

This essay, originally written in 2004, reproduced below unchanged, is pertinent to ANY attempt by the diocese to withdraw from The Episcopal Church or change the accession clause in the Episcopal Diocese of Pittsburgh constitution.

History Revisited

Historical Background of the Proposed Amendment to Article I, Section 1 of the Constitution of the Episcopal Diocese of Pittsburgh

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Summary: *The historical record tells a story different from that presented in the essay entitled "Discussion of Proposed Constitutional Amendment, Article I, Section I," which was included in the 2004 pre-convention materials. The Episcopal Church was not created by dioceses, since none existed in 1784 when the national church began organizing. The leading scholar on the subject has described the Episcopal Church's polity as unitary, not federal. From 1784 on, the requirement for diocesan membership in the Episcopal Church was clear: accession to its constitution and canons. General Convention reserved to itself from the beginning the sole power to define faith and order, and its requirement that all districts or dioceses accede to the constitution and canons of the Church acted in lieu of a supremacy clause. The experience of the Civil War emphasized the Episcopal Church's commitment to unity and its refusal to recognize the right of a diocese to withdraw. General Convention has since passed measures emphasizing that dioceses are the creations of the Church and subject to its constitution and canons. Chancellor Devlin's consistent misreading of evidence and sources results in conclusions that are completely invalid.*

Robert Devlin, the Chancellor for the Episcopal Diocese of Pittsburgh, recently prepared a "Discussion" of the proposed constitutional amendment to Article I, Section 1 of the diocesan constitution and canons.¹ In the paper, he reaches the erroneous conclusion that, historically and legally, there are no bars to this amendment or, for that matter, to the withdrawal of a diocese from the Church. Unfortunately, in making his arguments, Chancellor Devlin has misconstrued the historical record and the meaning of words such as "federation." In other places, his own arguments actually prove the opposite of what he claims.²

A series of national meetings held between 1784 and 1789 hammered out the first constitution and canons of the Protestant Episcopal Church in the United States of America (PECUSA). The Rev. William White (later Bishop White) of Pennsylvania had laid out a proposal for a national church in a 1782 pamphlet, *The Case of the Episcopal Churches in the United States Considered*, that became the basis for the national discussion. When White sat down to write, there were no structures for Anglicans in the Americas beyond the parish. The Bishop of London oversaw all the colonial parishes, and, although some of the men who served as Bishop of London appointed commissaries to represent them in a few colonies, nowhere had clergy or laity met on a regular basis to pursue the business of the Church, except in parish vestries.³ White was most concerned about creating a church suited to the new American Republic, and thus he argued that both laity and clergy should be included in all major decisions of the Church through a representative government.⁴ White accepted the idea of our founding

¹ Article I currently reads:

Acceding to the General Constitution

Section 1. The Church in the Diocese of Pittsburgh, being a constituent part of the Protestant Episcopal Church in the United States of America, accedes to, recognizes, and adopts the Constitution and Canons of that Church, and acknowledges its authority accordingly.

The amendment would add the following:

In cases where the provisions of the Constitution and Canons of the Church in the Diocese of Pittsburgh speak to the contrary, or where resolutions of the Convention of said Diocese have determined the Constitution and Canons of the Protestant Episcopal Church in the United States of America, or resolutions of its General Convention, to be contrary to the historic Faith and Order of the one holy catholic and apostolic church, the local determination shall prevail.

² Robert Devlin, "Discussion of Proposed Constitutional Amendment, Article I, Section I," September 4, 2004, Pre-Convention Delegate Packet, Episcopal Diocese of Pittsburgh.

