonies of what was to become the United States of America successfully obtained their independence from England, the members of the Church of England in the former colonies were faced with a dilemma: should they remain loyal members of the Church of England, in which case they might very well be judged traitors to the new nation, or should they reconstitute their church in the United States on a basis separate from that of the Church of England in terms of governance but not of faith, practice or doctrine?

The Church of England itself was established on the belief that the one, holy, catholic and apostolic Church, with its unbroken succession of properly-ordained bishops, should conform itself governmentally in accordance with the laws of the nation-state in which it was situated. This is what Henry VIII claimed in creating the Church of England as a governmental—but not necessarily theological—entity separate from the Church in Rome (and elsewhere). This principle was enunciated by Richard Hooker in his *Ecclesiastical Polity* and by Article Thirty-Four of the Thirty-Nine Articles of 1563, which form the basis of the Church of England and of the Anglican Communion subsequently:

Article XXXIV: Of the Traditions of the Church

It is not necessary that traditions and ceremonies be in all places one or utterly alike; for at all times they have been diverse, and may be changed according to the diversity of countries, times, and men's manners, so that

nothing be ordained against God's word. Whosoever through his private judgment willingly and purposely doth openly break the traditions and ceremonies of the Church, which be not repugnant to the Word of God, and be ordained and approved by common authority, ought to be rebuked openly, (that other may fear to do the like,) as he that offendeth against common order of the Church, and hurteth the authority of the magistrate, and woundeth the conscience of the weak brethren.

Every particular or national Church hath authority to ordain, change, and abolish, Ceremonies or Rites of the Church ordained only by man's authority, so that all things be done to edifying.³⁷

As long as England retained political control over the colonies, the Church in England and the Church in the colonies were under the same ecclesiastical discipline. When the political association ended, so must the ecclesiastical. This then necessitated a "reconstitution" of the government of the Church in the new nation because of the change in civil government.

However, that was easier theorized than done. Prior to the revolution, no bishop was resident in the Church in the colonies. From 1689 to the American Revolution the Bishop of London provided supervision for the Church in some of the colonies by appointing commissaries, but there were always some colonies without commissaries, and the statutory authority for their appointment was not always clear.

³⁷ *Book of Common Prayer* (1979), 874.

The members of the Church in the new nation were faced with the difficult question of how to reconstitute themselves without a bishop, with a severe shortage of ordained and adequately trained clergy, with the considerable unprecedented influence of the laity in actual ecclesiastical government, and in light of the general ineffectualness and unpopularity of the Church of England in some of the colonies before the Revolution. Their task was further complicated by the extreme local isolation historically experienced by each of the American colonies themselves, the varying ecclesiastical and social arrangements of the Church in them (especially differences between those colonies where the Church was established and where it was not), and by the differences in churchmanship which mirrored and fluctuated in proportion to the varieties and successes of church parties in England.

For all intents and purposes, the actual governance of the Church in the colonies and after independence was in each parish. The Church was at this time more functionally "congregational" than "episcopal" or otherwise hierarchical. Although local parishes were united under geographically-defined dioceses, none of the dioceses had a bishop. Moreover, a key to England's controlling its distant colonies had been to forbid the colonies to trade or communicate with each other directly. All legal contact between the colonies had to go through England. Thus the members of the Church in the new states might know their diocesan fellows, but, with some notable exceptions they

had little if any knowledge of members in the dioceses of other states.³⁸

As a consequence, ideas for reconstituting the Church in the United States emerged in certain states of the new nation where the membership was most active and concerned. This resulted in essentially three major plans for the Church in the US after 1780: one from Maryland, one from Pennsylvania, and one from Connecticut.

The Maryland Plan

The original attitude of the Church in Maryland is illustrative of churches chiefly concerned with establishing their identity as successors to the Church of England so that they might retain legal control over property that had been held by the Church of England before the Revolution as a first step toward developing its government. At the same time, they also wished to demonstrate that they were independent of any foreign ecclesiastical control. The Church in Maryland also was careful to see that its actions towards these ends were either expressly sanctioned by the government of the State of Maryland or at least did not require state approval or disapproval. This cautiousness, found also among Episcopalians in most of the states, sprang from fears that actions by American churchmen might be interpreted in America or in England as such departures from Anglican faith or practice as to sever the bonds of continuity between the Church in America and the Church of England.

In short, the Church in Maryland was first concerned with developing its government within the

³⁸ Robert W. Prichard, *A History of the Episcopal Church*, rev. ed. (Harrisburg: Morehouse, 1999), 63-64.

state, not with establishing a nationwide Episcopal Church. Towards this end, Dr. William Smith, leader of the Church's movement for reorganization in Maryland, was, in 1773, elected "*To go to Europe to be ordained an antistes, President of the Clergy, or Bishop (if that name does not hurt your feelings).*"³⁹ Because of a number of reasons, Dr. Smith was never consecrated, and Maryland did not have a bishop until after the organization of the Protestant Episcopal Church in 1789.

The Connecticut (Seabury) Plan.

Though having several points of similarity with the Maryland approach, the Church in Connecticut (and New England generally) manifested an essentially different conception of the role of the Episcopal Church. Theologically "High Church," politically Tory, and not enjoying Establishment before the Revolution, but rather, depending upon the aid of the Society for the Propagation of the Gospel, the Church in Connecticut was predisposed to react differently to the situation brought on by the defeat of England. Unlike Maryland, and the Church in the South, and, as shall be seen, unlike the Pennsylvania Plan, the Church in Connecticut felt that no departure in ecclesiastical faith or discipline could legitimately be made until a valid Episcopate had been secured. The "government" of the church *was* the bishop, it was believed. Authority to govern the Church flowed from Christ through the Apostles to the bishops.

³⁹ Letter from the Rev. Thomas John Claggett to William Duke of September 20, 1783, in William Stevens Perry, editor, *Journals of General Conventions of the Protestant Episcopal Church*, 3 vols. (Claremont, New Hampshire: Claremont Manufacturing Company, 1874), 3:34. (Italics in source.)

To have ecclesiastical government without bishops was impossible.

