

MANY PARTS,
ONE BODY

How the Episcopal Church Works

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stitution 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.⁸⁰

The General Convention exhibits two structural characteristics that are reminiscent of federal, and especially confederal, governments in its basis of apportionment to, and vote by orders provision in, the House of Deputies of the General Convention. However, these features are placed within a legislative framework that otherwise appears to be unitary in design and intent. Although deputy apportionment is by dioceses on an equal footing, the basis of representation is the church in the diocese and not the churches of the dioceses. The voting scheme also emphasizes more an intention to secure the approval of the three orders within the church as a whole than of the dioceses.

Most importantly, the governing powers of General Convention are not fundamentally limited by the Constitution. Especially is there no expression of a division of powers or a limitation to the powers of General Convention in favor of the dioceses. In consequence, General Convention does not exhibit essentially federal or confederal structure, but rather a unitary one. Its powers are virtually unlimited.

80. The extent of General Convention's powers has been the subject of considerable dispute between persons writing about the church's government. See the quotations given in the Appendix.



CHAPTER FOUR

EXECUTIVE, ADMINISTRATIVE, *and* JUDICIAL POWERS

WHAT ARE BISHOPS?

At no point in the church's polity is there greater confusion than that surrounding the episcopate. There is no authoritative common agreement as to the purpose, function, role, rationale, or calling of bishops in the American Episcopal Church. Various groups, especially adherents of one or other of the great ecclesiastical "parties," have definite—and often mutually exclusive—understandings of what bishops are and should be. There can be distinguished, however, three broad theories of the episcopate, described as *esse*, *bene esse*, and *plene esse*.

The first theory, *esse*, states that bishops are essential for the very "being" of the church: no bishops, no church—and vice versa. Following the doctrine of apostolic succession, adherents to the *esse* theory believe that bishops are directly in the line of those persons commanded by Christ to be his witnesses and officers. It is the responsibility of the bishop, above all others, to keep pure the faith once committed to the saints, committed to her or him at consecration. The way the church must be governed to be truly a church is by validly consecrated bishops. Episcopacy is not just a convenient—or inconvenient—device that grew out of the socio-political structure of the second- and third-century Roman Empire. It is the way Christ himself caused his church to be governed, so that, led by the Holy

Spirit, his witness might be continued for all time in the living body of Christ, the church.

The tendency of this theory is to stress strongly the power and position of the episcopate. Bishops are to rule according to an express mandate from God. Bishops ought to have, as shepherds of souls, considerable disciplinary and other governing powers, and ought not to be too severely circumscribed by human rules and conventions. Thus, there is a tendency to feel that the governing power of bishops should be virtually unlimited because of their special calling.

This theory finds an excellent expression in this statement made in the late nineteenth century by one of the church's most devoted laymen:

In the State, under our form and theory of government, power *ascends* from the people whereas, in the Church, it *descends* from above to the Bishops, and, in some respects, *through* the Bishops, into the subordinate ministry. The Bishops are the *governing* order.

.....

Neither priest nor layman possesses any inherent power of legislation. Their counsel and advice is taken by the Bishops, as was the case in the Primitive Church; and in "this Church" the Bishops have granted to them, as represented in national synod, the constitutional right of initiating and vetoing measures, in other words, the Bishops have consented and in legal form agreed not to *exercise* certain of their inherent functions, except so far as advised and approved by the House of Deputies in General Convention.

.....

The powers of a Bishop in his Diocese are not merely and only those flowing from his individual functions, but those flowing from the authority and functions of the College of Bishops, or the Bishops of the Province, through whom his individual functions are derived. . . . There can be no such thing as an "independent" Church or Diocese.

.....

The National Church is not a Church of delegated powers at all, but one possessing in and through the Bishops, or College of Apostles, inherent authority of government and discipline, the Constitution of the National Church being simply an instrument under the terms and conditions of which *organization* was effected and jurisdiction recognized, and not conferring or attempting to confer any law-making or governing power.

.....

The fact is known to all that, nevertheless, the General Convention legislates in ecclesiastical matters without reserve or hindrance, except so far as

restrained by the limitations of the Constitution, and in subordination to Divine and Catholic Law.¹

The *bene esse* theory states that bishops are simply desirable for the "well-being" of the church. They are not essential, but merely historical or desirable, if strongly so. The strict theory of apostolic succession might or might not be true—it probably is not—and has mainly token or symbolic value.² Bishops are primarily, then, persons chosen simply to be the "presiding clergy," superintendent of an area, elected leader, or overseer. They have no special ecclesiastical functions, except as others are willing to grant them, save confirmation and ordination. In this latter duty they play their chief role. They are persons responsible for the continuation of the priesthood. They do not embody and "continue" in themselves the church.³