³ Frederick V. Mills, Sr. *Bishops by Ballot: An Eighteenth-Century Ecclesiastical Revolution*, New York: Oxford University Press, 1978, pp. 1-133; Nancy L. Rhoden, *Revolutionary Anglicanism: The Colonial Church of England Clergy During the American Revolution*, New York: New York University Press, 1999, pp. 10-64; Peter M. Doll, *Revolution, Religion, and National Identity: Imperial Anglicanism in British North America, 1745-1795*, Madison: Farleigh Dickinson University Press, 2000, pp. 155-209. My own work on Virginia covers the colony with the most clergy and parishes and the most internal structure, thanks to a consistent series of appointments of commissaries and to the presence of the College of William and Mary. Joan R. Gundersen, *The Anglican Ministry in Virginia, 1723-1776: A Study of a Social Class*, New York: Garland Publishing, Inc., 1989, pp. 1-31, 204-228.

⁴ Mills, *Bishops by Ballot*, pp. 183-189.

political generation that government originates with the people. His vision was implemented in such provisions of the drafts and first constitution as having votes cast by orders and denying bishops an ultimate veto.

Publication of White's pamphlet was the first of many steps he took to create an American church. He encouraged laymen and clergy to meet in district (state) conventions to begin organizing regionally and, almost simultaneously, asked church people in different states to send representatives to national meetings. Virginia held its first convention only four months before the first General Convention met in 1785. Like most states, Virginia had no constitution or canons for its district in 1785, and thus had no formal legal existence then. In fact, because of internal battles over incorporation, Episcopalians in Virginia had been barred from incorporating. In some states, the Church was in such disarray that no conventions were held until after other participating states drafted the constitution for the Church. Only seven state conventions sent representatives to the July meeting of the 1789 General Convention. When convention reconvened in September, members from nine districts were present to amend and approve the final draft of the constitution for the Episcopal Church. There was no ratification process requiring district votes, and votes at convention were counted individually, with no requirement that a majority of districts approve any decision.⁵ As the founding districts wrote their own constitutions, the documents were shaped by the new constitution of the national Church, of which they were a part. Thus, the Episcopal Church was not a creature formed by existing dioceses, but a unitary structure with the flexibility to allow its constituent parts some local option in governance.

White's 1782 plan, however, had not been adopted in its entirety. Samuel Seabury became the first American bishop after his consecration by Scottish bishops in 1784. When Seabury returned to the U.S. later that year, he ordained candidates from any state, thus showing his intent to serve not a particular diocese but the whole Church. He also pressed the General Convention to change the proposed constitution to give bishops a greater role in church governance. Seabury and his supporters in Connecticut and Massachusetts wanted a hierarchical church. Only a last-minute effort in 1789 by Bishop White prevented a potential schism before the Church had formally come into being. Seabury won certain concessions, including making it harder to override a House of Bishops veto, but he was unable to win other major concessions because most Americans distrusted episcopal power. The constitution contains no provision for any "federal" system with delegated or reserved powers.⁶ Giving ultimate power to General Convention was a deliberate check on the power of bishops.

As Bishop White had insisted, the 1789 Church constitution specifically granted General Convention oversight of the faith and order as laid out in the Book of Common Prayer, thus giving laity a say in these matters and not allowing them to be the sole province of bishops. Article VIII of the constitution gave General Convention exclusive control over "A Book of Common Prayer, Administration of the Sacraments, and other Rites and Ceremonies of the Church, and a Form and Manner of making, ordaining and consecrating Bishops, Priests and Deacons." As soon as the constitution was approved in 1789, the convention appointed committees to draft canons and to settle on a standard text for the Book of Common Prayer, to authorize a hymnal, and to settle issues surrounding the creed. In 1811, Article VIII was amended to make explicit that changes could be made *only* by General Convention after votes in two successive conventions. In 1829, the Church added "Articles of Religion" to the list of things that *only* General Convention could change.⁷

Chancellor Devlin claims that the Episcopal Church was founded as a "confederation of colonial churches," citing as support for this claim, the work of James Dator, whose 1959 dissertation remains the most complete study of the nature of the Episcopal Church constitution.⁸ Devlin, however, has misstated Dator's findings. The 1789 constitution included the requirement that all districts joining the Church accede to the constitution of the Church. (At the time, there were no canons to include in the accession.) By vote of their representatives, the