Hence, Connecticut's energies were consumed, at least after March 1783, in obtaining the consecration of Samuel Seabury, at first unsuccessfully at Canterbury, and then successfully in November 1784 by non-juring but valid bishops in Scotland.⁴⁰ Until Bishop Seabury arrived back in Connecticut in August 1785, the Church in Connecticut rejected overtures from members of the Church in the other states to join in an ecclesiastical union for the revision of faith and discipline as the times required. "Really, Sir," the New England clergy wrote William White in reference to his plan, "we think an Episcopal Church without Episcopacy, if it be not a contradiction in terms, would, however, be a new thing under the sun."⁴¹

Moreover, the New England clergy were horrified at suggestions of presbyteral consecration of bishops. Only valid, episcopal consecration of bishops would do: "We think that the uniform practice of the whole American Church, for near a century, sending

⁴⁰ The non-juring bishops were Scottish and English bishops who refused to swear allegiance to William and Mary after the Glorious Revolution of 1688 had removed James II (to whom they had already sworn allegiance) from the English throne. They and their successors maintained independent church structures in both England and Scotland. James II's grandson and final legitimate heir Henry Benedict Stuart died in 1807, eliminating any further rationale for refusing allegiance to the English royal family. See Walter H. Stowe, "The Scottish Episcopal Succession and the Validity of Bishop Seabury's Orders," *Historical Magazine of the Protestant Episcopal Church* 9 (December 1940): 322-48 and Arthur Lyon Cross, *The Anglican Episcopate and the American Colonies* (New York: Longmans, Green, 1902), 264-67.

⁴¹ William White, *Memoirs of the Protestant Episcopal Church in the United States of America*, DeCosta Edition (New York: E. P. Dutton, 1880), 337.

their candidates three thousand miles for Holy Orders, is more than presumptive proof that the Church here are, and ever have been" of the opinion that validly-consecrated bishops are essential to a valid Church.⁴²

The Pennsylvania (White) Plan

The Pennsylvania Plan was the only major scheme that sought first to reorganize the Church in all the states into a single ecclesiastical entity. This plan, developed by William White, who is often said to be the "Founding Father" of the American Episcopal Church,⁴³ has sometimes been called the "Federal Plan."⁴⁴ This is an unfortunate misnomer. White's program was first outlined in *The Case of the Episcopal Churches in the United States Considered*.⁴⁵ This document generally is

⁴² William White, *Memoirs*, 338.

⁴³ E. Clowes Chorley, "The General Conventions of 1785, 1786, 1789," *Historical Magazine of the Protestant Episcopal Church* 4 (December 1935): 265. "In a very real sense his memory should be venerated at the Father of the American Church." See also, Richard G. Salomon, "Mother Church—Daughter Church—Sister Church," *Historical Magazine of the Protestant Episcopal Church* 21 (December 1952): 418; William J. Seabury, *An Introduction to the Study of Ecclesiastical Polity* (New York: Crothers and Korth, 1894), 193-94; and James A. Muller, *The Government of The Episcopal Church* (Cambridge, Massachusetts: Episcopal Theological School, 1929), 1.

⁴⁴ Chapter Three of Clara O. Loveland, *The Critical Years. The Reconstitution of the Anglican Church in the United States of America: 1790-1789* (Greenwich, Connecticut: Seabury, 1956), is entitled, "The Federal Plan for Reorganization," and is an analysis of White's position in the *Case*. Dr. Loveland acknowledges that she took the term "federal" from Samuel D. McConnell, *History of the American Episcopal Church*, 1904 edition.

⁴⁵ *William White's "Case of the Episcopal Churches in the United States Considered,"* ed. Richard G. Salomon (Philadelphia: Church Historical Society, 1954).

considered to be the initial precursor to The Episcopal Church's Constitution of 1789 and hence must be examined carefully.

Written during the summer of 1782 at a time when White, along with many others, thought England might not recognize the independence of the American states, the *Case* was primarily concerned with outlining a scheme of union for the Church in the United States. White assumed that it would be completely impossible to secure consecration of an American bishop from the English line. Thus, although he lamented the necessity of so acting, he felt that the need for a continuing witness to the Christian faith dictated that the reorganization of the former Church of England in America be conducted in the absence of a bishop.⁴⁶

Events contemporary with the publication of the *Case* in fact negated that assumption. In early August 1782 it became apparent that England was willing to recognize American independence.⁴⁷ If this were so, then it was more likely that the Church of England could be persuaded to consecrate an American candidate to the episcopacy. Nonetheless, the *Case* was printed and widely distributed among members of the American Church, and had considerable influence on subsequent constitutions.

Chapter Three of the *Case* contains the "sketch of a frame of government" as follows:

As the churches in question extend over an immense space of country, it can never be expected that representatives from each church should assemble in one place; it will be more

⁴⁶ White, *Case*, 29-30.

⁴⁷ Richard G. Salomon, Introduction to White, *Case*, 9.

convenient for them to associate in small districts, from which representatives may be sent to three different bodies, the continent being supposed divided into that number of larger districts. From these may be elected a body representing the whole.

In each smaller district, there should be elected a general vestry or convention, consisting of a convenient number (the minister to be one) from the vestry or congregation of each church, or of every two or more churches, according to their respective ability of supporting a minister....

The assemblies in the three larger districts may consist of a convenient number of members, sent from each of the smaller districts, equally composed of clergy and laity, and voted for by those orders; the presiding clergyman to be always one, and these bodies to meet once in every year.

The continental representative body may consist of a convenient number from each of the larger districts, formed equally of clergy and laity, and among the clergy, formed equally of presiding ministers and others to meet once in three years.⁴⁸

White's plan is cited in all major sources as being substantially identical with the final form of the Church's polity: "The Constitution of the American Episcopal Church to this day bears the imprint of his

⁴⁸ White, *Case*, 25.

hand, more than that of any one man.”⁴⁹ If so, what was White’s purpose in recommending the three-tiered governmental framework? The answer seems to be provided in the first paragraph of his third chapter: because the parish churches extend over such a great expanse of territory, it is difficult to secure a single convention with representatives from each parish, so there must be instead a series of ascending conventions.

Nowhere does White declare in the *Case* his intention of establishing a federal government or of securing a distribution of governing power between a central and member governments. Rather, he is concerned with how to achieve a satisfactory system of representation within what is a unitary government. Since the territorial extent of the Church is considerable, and transportation and communication difficult, he concludes that a system of interrelated, multiple, representative conventions rising from the local congregation to the “continental representative body” is the best solution.

He does not attempt to protect the sovereign powers of the Church in the states by limiting the power of the continental convention in favor of diocesan power. Rather, he would limit governing powers of all the bodies: “The use of this and preceding representative bodies is to make such regulations, and receive appeals in such matters only, as shall be judged

⁴⁹ Walter H. Stowe, “William White, Ecclesiastical Statesman,” *Historical Magazine of the Protestant Episcopal Church* 22 (December 1953): 374. Consult also Muller, *Government*, 7-8. Muller states, in reference to the Fundamental Principles of 1784: “This is essentially the plan which had been proposed in White’s pamphlet.” Salomon, Introduction to White, *Case*, 7 says, “It contains the first draft of the organization of the Church as it is today.”

necessary for their continuing one religious communion."⁵⁰

White clearly favored decentralization, however. He felt it was good "... to retain in each church every power that need not be delegated for the good of the whole."⁵¹ At another place in the *Case*, he says that "there is great truth and beauty in the following observation of the present Bishop of St. Asaph, "the great art of governing consist in not governing too much."⁵² Consequently, White was interested in protecting the individual churchman from "too much" ecclesiastical legislation by setting up an elaborate system of representation; building from the individual parish member, through a series of more-inclusive representative bodies, to a final group continental in its composition and scope.

