**The Episcopal Church and the New Episcopal Church**

In 2013 an “Ecclesiology Committee of the House of Bishops” produced something they called “A Primer on the Government of the Episcopal Church and its underlying theology.” We have evaluated the document in detail at the Anglican Communion Institute website.[[1]](#footnote-1) Recently the document appeared again, this time at a House of Bishops meeting in North Carolina.[[2]](#footnote-2) What is the purpose of trying to secure a place for this understanding of TEC’s polity at this point in time?

Leaving aside a possible pragmatic purpose (to aid in litigation), one thing that emerges in the course of the sixteen-page discussion is an assertion of the “supreme authority” of General Convention (p. 9). Yet one might rightly ask in just what sense this might be so*, given the presence within the Episcopal Church of a Constitution, which itself defines the role of General Convention, Bishops, the Book of Common Prayer, and other obvious touchstones of authority, and which cannot be deviated from by canon or General Convention action.* Indeed, the Primer itself adverts to this when it speaks of General Convention’s conduct being subject to “parameters” (p. 9).

The Primer opines that the “supreme authority” of General Convention is to be contrasted with a “state’s rights” model. Yet the obvious point is that when individual Bishops or Dioceses appeal to authority, they do so with reference to the Constitution of TEC. There is nothing “state’s rights” about this appeal but rather it is a solemn assertion of the authority of the TEC Constitution itself. Individual diocesan constitutions and canons make explicit reference to the TEC Constitution and solemnly declare it to be the authority to which the dioceses agree to subject their own diocesan affairs.

The point is otherwise made at another juncture in the Primer when it states,

“…the Prayer Book has faithfully continued to embody the essential understanding of Christian faith as prayed by the faithful: Episcopalians are a biblical people gathered by word and sacrament. We are a people of catholic order and polity as reflected in the Ordinal and in the conduct of our various liturgies” (p. 8).

The BCP is *itself a constitutional document*. It does indeed declare via its Ordinal the responsibility of Bishops, but their responsibility is to “share with your fellow bishops in the government of the whole Church” (BCP, p. 518. The Ordinal never mentions General Convention, much less its supposed “supremacy.” And all of this is done, so the Constitution holds, in agreement with Holy Scripture. The Constitution is a solemn agreement through time to conduct our affairs in catholic order. This is why amendment of either the Constitution ot the BCP would require two successive Conventions: *to declare thereby that the Book of Common Prayer and its declaration of the faith catholic are not subject to ad hoc alteration, any more than is the Constitution itself*.

With this as backdrop, we can now better understand why we are witnessing the emergence of a New Episcopal Church, which conforms neither to the historical TEC nor even the confused one set forth in the Primer. The New Episcopal Church (henceforth NEC) retains a Constitution, Bishops, a General Convention, and even Holy Scripture, but these take on an altogether different character than in the erstwhile TEC. NEC has allowed to emerge a Presiding Bishop with disciplinary authority over fellow Bishops – something the Constitution does not permit. NEC no longer sees Bishops as obedient to Holy Scripture by solemn oath, as set forth in the BCP, but rather as agents of General Convention actions. This is made clear in respect of proposed same-sex blessing and marriage rites, where the role given to them is now obviated. [[3]](#footnote-3)The Constitution remains but is no longer the governor of General Convention actions, but is somehow identical with whatever General Convention may decide to do.

The problem may be seen in its more acute form in the manner in which the Book of Common Prayer, *itself a constitutional document which is not to be altered except by affirmative votes by orders of “a majority of the Dioceses entitled to representation” at two successive GCs*, has now become a vague placeholder of yesterday’s temporary and transitory convictions. Even the Primer stays away from this obvious problem area in the quote above, though we may see a hint of it in the language which concludes the quote, “…of our various liturgies.” What began as an assertion of the unique and catholic status of the Book of Common Prayers (and its Ordinal) which embodies “the essential understanding of Christian faith as prayed by faithful Episcopalians” (*lex credendi, lex orandi*) appears to slide into a very different context: various liturgies emerging to give expression to what we now believe and hold to be so, apart from subjection to the Constitution and the letter of the Book of Common Prayer. This produces not catholicity but each new generation’s assertion of its freedom to confess and pray and pronounce and hear scripture’s word *on its own terms*.