⁵ *Journal of a Convention of the Protestant Episcopal Church in the States of New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, and South-Carolina, held in Christ-Church, in the City of Philadelphia, from July 28th to August 8th, 1789*, Philadelphia: Hall and Sellers, 1789; *Journal of the Proceedings of the Bishops, Clergy and Laity, of the Protestant Episcopal Church in the United States of America in a Convention Held in the City of Philadelphia, from Tuesday, September 29th, to Friday, October 16th, One Thousand Seven Hundred and Eighty-Nine*, Philadelphia: Hall and Sellers, 1790.

⁶ Mills, *Bishops by Ballot*, pp. 273-82.

⁷ *Digest of the Canons for the Government of the Protestant Episcopal Church in the United States of America, Passed and Adopted in the General Conventions of 1859, 1862, and 1865: Together with The Constitution*, Boston: William A. Hall, 1865, p. 11.

⁸ "In summary, neither Bishop White's 'Case,' nor the 'Fundamental Principles' of 1784, nor the 'General Ecclesiastical Constitution' of 1785, nor the 'General Constitution of 1786,' nor the Constitution of 1789 provided explicitly for a constitutional division of powers. Such a division of powers is an essential manifestation of both federal and confederal governments. Neither is there any other evidence to indicate that the Constitution is one of a confederation. Indeed, as far as the written Constitution is explicitly concerned, the Church's government is unitary." James Dator, "The Government of the Protestant Episcopal Church: Confederal, Federal or Unitary?" (Ph.D. dissertation, American University, 1959), p. 54. Dator supposedly is the source for Chancellor Devlin's claim to the contrary.

conventions present did so and, as they wrote constitutions for their own districts (*i.e.*, dioceses), they included statements of accession in them. All future dioceses/districts were required to include such accession in their constitutions. Since there is no delegation of power to dioceses, there was—and is—no need for a supremacy clause to assert the authority of national claims among competing acts of confederated governing bodies. The accession statement thus replaces a supremacy clause, binding all to an *unqualified* acceptance of the constitution and canons as set by General Convention. In fact, as Professor James Dator notes in his 1959 doctoral dissertation:

There has never been anything in the Constitution of the Church which allowed, or reasonably could be inferred to allow, a diocese either to nullify acts of General Convention or to secede from the Church against General Convention's will, either to become an independent Church itself or to join with other dioceses to form a separate Church, or to unite with an existing church.

As to the matter of practice, there appears to have been no instance in the Church's history when a diocese has declared at [*sic*] act of General Convention of no effect within that diocese's boundaries. Therefore, it seems that no diocese has ever acted to nullify an act of General Convention. Thus, in answer to the first question raised above, it may be stated that dioceses do not possess the right of nullification over General Conventions' actions, but, rather, must obey them. There being no other body within the Church to interpret the Church's Constitution and Canons save the General Convention, a diocese disagreeing with these documents legally can only seek to have remedial legislation passed by the Convention itself.⁹

Like the nation itself, the Episcopal Church was greatly tested during the Civil War. The Episcopal Church is notable among protestant denominations for avoiding schism during the war. Church leaders did this by insisting that just because secular governments divided or seceded, the Episcopal Church did not have to follow suit. Just as Lincoln refused to recognize the legality of secession, the General Convention of the Episcopal Church continued to insist that the Episcopal Church was one undivided body.¹⁰ Rejecting an attempt to declare churches schismatic for forming the Protestant Episcopal Church in the Confederate States of America, General Convention simply considered the southern deputies absent, even reading the names of all absent southern dioceses in roll-call votes.¹¹ Article II of the constitution of the Episcopal Church had long provided that "if ... no Deputies, either lay or clerical, should attend at any General Convention, the Church in such Diocese shall nevertheless be bound by the acts of such Convention."¹² Thus, even if absent, the actions of the Convention were binding on the southern states. When two bishops from the just-defeated South appeared at General Convention in October 1865, Presiding Bishop John Henry Hopkins welcomed them back immediately. They resumed their seats in the House of Bishops, since the church had never officially recognized their leaving.¹³