Nonetheless, the controversy concerning White's *Case* at the time it was published was not over the locus of political power. It was entirely over its

⁵⁰ White, *Case*, 26.

⁵¹ Salomon here, in annotating White's *Case*, footnotes Article Two of the *Articles of Confederation*: "Each state *retains* its sovereignty, freedom and independence, and *every power*, jurisdiction and right which is not by this confederation expressly *delegated* to the United States, in Congress assembled." See Salomon, annotation to White, *Case*, 125n43. (Italics in source.)

To quote a contemporary source which was designed to guarantee the sovereignty of the States in the Confederation for an inferential interpretation of White's statement is very misleading. There is no objective reason to believe that White was stressing either parochial or diocesan supremacy in the *Case*. If he were interested in protecting sovereignty, it is highly significant that he did *not* follow the obvious model of the *Articles of Confederation* which Salomon cites, and include this protection specifically in his "sketch of a frame of government."

⁵² White, *Case*, 27.

quasi-Presbyterian plan of government and the introduction of the laity on an equal footing with the clergy to ecclesiastical councils.⁵³ The possibility of consecration by clergy of a person who was to exercise episcopal duties was rejected by the New England clergy and other persons. This group was also hesitant to accept the idea of lay representation as well.

Connecticut and Pennsylvania Plans Opposed. Essentially, then, there were two main views towards the reconstitution of the Church after the Revolution since Maryland was willing to participate in the Pennsylvania Plan. Connecticut and New England, on the one hand, felt that no discussion for organization among the local churches could be had until there was a bishop in The Episcopal Church in America. White and the churches of the East and South felt that the congregations should

⁵³ The laity have always played a prominent and official role in the American Episcopal Church, and the propriety and catholicity of this has often been both challenged and defended. While the implications of lay participation are manifold, they will not be developed systematically here, though occasional reference will be made to lay governmental responsibilities and duties at various points. For varied discussions see G. MacLaren Brydon, "The Origin of the Rights of Laity in the American Episcopal Church," *Historical Magazine of the Protestant Episcopal Church* 12 (December 1943): 313-38; C.C. Edmunds, Jr., "The Revival of Minor Orders—The True Method of Enlisting Lay Help," *Church Eclectic* 17 (1889): 219-229; Investigator, "Permanent Deacons as Assistants in Large Parishes," *Protestant Episcopalian* 7 (1836): 383-86; "The Laity in the Church. Has the Experiment of the American Church Succeeded?" *Church Eclectic* 7 (1879): 374-80; R.W. Norman, "Women's Work in the Church," *36 Church Review* 36 (1881): 213-40; Albion K Parris, "The Place of the Laity in the Church," *Protestant Episcopal Review* 13 (1900): 301-11 (1900); "Report of a Meeting of the Standing Committee of the Diocese of M---," *Church Eclectic* 9 (1881): 842-45; and Walter H. Stowe, *More Lay Readers than Clergy: A Study of the Office of Lay Reader in the History of the Church* (Philadelphia: Church Historical Society, 1954), 11-22.

organize, make whatever minor revisions were essential in Anglican discipline and liturgy to continue the Church, and secure a bishop as soon as it was possible to do so.⁵⁴

From 1784 to 1789 there were several Constitutional Conventions that drafted and debated versions of what finally became the Constitution of the Episcopal Church. White was very active in all of them. Bishop Seabury and the New England clergy only joined with the churchmen from the southern and middle states in 1789 to form the Protestant Episcopal Church in the United States of America.

Constitutional Documents and Conventions from 1784: The "Fundamental Principles of 1784."

The first meeting of members of The Episcopal Church from various states that included a consideration of ways of reorganizing the Church was held in New Brunswick, New Jersey on May 1784. In New York on October 1784 a larger group met, called by the New Brunswick Assembly. Present were clergy and/or laymen from Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. This convention of only twenty-seven members presented the following "Fundamental Principles":

⁵⁴ See Loveland, *The Critical Years*, 167-235 for the best discussion of the progress of these two schemes. She feels that the union was very nearly impossible, and only precariously achieved by the compromise of both groups and the alteration in the plans of each, in part due to changes in the environmental situation. Structurally and essentially, nonetheless, it was White's plan that prevailed.

- I. That there shall be a General Convention of the Episcopal Church in the United States of America.
- II. That the Episcopal Church in each State send Deputies to the Convention, consisting of Clergy and Laity.
- III. That associated congregations in two or more States may send Deputies jointly.
- IV. 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 Constitution of the respective States.
- V. 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*.
- VI. 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.
- VII. That the first meeting of the convention shall be at Philadelphia, the Tuesday before the Feast of St. Michael next; to which it is hoped and earnestly desired that the Episcopal churches in the respective States, will send their clerical and lay deputies, duly instructed and authorized to proceed on the necessary

business herein proposed for their deliberation.⁵⁵

As in *White's Case*, the question of federalism does not appear to have been the concern of the persons who wrote these "principles of ecclesiastical union." There is no division of power. However, a case can be made for the position that the union proposal does have several federal or confederal characteristics, with the Church in the several states being the basis of the federation, because the voting procedure in the Sixth Principle was held, in the Convention of 1785, to mean that voting was counted by states and not by individuals.⁵⁶ But that is the extent of it.

Various proposed articles of union for Episcopal parishes within each state were drawn up during this period. It is informative to examine these proposals to see whether they evidence a concern for protection of diocesan or parish political powers.

The accounts of various state conventions of the time lead again, as in the instance of *White's Case*, to the conclusion that if the government of the national Church were to be one of restricted powers, then the residue of the governing power should rest in the parish churches and not in the dioceses. Thus, the proposed principles each of Massachusetts, Virginia, Pennsylvania, South Carolina, and Maryland contain the hope that "no powers be delegated to a general ecclesiastical government, except such as cannot conveniently be

⁵⁵ Perry, *Journals*, 1:12-13.