In the review to follow, we can see how the alteration of our historical, catholic understanding of the Constitution and Book of Common Prayer has created in its wake two different Episcopal Churches. This has come in the form of supplementation and aggregation of rites to be used alongside the BCP, to the degree that that BCP itself begins to disappear in a rear-view mirror. Minimally, it leads to a view of the BCP as something like a starting point, or ignition switch, on new rites necessary to make sense of what has in consequence become an erstwhile book. No longer necessary is constitutionally ordered Prayer Book revision, *because the BCP doesn’t hold any specific claim that would necessitate such revision anyway*.[[4]](#footnote-4)

After the 2012 General Convention purported to “authorize” a rite for same sex blessings and urge its use, as adapted, for same sex marriages, we published an analysis demonstrating that this was completely unconstitutional. This impediment was not a question of constitutional voting requirements that happened not to be met; rather this action by General Convention was without any constitutional basis and would have been constitutionally *ultra vires* even if all bishops and deputies had been present and voted unanimously in favor. This type of action is simply not within the authority of General Convention. We summarized our analysis as follows:

Every bishop, priest and deacon undertakes at ordination “to conform to the doctrine, discipline and *worship* of The Episcopal Church.” The recent action by General Convention purporting to authorize bishops to authorize a rite for blessing same sex couples raises in an acute way the question of what exactly is the worship of The Episcopal Church to which all clergy promise to conform. We look carefully at this question below. Our conclusions can be summarized as follows:

* The authority to define the worship of the Church is spelled out with precision in Article X of the Constitution.
* Subject to the exceptions in Article X, the worship of the Church is that found in the Book of Common Prayer, which is to be used “in all the Dioceses.”
* General Convention has authority only to amend the Book of Common Prayer or to propose revisions to the BCP and authorize them “for trial use throughout the Church” “at any time” “as an alternative” to the standard Book of Common Prayer.
* Diocesan bishops, not General Convention, have authority to permit supplemental forms of worship under defined conditions.
* The proposed rite was not conceived as a revision to the Book of Common Prayer and therefore General Convention had no authority to authorize its use by any majority or supermajority vote.
* The action of General Convention was theologically incoherent in that it assumed that God’s blessing can be invoked provisionally and in some dioceses but not others.
* The resolution passed is unconstitutional because it exceeds the authority of General Convention and invites clergy to violate BCP rubrics.
* Bishops cannot constitutionally permit use of this rite in connection with civil marriages.

We conclude: taken as a whole, Resolution A049 is not just a legal nullity and theologically incoherent, although it is that. It is also profoundly unconstitutional in that it purports to do something General Convention is not authorized to do and encourages clergy to violate the canons, the rubrics of the Book of Common Prayer and their vow to conform to the worship of the Church.

But this is only one instance of the proliferation of unconstitutionally authorized liturgical materials for a church in liturgical, theological and canonical chaos. General Convention itself has called attention to this problem and concluded “it is time…to honor the spirit of the prayer book rubrics.” We agree.

Now, three years later, we find General Convention once again considering patently unconstitutional actions. What is noteworthy this time is that the Standing Commission on Liturgy and Music is not only proposing these unconstitutional actions, it is also acknowledging that they are unconstitutional and proposing an amendment to Article X that would (presumably retroactively since the amendment could not be approved before 2018) give General Convention the authority it has attempted to exercise for years without constitutional mandate.

The relevant proposals are the following:

* To “authorize for use” without qualification the rite for blessing same sex covenants authorized “for provisional use” “under the direction and subject to the permission of the bishop exercising ecclesiastical authority” at the last General Convention. The apparent intent of this unqualified authorization is to make this rite available in all dioceses without regard to the permission of the bishop.
* To “authorize for use” (not provisionally) a rite for same sex marriages “under the direction of the bishop exercising ecclesiastical authority.” Note that the words “subject to the permission of the bishop exercising ecclesiastical authority” attached to the provisional rite approved at the last General Convention have been omitted from this new marriage rite. Although same sex marriage rites are to be under the bishop’s direction, are they still subject to the bishop’s approval?
* To resolve that “bishops, particularly those in dioceses within civil jurisdictions where same-sex marriage, civil unions, or domestic partnerships are legal, may continue to provide generous pastoral response to meet the needs of members of this Church.” The apparent intent of this resolution is to permit (“may continue”) bishops to ignore the rubrics in the BCP and the provisions in the canon on marriage (I.18) stating that marriage is between a man and a woman. But General Convention does not have the authority to permit bishops (or anyone else for that matter) to ignore the constitutional and canonical law of the church. Whatever authority bishops have in this matter derives from the Constitution and the BCP, not a resolution of General Convention.
* To amend the marriage canon to make it gender neutral. This of course would not change the requirements in the rubrics of the BCP, a constitutional document.
* Finally and most significantly for purposes of this analysis, to amend Article X of the Constitution to authorize a single General Convention to “provide for use of other forms [than those of the BCP] for the renewal and enrichment of the common worship of this Church for such periods of time and upon such terms and conditions as the General Convention may provide.” In other words, this is a proposal to amend the constitutional article on the BCP to authorize General Conventions to do the very thing they have been doing for many years and intend to do so again this year. This would effectively render the BCP obsolete as a constitutional document since any General Convention could circumvent its requirements by replacing them with others. On this understanding NEC is effectively asserting, as Groucho Marx once said, “those are my principles, and if you don't like them... well, I have others.”