The creation of the Diocese of Pittsburgh from the Diocese of Pennsylvania was approved at the same 1865 General Convention at which Presiding Bishop Hopkins warmly welcomed back Bishop Atkinson of North Carolina and Bishop Lay of Arkansas. The convention journal clearly records that Pittsburgh's proposed constitution and canons met all provisions of Article V of the constitution of the Episcopal Church, including "acceding to this Constitution."¹⁴ The Constitution presented for approval from Pittsburgh included this statement: "This Church, as a constituent part of the Protestant Episcopal Church of the United States of America, accedes to, recognizes, and adopts the general Constitution of that Church and acknowledges its

⁹ Dator, "The Government of the Protestant Episcopal Church," pp. 200-201. Chancellor Devlin cited this passage in Dator's dissertation as demonstrating that "there is no authority that expressly forbids a diocese from nullifying an act of General Convention" (Devlin, p. C-12), but Dator obviously came to the opposite conclusion and has confirmed in e-mail messages to me dated October 2 and 4, 2004 that Chancellor Devlin has misstated his findings. Dator noted, "I am as offended as I am shocked by such shoddy scholarship—and Churchmanship."

¹⁰ The convention admitted that the separation of the southern churches was a forced separation caused by the de facto secular political break. Thus, it continued supporting missionaries in Alabama and welcomed back each diocese as deputies appeared at General Conventions. James M. Donald, "Bishop Hopkins and the Reunification of the Church," *Historical Magazine of the Episcopal Church*, XLVII (1978), pp. 85-88. Even James Otey, who became the senior bishop of the Episcopal Church in the Confederacy, did not believe that secession required the Church to separate. Paul G. Ashdown, "Commission From a Higher Source: Church and State in the Civil War," *Historical Magazine of the Protestant Episcopal Church*, XLVIII (1979), pp. 321-330.

¹¹ Dator, "The Government of the Protestant Episcopal Church," pp. 201-213.

¹² *Digest of the Canons*, p. 6.

¹³ Donald, "Bishop Hopkins," pp. 85-88. For more on this reunification, see Lockert B. Mason, "Separation and Reunion of the Episcopal Church, 1860-1865: the Role of Bishop Thomas Atkinson," *Anglican and Episcopal History*, LIX (1990), pp. 345-365. Devlin refers to Hopkins as Presiding Bishop in 1862 (Devlin, p. C-13), but he was then just Bishop of Vermont. In 1862, Presiding Bishop Brownell was ill, and Hopkins presided in his absence, as the next-most-senior bishop. Hopkins became Presiding Bishop in 1865, when Brownell died.

¹⁴ *Digest of the Canons*, p. 7. *Journal of the Proceedings of the Bishops, Clergy, and Laity of the Protestant Episcopal Church in the United States of America, Assembled in a General Convention, Held in St. Andrew's Church in the City of Philadelphia, from October 4 to October 24 Inclusive in the Year of Our Lord 1865*, Boston: William A. Hall, 1865, p. 171.

authority accordingly.”¹⁵ By 1919, the constitution of the Episcopal Church had been amended to require explicit accession to the canons. Pittsburgh, accordingly, amended its canons to include accession to the canons, as did other dioceses.¹⁶ This accession is what the amendment to Article I seeks to change.

Chancellor Devlin is quite correct in saying that “accede” can mean simply “give consent.” “Accede” generally carries a sense of *yielding under pressure*, however, which is exactly what a diocese does when it is formed and becomes a part of the Episcopal Church. The key phrase in the current Episcopal Church constitution, however, is that the accession to it must be “unqualified.” Unfortunately, the proposed amendment to Article I Section 1 puts qualifications upon the Pittsburgh accession, and thus is a forbidden action. Mr. Devlin is also correct that *if* the Episcopal Church had a federated polity, then it *might* be possible to argue that General Convention holds only the powers delegated to it, with other power vested elsewhere. However, there are other theories of power applicable to federations. For example, the U.S. Supreme Court has recognized that a power may be given concurrently to more than one level of government, and it has countered ideas that federal power is limited to expressly granted powers with the theory of implied powers. Thus, Mr. Devlin has ignored the fact that the courts have recognized several forms of distribution of power within a federal system.