⁵⁶ Perry, *Journals*, 1:18.

exercised by the clergy and laity in their respective congregations.”⁵⁷

The same wording was used in one of the six “Articles of Convention” of the Church in Pennsylvania in May 25, 1784 and was cited by the convention of the Church in Maryland in June 1784 as being the basis of Maryland’s “Declaration of Religious Rights” of June 23, 1784.⁵⁸ It also appears in Article VI of the Articles of the Massachusetts Convention of September 8, 1784⁵⁹ and of the South Carolina Convention of May 1786.⁶⁰

On May 23, 1785, a convention “consisting of thirty-six clergy and upwards of seventy laymen” in Virginia approved the “Fundamental Principles” of October 1784 after modifying the Fourth and Sixth Articles.⁶¹ The convention added, “that this convention will however accede to the mode of voting recommended in the Sixth Article, with respect to the convention to be holden in Philadelphia, reserving the right to approve or disapprove their proceedings.”⁶² Virginia thereby attempted specifically to reserve for herself the right to “nullify” any decisions of the Philadelphia Convention of 1785 that were contrary to her wishes.

The New Jersey Convention of July 6, 1785 also accepted the “Fundamental Principles” and elected deputies to the Philadelphia Convention, “with power to accede, on the part of this convention, to the fundamental principles...and to adopt such measures, as

⁵⁷ White, *Memoirs*, 93.

⁵⁸ Perry, *Journals*, 3:14-34, especially 29-30.

⁵⁹ Perry, *Journals*, 3:64.

⁶⁰ Frederick Dalcho, *An Historical Account of the Protestant Episcopal Church in South Carolina* (Charleston: E. Thayer, 1820), 474.

⁶¹ Perry, *Journals*, 3:47.

⁶² Perry *Journals*, 3:48.

said general convention may deem necessary for the utility of the said church, not repugnant to the aforesaid fundamental principles.”⁶³

A convention of the Church in Maryland on June 22, 1784 added a statement of what it considered to be the necessary scope of the powers of the governing bodies of the Church.⁶⁴ But significantly, the Maryland Convention did not attempt to divide the powers between the Convention of the National Church and the diocesan conventions. There was no attempt to protect the diocesan powers from exercise by the national Church.

Three conventions were subsequently held that suggested various changes in the previous drafts. They were held on September 27-28, 1785 and June 20, 1786, both in Philadelphia, Pennsylvania, and October 10-11, 1786, in Wilmington, Delaware. But the main progress towards reconstituting the Church in the United States was achieved elsewhere, when Samuel Provoost of New York and William White of Pennsylvania were ordered bishop by the Archbishops of Canterbury and York with the participation of the Bishops of Bath and Wells and of Peterborough, in the Chapel of the Archiepiscopal Palace of Lambeth on February 4, 1787.⁶⁵ With the earlier consecration of Connecticut’s Samuel Seabury on November 14, 1784, there were now three bishops in the American Church. Valid independence by the American Church from the Church from England was finally fully possible.

⁶³ Perry *Journals*, 3:56.

⁶⁴ Perry, *Journals*, 3:30-31.

⁶⁵ White, *Memoirs*, 27.

The General Convention and Constitution of 1789

It was during the two sessions in July and September of 1789 that the reorganization of the Episcopal Church was finally settled. Previous constitutional documents had been but proposals for union. On August 8, 1789, a constitution was adopted of which later revisions were only in the way of amendment. White says that there was a "conviction generally prevailing in the convention, that the formerly proposed constitution was inadequate to the situation of this Church" because it did not assume that there would be the completed episcopate (the three resident bishops needed to consecrate additional bishops) made possible by the joining of the two English-consecrated bishops and the single Scottish-consecrated into a single ecclesiastical organization.⁶⁶

Indeed, the proceedings of this session were largely conditioned by that possibility. After drawing up preliminary Canons and a Constitution, and preparing a report of their actions for the English Archbishops,⁶⁷ the Convention adjourned until September 29, a month and a half later, sending a special request to Bishop Seabury and the New England Clergy for their presence at the coming convention. The hope was that the time was propitious for the formation of a lasting union of all the Episcopal Churches in the several states.

The expectation of participants in the summer convention that New England representatives would join them when they reconvened in the fall was achieved. On September 20, 1789, when the adjourned Convention met once again in Philadelphia, Samuel Seabury, Bishop of Connecticut, and three other New

⁶⁶ White, *Memoirs*, 166.

⁶⁷ Perry, *Journals*, 1:63-90.

England clergymen were in attendance.⁶⁸ On October 2, after securing the modification of Article III,⁶⁹ the New England Clergy accepted the Constitution as drawn up by the summer convention. Thus, October 2, 1789, may be considered to be the date when the former Church of England in America reconstituted itself into the Protestant Episcopal Church in the United States of America. The Constitution was somewhat revised from earlier constitutional proposals, especially in regard to the governing role of bishops, the composition of General Convention, and to some extent, in the amending process.

There still, however, was no statement as to a division of powers between the General and diocesan conventions or as to the limits of the governing power of General Convention itself. It is true that the Constitution rested upon and operated primarily through the actions of the Church in the states. This is a significant change from the scheme outlined in *White's Case*, which was based essentially upon parochial action. But, as was the situation in the proposals since 1784, on the face of the 1789 Constitution, no article or section was included for the purpose of defining a constitutional division of powers between the Church's central government and the governments of the dioceses.

Therefore, in contradiction to those who believe the government of The Episcopal Church to be either confederal or federal on the basis of an alleged analogy

⁶⁸ "The Rev. Dr. Samuel Parker, Deputy from the churches in Massachusetts and New Hampshire, and the Rev. Mr. Bela Hubbard and the Rev. Mr. Abraham Jarvis, Deputies from the church in Connecticut." See Perry, *Journals*, 1:93.

⁶⁹ Perry, *Journals*, 1:83-85.

between the Articles of Confederation or the United States Constitution's division of power, it can be said that there is neither explicit nor implicit in the Church's Constitution of 1789 any definition of a division of powers, even though the framers of the Constitution had the models of both the Articles of Confederation and the U. S. Constitution before them.

Subsequent Constitutional Amendments

If there was no explicit division of powers provided for at the inception of the Episcopal Church, has such a provision been added to the constitution subsequently, or, if not, can a division of powers be reasonably inferred from the totality of the Constitution of 1789 and later amendments?

The Constitution of the Church has indeed undergone considerable revision and reorganization. Aside from changes in substance since 1789 there has been considerable change in form, especially in 1901. Whereas the original Constitution was only two or three pages long and consisted of nine brief and single-paragraphed articles, the Constitution after the 2009 Convention was ten pages long with twelve articles.

Nevertheless, an examination of the constitutional amendments accepted by General Convention shows that no section has been added to the Constitution either for the specific or incidental purpose of affirming or denying the federal or confederal structure of the Church or of a division of power between the central and diocesan governments.⁷⁰

⁷⁰ Article 3, section 4 of the Revised Constitution as proposed by the Joint Commission on Revision in March 1895, said in part, "the powers not committed to the General Synod or to the Provincial Synods by this Constitution, nor prohibited by it to the dioceses are reserved to the

Source and Scope of the Canons.