We note that this last resolution is most significant for our analysis because the theological issues over same sex marriage have been debated for years and continue to be. Our purpose here is not to add to that debate but is a more limited one: to point out again, as we did in 2012, that these proposals to approve same sex rites are clearly unconstitutional. Our surprise this time is that the very committee proposing these rites agrees with our analysis. Note the following explanation offered by the SCLM for its proposed Resolution A066:

**The Constitution allows the General Convention to authorize alternative forms of worship only for trial use as a proposed revision of the Book of Common Prayer**. Since the 1979 Book of Common Prayer was adopted, alternative forms of worship in the Enriching Our Worship series and in Liturgical Resources 1 have been authorized, even though these were not designated for trial use as a proposed revision of the BCP. In addition, a number of congregations are experimenting with other new liturgical forms. **This amendment would create a clear, constitutional basis for experimental liturgical reforms that are not intended for trial use as a proposed revision of the Book of Common Prayer**, while ensuring common prayer through the use of authorized liturgical materials. (Emphasis added.)

To repeat: the amendment would “create” a “constitutional basis” for what the General Convention has been doing and intends to continue doing.

The proposal to give a single General Convention the authority to add additional rites to the approved liturgies found in the BCP has a long and tortured legislative history. It was first proposed in 1991 (as Resolution A-121) and was passed as a first reading of a constitutional amendment and sent to the dioceses for review as constitutionally required. In 1994, the second reading (1994-A016) was rejected by a large margin of “the Dioceses entitled to representation” voting by orders as the Constitution specifies in Article XII.

In 1997, the General Convention passed Resolution C-021, again asking the SCLM and the Standing Commission on Constitution and Canons “to submit to the 73rd General Convention for first reading an amendment to the Constitution of this Church to add to Article X an authorization for preparation and use of additional liturgical materials.”

As requested, Resolution A-132, containing language identical to that proposed yet again this year for consideration in 2015, was proposed and passed a first reading in 2000. The proposed amendment was then sent to the dioceses in 2000 as the Constitution requires and was rejected again in 2003 when it was considered ( 2003-A108) on the second reading.

In 2006, the General Convention tried again. It passed Resolution A-078 in which it invited “bishops and the larger church into dialogue about the relations between local liturgical initiatives and ordered authority” and asked the two standing commissions once again to “examine canons and rubrics that govern the development and use of liturgical materials and propose amendments authorizing appropriate local and regional liturgical initiatives.” The explanation noted that

The multiplication of liturgical and musical materials intended for occasional use at the direction of the Diocesan bishop … has rendered the meanings of prayer book phrases like *forms set forth by authority with this Church* and *subject to the direction of the bishop* (BCP p. 13) and *hymns...authorized by this Church* (BCP p. 14) difficult to interpret…. It is time to give serious consideration to a structure in which these resources can be understood and evaluated, in order tohonor the spirit of prayer book rubrics….

What is most remarkable about this twenty-five year effort to give General Convention the authority to supplement the BCP is that *the recognized lack of constitutional authority has not stopped General Convention from authorizing these additional rites anyway*. Indeed, this year the General Convention is doubling down on its lawlessness: even as it is a) requesting amendment to the Constitution to “create” this authority, it is b) proposing to proceed with authorizing new rites contravening the existing constitutional rites and rubrics, to take away the authority of the one church office, the Diocesan Bishop, explicitly authorized to approve supplemental rites, and c) purporting to give permission to bishops to ignore BCP rubrics and constitutional and canonical requirements.

We noted in 2012 that the former bishop of New York reversed his position and permitted his clergy to perform same sex marriages following that year’s General Convention. He concluded “we are left with a situation in which the mind of this recent Convention appears to be to allow such services. However, The Constitution and The Book of Common Prayer still say something else.”

This perfectly summarizes the distinction between the NEC and TEC. For the NEC “the mind of this General Convention” is the only authority, trumping not only the Constitution and the BCP but any other canonical or legal impediment that exists to realizing whatever is the “mind” of the majority of the moment. The constitutionally scrupulous may repeatedly try to conform the Constitution to the “mind” of General Convention, but there apparently is no constituency in NEC that is willing to conform the actions of General Convention to the Constitution and the BCP.

1. <http://www.anglicancommunioninstitute.com/2013/11/polity-primer-aci-response/>. [↑](#footnote-ref-1)
2. See the weblog of Bishop Dan Martins. <http://cariocaconfessions.blogspot.com/2015/03/house-of-bishops-2015-spring-meeting_17.html>. [↑](#footnote-ref-2)
3. The 2012 provisional blessing was to be used “under the direction and subject to the permission of the Bishop with ecclesiastical authority.” [↑](#footnote-ref-3)
4. That the form of the 1979 BCP may give rise to this new understanding is not our concern here, insofar as the 1979 BCP was not a revision that expressly declared for such a development via rubrics or rites, thus making its own status ephemeral or suggestive only. It was printed with a spine and not a ring-binder. [↑](#footnote-ref-4)