In the case of the Episcopal Church, however, the Chancellor’s argument is irrelevant. We need not consider theories about distribution of power in a federation at all. For, as Professor Dator concluded, the Episcopal Church is unitary in structure (though decentralized). In fact, Dator concludes, “There appears to be no limit to the power of General Convention but its own self-limitations. Specifically, there is no evidence in the Constitution that the power of the General Convention was to be in any way limited in favor of diocesan conventions, nor that the two were to have mutually exclusive powers in any particular area.” Even if we wished to dispute these conclusions about Church structure and to claim that the Church *is* a federation, the matter is still moot. The constitution of the Episcopal Church explicitly put matters of faith (the Book of Common Prayer, Articles of Religion, etc.) under the authority of General Convention. In 1919, the General Convention clearly asserted that it had retained the final authority in such matters by amending the constitution to give General Convention permission to establish “an ultimate Court of Appeal, solely for the review of the determination of any Court of Review on questions of Doctrine, Faith or Worship” should it so chose. General Convention has chosen to keep such power in its own hands, however, rather than to delegate it to a court of its creation.¹⁷ In other words, the Episcopal Church’s constitution meets Mr. Devlin’s requirement of an expressly delegated power to General Convention, and there is no basis for a claim that this power has been reserved to dioceses.

The decision of the federal courts in *Dixon v. Edwards* is equally irrelevant. According to Devlin, the court declared that “the sole interpreter of the Canons of General Convention is the Bishop, or Ecclesiastical Authority, of a diocese.” But the court was deciding whether a bishop or an individual parish had greater authority in interpreting canons, not whether a bishop or General Convention has the final say in such matters. The Episcopal Church’s constitution and canons make it clear that a bishop does not have final interpretative power, for a bishop can be presented for violating the canons and be tried under a process regulated by General Convention. Thus, there is a higher authority than the bishop.¹⁸

Thus, neither the historical record, nor scholarly interpretation, nor the actual words of the constitution support Chancellor Devlin’s claims. The conclusion is clear—the proposed amendment is beyond the power of the diocese to enact.

About the author: Joan R. Gundersen holds a Ph.D. in Early American History from the University of Notre Dame (1972). Both her masters and doctoral theses were on the Anglican Church in colonial Virginia. She has published widely on 18th century history, the history of the Episcopal Church, and women’s history. She has served for more than 25 years on the editorial board of *Anglican and Episcopal History* (formerly *The Historical Magazine of the Protestant Episcopal Church*). A contributing author to *Episcopal Women: Gender, Spirituality and Commitment in an American Mainline Denomination* (edited by Catherine Prelinger and published in 1994 by Oxford University Press), Gundersen is Vice President of the Episcopal Women’s History Project Board.

¹⁵ *Journal of the Proceedings, 1865*, “Constitution and Canons of the Protestant Episcopal Church in the Diocese of Pittsburgh, As Provided by Article V of the Constitution of the Protestant Episcopal Church in the United States of America,” Appendix A.

¹⁶ *Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America Adopted in General Conventions 1789-1919*, Printed for the Convention, 1919, p. 9.

¹⁷ Dator, “The Government of the Protestant Episcopal Church,” pp. 245, 131fn. Article IX, *Constitution and Canons 1789-1919*, p. 13. The permission for such courts remains in the current version of Article IX of the Constitution of the Episcopal Church.

¹⁸ *Dixon v. Edwards*, 290 F3d 699 (4th Cir 2002). Also available at <http://pacer.ca4.uscourts.gov/opinion.pdf/012337.P.pdf>.