The enactment of Canons by General Convention is equivalent to the passing of laws by civil governments. That is, a Canon, as far as the American Episcopal Church is concerned, is a law for the Church. When the 1789 Constitution was adopted, there were seventeen Canons not arranged in any apparent sequence. After the most recent General Convention in 2009 there were sixty-six Canons arranged under five titles.

The summer session (July 20 - August 8) of the 1789 Convention adopted ten canons.⁷¹ These had been prepared largely by a committee appointed to draw up a body of canons.⁷² Actually, these canons were passed by the Convention one day *before* the Constitution was finally accepted.⁷³ This fact has been used by some students of the Church's government to show that the Canons are not necessarily made pursuant to the Constitution; that there is, indeed, no subject about which General Convention cannot legislate.⁷⁴

These early canons were concerned only with establishing the qualifications of candidates to Holy Orders throughout the Church. Consequently it was

dioceses respectively, save that no diocese or province shall legislate in regards to doctrine or worship." See *Churchman* 71 (March 16, 1895): 379. This clause apparently was not the object of public discussion. It was not debated in the 1895 General Convention and was not reported on the floor of either House of the Convention for action. It died, for reasons unascertainable, in the Bishops' Committee on the Constitution.

⁷¹ Perry, *Journals*, 1:79-82.

⁷² Perry, *Journal*, 1:72.

⁷³ Perry, *Journal*, compare 1:79 with 1:83.

⁷⁴ See Hoffman, *A Treatise on the Law of the Protestant Episcopal Church*, 222; and Vinton, *Manual Commentary*, 79-80.

clearly determined that while candidates were required to have the approval of and guarantee of support from the ecclesiastical authorities in their diocese, General Convention was competent to set any qualification supplementing or obliterating those of the dioceses. The Canons ensured, for example, the approval or disapproval of candidates to the Episcopacy by representatives of the bishops, clergy, and laity in all dioceses of the Church, even though after consecration they would be jurisdictionally restricted to the exercise of their office within their own dioceses only, except by invitation.⁷⁵

These first Canons also showed that General Convention could significantly control the internal instruments of government of the dioceses even though the Constitution did not give them specific authority so to do. As but one example, Canon Seven stated in part, "In every state in which there is no Standing Committee, such Committee shall be appointed at its next ensuing Convention."⁷⁶

It was recognized by the very committee that drafted these first Canons that they were quite incomplete. Thus, the fall session of this Convention, at which the New England Churches were for the first time present, agreed to a list of seventeen canons. The first nine canons were identical to the ten of the previous sessions.⁷⁷ Canons X through XVII were newly passed,

⁷⁵ More will be said about this and other implications of the governing role of bishops in relation to the question of federalism in section four of this article.

⁷⁶ Perry, *Journals*, 1:81. For an explanation of Standing Committees, see Dator, *Many Parts*, 116-17.

⁷⁷ The only exceptions were that Canon VII of the first session was joined to Canon VI; and to Canon VIII (now VII) which required that

and were concerned with guiding the conduct of the parish clergy in their liturgical and pastoral relations, and in establishing minimal discipline for the laity, or regulating aspects of parish government by clergy and laity.⁷⁸

Thus, the second session of this first General Convention not only presumed competence for controlling diocesan governments and the qualifications of ministers, but for the operation of parochial government as well. Such far-reaching authority is more typical of a unitary than of a federal or confederal government, especially inasmuch as the Constitution did not specifically or by reasonable inference give General Convention these powers.

The Canons have been codified, revised, and rearranged several times in the Church's subsequent history. At no time, however, either by canonical legislation or constitutional amendment, have enacted provisions designed fundamentally to limit the power of the General Convention in favor of diocesan power been enacted, nor has a division of governing authority between the central and the affiliate governments been established.

Moreover, the Constitution of the Church not only does not specifically restrict the power of General Convention, but also it does not specifically empower the Convention to act in many significant areas. This lack of specific constitutional authority itself has only rarely been successfully invoked to attempt to prevent

candidates for Orders know Greek and Latin, was appended a clause for exemption under certain circumstances.

⁷⁸ Canons X, XI, XVII, XIV, XV, and XVI; Canons XII, and XIV, and Canons XIX, XVII, respectively.

General Convention from passing canonical legislation. Thus, General Convention has enacted canons touching on almost all matters of ecclesiastical governance, and has preempted various fields from diocesan legislation. Consequently, there is little of significance about which the dioceses possess exclusive jurisdiction—and even this may at any time be removed by General Convention through canonical legislation or constitutional amendments.⁷⁹

IV.

Applying governance criteria to the Constitution

Having examined in some detail the origins of the American Episcopal Church in relation to the unitary/federal question, it is now necessary to examine that structure in terms of the other criteria developed for determining the locus of authority.

Amendment

The process by which a constitution may be amended is as crucial a distinguishing institutional feature of federal and confederal governments as is the presence of a constitutional division of powers.⁸⁰ In a federation, constitutional amendment requires the joint participation of the central and associated governments. If the Constitution may be amended by the central government alone, even if the process is more difficult than ordinary legislation, the government is probably unitary. If the associated governments, together or

⁷⁹ Hill Burgwin, "The National Church and the Diocese," *Church Review* 45 (1885): 423-55.

⁸⁰ Livingston, *Federalism and Constitutional Change*, 380 ff. Livingston considers the very test of a federal government to be the way in which the constitution is amended.

singly, are able to amend the Constitution, the government is probably confederal.

Nowhere is a unitary structure for the Church's government more strongly suggested than in the method of constitutional amendment. No formal participation by the dioceses (or parishes) in the amending process is required. General Convention is competent to amend the Constitution itself, although it does take the acceptance of two consecutive Conventions.⁸¹

Nullification or Secession

Closely connected to the method of amendment is the question of nullification and secession. If an associated government may nullify an act of the central government that is intended to have effect within or upon the associated government, then the structure of the union is probably confederal. If, on the other hand, the central government legally may modify or eradicate the structure or power of an associated government, then the association is unitary. In a federal government, under the division of powers, the constituent governments must obey decisions of the central government made in accordance with its constitutional powers. There is, however, a deposit of power and an essential governmental structure belonging to each associated government that the central government may not obliterate.

Neither nullification nor secession is specifically allowed or reasonably implied in the Constitution of the Episcopal Church. Until recent activities, one example of

⁸¹ Perry, *Journals*, 1:84, 100.

what at first appears to be secession occurred during the Civil War and was the result of civil action within the United States. It did not occur because of a desire on the part of the Southern dioceses to leave the American Episcopal Church because of theological or related differences. Rather, it arose entirely because of the beliefs that led to the creation of The Episcopal Church in the United States—and the Church of England itself—to begin with, namely, the Church is to be governmentally-organized according to the nation-state in which it resides. Since the Southern states tried to secede from the United States of America, the southern dioceses of the Church felt they had to do the same.

Importantly, The Episcopal Church in the United States refused officially to recognize the Confederate Episcopal Church, considering the Church in the South as remaining in the American Episcopal Church. Therefore, the confederal principle of secession has neither been vindicated in practice nor allowed in theory as far as the American Episcopal Church is concerned, although it has been asserted on occasion by various Episcopalians,⁸² and is mistakenly sought to be exercised now.

On the other hand, the essentially unrestricted power of General Convention over the diocesan governments is clear. By virtue of the unitary method of constitutional amendment and because General Convention is in no way limited in the exercise or definition of its powers by the Constitution, the governmental structure and powers of the dioceses exist by virtue of the actual or tacit decisions of General Convention.

⁸² See Dator, *Many Parts*, 118-25 for a discussion of the Confederate Episcopal Church.

In conclusion, then, the nature and provisions of the Constitution, its method of enactment and amendment, and the mutual relationship of governing powers between the dioceses and General Convention are all definitely on the side of a unitary government with the locus of final power being in the General Convention.

Voting at General Convention

The General Convention is the supreme governing body for The Episcopal Church. It is a primarily representative body of bishops, priests, and laymen, combining within it ultimately all legislative, executive, and judicial powers for the Church in the United States.

There are, however, three questions about the characteristics of General Convention that must be answered in terms of the question of the Church's constitutional structure. What is the basis of apportionment? To whom do the Convention deputies owe responsibility or accountability? What is the voting procedure in General Convention?

The method of apportionment of the central legislature has significance for understanding the form of government. In a federal government the member governments are represented as such in at least part of the central legislature, which may be bicameral in form. In a confederal government, the associated states are represented as such in the central legislature, which may also be bicameral.

General Convention appears to be bicameral. There is a House of Bishops and a House of Clerical and Lay Deputies. But it is the Lower House (deputies) rather than the Upper that seems to exhibit a federal or

confederal organization. Moreover, the vote by Orders in this House (in which clergy and laity are polled separately) tends more towards producing a tri-cameral than a bicameral legislature.

Clerical and lay deputies to the General Convention are chosen by diocesan conventions, and in General Convention, during a vote by Orders, the votes of the members of each Order in each diocese are counted corporately as a single vote. Consequently, in a vote by Orders, it is the decision of the Orders in the dioceses that is presented in the vote, not merely the sum of a majority of individual wills.⁸³ General Convention may seem in this to evince federal or even confederal characteristics. For example, a confederal presumption is suggested by the fact that each diocese, regardless of size, is entitled to the same number of deputies as every other diocese. Coupled with the vote by Orders provision, the suggestion may at first seem convincing.

In a confederal government, all of the deputies to the central government are ultimately responsible to the associated governments rather than to "the people" of a geographic area. They are chosen by the member governments and are expected to attempt to carry out their electors' commands in order that the division of powers and the associated governments' rights may be secured. While members of the House of Deputies are elected by the associated governments, this is not true of all members of General Convention. Members of the House of Bishops hold their membership simply by virtue of being bishops. They represent no one and have no legal or formal representative responsibility to their

⁸³ See Dator, *Many Parts*, 69-73 for a full exposition of the voting patterns at General Convention.

dioceses. It should be remembered also that bishops have executive, legislative, and judicial governing powers and responsibilities, both in regard to their dioceses and the National Church. Although their initial election is by the diocese over which they are to exercise jurisdiction, they must be confirmed in their election by a majority of all bishops, and a majority of representatives of the whole clergy and laity of the Church, either evidenced by Standing Committees or by the House of Deputies of the General Convention.

The election of a bishop is not approved by the diocesan conventions, which would be the federal or confederal method. The Standing Committees, which give approval, have a basis and continuance that is even more directly dependent upon the canonical legislation of General Convention than is that of the diocesan convention. Indeed, this entire arrangement is subject to the pleasure of General Convention, and may be altered by General Convention, either by constitutional amendment or canonical legislation.⁸⁴

Thus, because of the form of membership in the House of Bishops, it is possible to conclude that the General Convention does not conform to a confederal pattern of representation (in which all legislators would represent the associated governments). It is still possible, however, to argue that the representation is federal in character, however, since in a federal government it is possible for only a portion of the central legislature's members to represent the associated governments. This premise, however, requires further

⁸⁴ For a review of the history of General Convention legislation concerning voting patterns see Dator, *Many Parts*, 63-68.

examination of the method of voting in the General Convention.

The voting procedure in General Convention has interesting ramifications. If voting in the central legislature is tallied entirely on the basis of member state units rather than of individuals voting, a confederal structure is suggested; if it is tallied in part on the basis of member states, the structure may be federal. In the House of Bishops there is no formal requirement that the vote be counted by dioceses. Even when one diocese has several bishops in the House, the vote of each bishop counts separately, without regard to diocesan affiliation.⁸⁵

The normal voting procedure in the House of Deputies is the same as in the House of Bishops. However, the vote by Orders requirement on some measures, and possibility on all, suggests, it may seem at first, a federal method, (but not a confederal one, since only part of the legislature is involved). The voting, however, is actually taken of the Orders in the dioceses rather than simply of the dioceses themselves. This casts the federal presumption in a different light and suggests that the method is not essentially connected with the question of federalism at all. The vote by Orders, instead, is a convenient way to secure the approval of representatives of the Church's three Orders. This voting method is designed to protect the "veto" rights of each of the Orders, rather than that of the diocesan governments. Indeed, the Constitution calls the

⁸⁵ The method of voting in the House of Bishops has always been relatively simple, though not explicit in the Constitution until 1901. See *Journal of the General Convention* (1901), 35, Article 1, section 2.

procedure a “vote by Orders,” not a “vote of dioceses.”⁸⁶ Thus, even the voting pattern in the House of Deputies, taken by itself, does not lead to the necessary conclusion that the system of government is federal (or confederal).

Considering the structure of General Convention, then, it may appear that some of General Convention’s arrangements indicate that the Church’s government is federal or perhaps even confederal. Yet, these features do not lead to that conclusion, especially in the absence of a constitutionally guaranteed division of power. This division does not exist in the government of The Episcopal Church, and the basis of apportionment and voting procedures in General Convention when considered both by themselves and in the fact of this absence indicates a unitary government.

Chief Executive

The chief executive of The Episcopal Church is the Presiding Bishop. This officer began as no more than the bishop who, according to seniority, presided over the House of Bishops. Now elective by the House of Bishops with the approval of the House of Deputies, the Presiding Bishop not only presides over the bishops, but also, in the presidency over the Executive Council, is the most important executive and administrative officer of the Church.

As far as the question of the Church’s constitutional structure and locus of authority is concerned, it is important to state that the diocesan

⁸⁶ The provision to vote by order goes back to the “Fundamental Principles of 1784” and predates the provision for a bi-cameral legislature. See Perry, *Journals*, 1:13.

governments have no control over the election of the Presiding Bishop. That officer is chosen by General Convention and is dependent solely upon the General Convention for the statement of powers and responsibilities. The office is like that of a “weak-mayor” or a “weak-governor” in the American system of government. It has no federal or confederal characteristics at all.⁸⁷

Judiciary

In a federal or confederal government, it is necessary to have some instrumentalities by which the law of the member governments and of the central government may be adjudicated in their respective spheres. Both the central and component governments need their own system of courts to decide cases according to their assigned jurisdictions in the division of powers. It is also possible that in a confederation, the central government may be forced to rely upon the courts of the associated governments in the execution of all or part of its adjudication. At the same time, because unitary governments may be very decentralized in their operation, it may be difficult to distinguish between a confederal and a unitary judiciary without considering whether or not there is a constitutional division of judicial powers between associated and central governments. A unitary government may utilize the courts of governmental bodies inferior to it in the same way that the central government of a confederation may be required to use the courts of the associated governments. The question of whether the government of the union is finally confederal or unitary in this

⁸⁷ For a review of the history of General Convention legislation concerning the office of Presiding Bishop see Dator, *Many Parts*, 89-93.

instance may be answered by determining whether or not the central government may legally alter this arrangement on its own volition, irrespective of the wishes of the other governing bodies. If it may, the government is unitary. If not, it may be federal or confederal.

According to the Constitution of the Church, the diocesan courts handle all cases involving the lower clergy and the national Canons, from which there is an appeal no higher than the courts of the provinces. And yet, courts for all cases involving bishops are provided for by procedures established by General Convention.⁸⁸ Inasmuch as the utilization of diocesan courts is required by the Constitution, it might appear that the Church's structure is confederal, were it not that bishops are tried only by methods specifically determined by General Convention, and the Constitution both provides for no division of power and may be amended by General Convention alone. Consequently, the arrangement is that of a unitary government utilizing the judicial systems of inferior bodies over which it enjoys ultimate control.

Interpreting the Constitution

One of the problems most crucial to the question concerning the Church's Constitution is how disputes over the meaning of the Constitution are resolved. In a confederation, constitutional interpretation is, finally, up to each associated government individually. In a unitary government, the central government possesses final interpretative authority. In a federation, there may

⁸⁸ For a review of the history of General Convention legislation concerning church courts see Dator, *Many Parts*, 99-104.

be either a body independent of both governments so empowered, or the courts of the national government may assume the function.

The Constitution of the Episcopal Church makes no specific provision for a mode of constitutional interpretation. The courts of the Church do not perform this function, and the dioceses are not permitted the power. Accordingly, the Constitution is what the General Convention says it is. There is no body in the Church which can determine authoritatively whether General Convention has acted constitutionally or not, save General Convention itself.⁸⁹

Membership

The question of membership is significant for the constitutional problem. In a federation, there is dual membership or citizenship. The individual is citizen both of the central and associated governments. In a confederation, the individual ordinarily is not fully a citizen of the central government, but only of the associated government in which the person lives. Under a unitary system, citizenship is determined finally by the central government, although the individual may have special affiliation, ultimately according to national laws, with certain inferior governing bodies.

⁸⁹ Although the Constitution since 1901 has allowed General Convention to establish a "Final Court of Appeals on matters of Doctrine, Faith, or Worship," none has thus far been established. For arguments on the merits of establishing such a court of appeals, see Harold A. Prichard, ed., *The Hartford Papers* (Spencer, Mass.: Heffernan Press, 1932), 199-252; George H. Bates, "Courts of Appeal and the General Convention," *Church Review* 48 (1886):113-30; Stephen P. Nash, "the Constitution of Ecclesiastical Courts," *Church Review* 48 (1886):284-92; and Joseph Packard, Jr., "Ecclesiastical Courts of Appeal," *Virginia Seminary Journal* 2 (1888):8-19.

The exact definition of membership in The Episcopal Church is still unclear, but one matter is certain. Membership may be authoritatively determined by General Convention. There is no dual citizenship or membership as such, but only membership in the Church (meaning that portion of Christ's Church organized as the Protestant Episcopal Church in the United States of America), ordinarily expressed by affiliation with a parish in a diocese.⁹⁰

Complete Set of Governmental Instrumentalities and Resources.

Both the central and associated governments in a federation should possess constitutionally a complete set of governmental institutions relative to the powers assigned to them by the division of powers. They also should possess sufficient human and monetary resources to exercise their powers independently. In a confederation, it often is constitutionally necessary for the central government to rely upon the institutions and resources of the associated governments in carrying out

⁹⁰ Several elements in the Canons imply membership in The Episcopal Church, rather than in a specific parish or diocese. Since 1835, "all persons who are members of this Church," have been declared by the Constitution of the Foreign and Domestic Missionary Society to be members of the Society. In addition there is the canonical provision for "Removal to another congregation," which is currently part of canon 1. 17 and dates back to 1853. Until a 1982 revision (effective in 1/1/1986) this canon spoke of "a communicant or baptized member *in* the parish" rather than "*of* the parish." Yet when speaking of a person's relationship to the general church, it used the phrase, "*of* the Church." After the 1982 revision, the initial reference to a "member in the parish" became a reference to "a member of this church," though a later reference in the same canon does now refer to "a member of the new congregation." See Perry, *Journals*, 2:695; and Canon I. 17 (1982).

many of its governing powers. Under a unitary system, the central government may utilize the arms and members of inferior governing bodies, but this is not a fundamentally constitutional limitation.

It may appear superficially that the national Church is reliant upon the dioceses in several areas for governmental institutions, human resources, and money in carrying out its program. The national Church is reliant upon the diocesan courts for the trial of the lower clergy, and upon the provinces for its courts of appeal. The Presiding Bishop originally was simply the oldest diocesan bishop called upon to serve as the national Church's executive and administrative head, and there was no full-time, coordinate national administration until well into the Twentieth Century. Finally, the national Church appears wholly reliant upon the dioceses and parishes financially.⁹¹ Do these things indicate a confederation?

They do not, because these arrangements, while highly decentralizing and confederal-like, may be altered at any time by General Convention whether by constitutional amendment or simple canonical enactment. The system is not essential. It is dependent upon the pleasure of General Convention, and not upon a constitutional arrangement over which the General Convention has no ultimate control, as would be the case in a federation or confederation.

Conclusion about the locus of authority.

The final conclusion, then, about the structure of the Church's government is that the government of the

⁹¹ For further exploration of these issues see Dator, *Many Parts*, 89-93 (the Office of Presiding Bishop), 96-99 (financial support of General Convention);, and 99-104 (the Judicial System).

Protestant Episcopal Church in the United States of America is unitary with the locus of authority in the General Convention. As such, however, it is hugely decentralized. In this decentralization, it often takes on confederal, more nearly than even federal, characteristics. This, however, does not make the Church structurally confederal. There is no essential division of power between the General Convention and the dioceses. In fact, there is no limit at all upon the Convention's governing powers, unless it be the ancient Canons and the necessity for conformity with the Catholic Faith; but these are interpreted finally by General Convention alone. Thus, the government is unitary and the locus of authority is in the General Convention. Dioceses (and local parishes) may not legitimately secede from The Episcopal Church, and if they do leave, they cannot take Church property with them.

V.

What the Courts of the United States will decide.

Over and above its own constitution and canons, The Episcopal Church must act in conformity with the constitution and laws of the United States and of the several states of the union. Thus, even though the 1st Amendment to the U.S. Constitution states that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof" and the 14th Amendment has been interpreted as applying this prohibition not only to Congress but also to all agencies of government at all levels, the civil courts in the United States do hear cases involving intra-church disputes if civil or property rights are involved.

The Supreme Court of the United States declared early on and has consistently affirmed that the courts will not intervene in purely doctrinal matters, however. Moreover, the Supreme Court has repeatedly ruled that the basis upon which civil courts must adjudicate disputes among members of a church is on the courts' understanding of the meaning of the church's formal governance structure [*Watson v. Jones*, 1871], in the instance of the Episcopal Church, the Constitution and Canons of 1789, as revised. Thus, in a dispute between a diocese (or parish) and General Convention, if the civil courts can be persuaded to take jurisdiction, then the conflict should be decided with reference to the Constitution, Canons and the decisions of General Convention itself as "the highest church judicatory" to the dispute.

This is sometimes called "the deference approach." Civil courts first determine if the church is constitutionally "hierarchical" or "congregational." If the church is hierarchical, the civil courts will uphold the decisions made by the highest church judicatory as long as the church's own procedures were followed. If the courts determine that the church's procedures were not followed, it may then decide against the highest church authorities or, more likely, send the matter back for the church to decide after properly following its own procedures.

If the courts determine that the church is constitutionally "congregational" then it will uphold the decisions of the majority of the congregation, again, if the church's constitutional procedures have been followed.

More recently, in the case of *Jones v. Wolf*, 1979, the Supreme Court said that, in resolving property disputes, the courts could also rely "on objective, well-

established concepts of trust and property law familiar to lawyers and judges," while still keeping the courts free "from entanglement in questions of religious doctrine, polity, and practice." This is termed "the neutral principles approach".

There has been a flurry of local and state supreme court cases recently involving The Episcopal Church. The initial cases have resulted from parishes attempting to leave their diocese (and hence the Church) and join another entity while taking their Church property with them. A second round of cases has resulted from entire dioceses attempting to leave the Church and join another entity while taking their Church property with them.

Judgments in all of the cases have re-stated that the civil courts should not attempt to resolve doctrinal conflicts. Some have clearly stated that The Episcopal Church is hierarchical and so the courts must follow the decisions of the highest ecclesiastical authority, with the General Convention specifically named. While considering "established concepts of trust and property law" as required in the neutral principles approach, some courts have stated that, while a deed may seem to imply that the members (or officers) of a local parish are the owners of Church property, once a parish joins The Episcopal Church, the parish and its property then become subject to the Constitution and Canons of the Church, with The Episcopal Church becoming the rightful owner of the property.

Other lower courts, however, also relying on the "neutral principles" approach, have sided with the local parish in property disputes, ruling that parishes can take church property with them when they leave. As of this

writing, no state supreme court (with the possible exception of South Carolina) has upheld such a decision, and some have rejected it.⁹² Many cases are still under litigation at the state level, often going back and forth from the state supreme and lower courts on various legal technicalities.

More importantly, so far none of the recent cases have been taken under consideration by the United States Supreme Court. Once a case does make it to the Supreme Court, one might anticipate that a Court that eschews "judicial activism" and prides itself on following precedence and a close reading of the 1st Amendment will re-affirm its previous decisions, many of which have dealt specifically with The Episcopal Church.⁹³

There can be no doubt that by both the "deference" and "neutral principles" approach, dioceses (and parishes) lack the right to leave The Episcopal Church and take Church property with them. A careful reading of the discussions leading up to the formation of The Episcopal Church in the United States by the Constitution and Canons of 1789, and during all of the following General Conventions (including those rare times, such as 1901, when the Constitution was substantially revised and re-ordered) show that as long as the procedures described in the Constitution and Canons are followed, the General Convention is the final

⁹² In *All Saints Parish v. Protestant Episcopal Church*, 685 S.E. 2d 163 (S.C. 2009); 385 S.C. 428, 685 S.E. 2d 163 (2009) the South Carolina Supreme Court ruled that the Diocese of South Carolina did not exercise a trust over a parish corporation that predated the American Revolution and the organization of The Episcopal Church. It is not entirely clear how this decision would affect a parish formed at a later date. See <http://www.judicial.state.sc.us/opinions/HTMLFiles/SC/29724.htm>.

⁹³ For a partial list of civil court cases involving The Episcopal Church, see Dator, *Many Parts, One Body*, 190.

and supreme authority over all matters of interest to the Church and its members.

As I have shown, the issue of whether The Episcopal Church in the United States is or should be unitary, federal, or confederal has been discussed over and over from the very beginning of its creation. Proposals were made while drafts of the original Constitution were being debated to specify that dioceses (and/or parishes) had powers that General Convention could not abrogate. However, none of these proposals, or anything remotely suggesting them, made it into the 1789 Constitution or into subsequent revisions. While there have been numerous popular and scholarly assertions over the years and now that the Church is federal or confederal, there have been few formal attempts, and certainly no successful ones, that have altered the Constitution from its original unitary nature.

Sometimes people have asked for a "smoking gun"—a formal statement somewhere in the Constitution that declares the General Convention supreme, or that the Church is unitary and not federal and/or that the dioceses or parishes do not have inalienable governing rights including the right to secede—to prove the point once and for all. That would be nice. But it is unnecessary. The Episcopal Church is hierarchical and not congregational. Unitary governance is the default system of governance. For a polity to be federal or confederal rather than unitary, there must be a clear statement in the fundamental constituting document of a division of power between the central and constituent entities. There is no such statement in the Constitution of the Church, while both the formal structure and subsequent decisions by the General

Convention from the beginning down to the present show The Episcopal Church to be unitary with the locus of authority being the General Convention, and that neither the dioceses nor the parishes have governing rights or processes that the General Convention cannot alter as long as it follows constitutional procedures.