There is no mysticism in this theory, only the hard-headed, realistic view that people need some sort of leadership, and since it appears that, insofar as bishops have served "from the earliest time," they should be had now. "The history of the early church proves that bishops are not necessary to its *being*, though practical experience has indicated that they are helpful to its *well being*."⁴

Bishops, however, should not be autocratic or unrestricted in their rule. Indeed, their rule should be carefully defined and subject to the review of the church:

It is dangerous to elect anyone to an office with wide administrative powers. But we repeat that the episcopal form of church government is the most practical and the most efficient which has ever been attempted—if

1. S. Corning Judd, "By What Laws the American Church Is Governed and Herein Chiefly, How Far, If at All, English Ecclesiastical Law Is of Force as Such, in This Church [Reply to Mr. Burgwin]," *Church Review* 37 (1882): 194–97. See also Hill Burgwin, "The National Church and the Diocese," *Church Review* 45 (1885): 438. A writer in 1837 observed, "In a word, if our Blessed Lord gave to the one grade alone, distinguished as that of Bishops, the right of legislation, then can acts of legislation solely take place by their permission" (Caesariensis, "The Episcopal Veto," *Protestant Episcopalian* 8 [1837]: 207). The best and most scholarly modern statement of the *esse* theory is found in Kenneth E. Kirk, ed., *The Apostolic Ministry* (London: Hodder and Stoughton, 1946).

2. In 1919, the Rev. John H. Melish, speaking as one of three lecturers on the subject "The Functions of the Episcopate in a Democracy," published by the 1919 Episcopal Church Congress, said: "None but the ecclesiastical caveman believes any longer in apostolic succession" (p. 220). Interestingly, the speaker who had preceded Melish, Bishop Irving P. Johnson, had spoken of his understanding of the episcopate as naturally following from "The Theory of Apostolic Succession" (p. 208). See Protestant Episcopal Church Congress, *The Church and Its American Opportunity* (New York: Macmillan, 1919), 207–35.

3. See Walter Ayrault, "Proper Place of Episcopacy in the Church," *Church Eclectic* 10 (1883): 961–68.

4. "In Defense of Episcopacy," *Chronicle* 47 (1947): 82.

the bishop does not forget that he is an elected officer of the church whose powers are restricted by its canons.⁵

Thus the *bene esse* theory tends to stress a limited, defined, pragmatic episcopacy, subject to considerable control by the church and the object of no particular honor or reverence—ecclesiastical or otherwise. It favors rule primarily by the members of the church itself. Hence, persons of this view favor conventions of clergy and laity, and otherwise representative government, with the bishop serving as little more than the presiding officer.

The *plene esse* theory, attempting to be a *via media* or middle way, is a refinement and emphasis of an aspect of *bene esse*. It evidences the feeling that bishops are necessary for the “full being” (or “fullness”) of the church, for its more nearly perfect being.⁶ To have bishops is to have one mark necessary for a true church. Bishops, however, may be present, and heresy still abound. The mere presence of even validly consecrated bishops does not mean a true church by definition. No church can be perfect in its organization without valid bishops, but some churches at some times, wholly without bishops, have more nearly been true to the faith than churches with bishops. One must look to more than merely the presence of bishops for the true church. Bishops are necessary for the fullness of perfection, it is true. But more than that cannot be said for episcopacy, *per se*. Thus, some adherents to this theory are willing to grant considerable governing powers to bishops as long as the church as a whole holds the ultimate check, probably in representative assemblies. They do not fear the power of the episcopate as such, because they have an affectionate view of the office; but they do deplore unrestrained power for bishops.

This, in only the barest outline, sketches some essential features of the three theories of the episcopate in the American Episcopal Church today.⁷ The relevance to the problem of the church's constitutional structure is this: Is it believed that bishops are essentially “the church,” or are they no more than elected administrative officers? Does ecclesiastical government flow from the House of Bishops as a whole to the clergy and laity? Or does it lie substantially perfect in each diocese with its bishop, clergy, and laity? A unitary structure is suggested if governing power is derived from the as-

5. *Ibid.*, 83.

6. One of the best-known statements of *plene esse* appears in a book edited by Kenneth M. Carey, *The Historic Episcopate* (London: Dacre Press, 1954). It was written in opposition to Kirk's *Apostolic Ministry*. See especially the article by H. W. Montefiore, pp. 105–27.

7. The contrast between *esse* and *bene esse* is excellently illuminated in Samuel A. Wallis, *Synopsis of Lectures on Church Polity in the Theological Seminary of Virginia* (Alexandria, Va.: R. Bell's Sons, 1904), 54–55.

sembled bishops. A federal or confederal one seems evidenced if each diocese is complete.

The theological justification for bishops is a subject of debate within the Episcopal Church. Thus, the point here is only to stress that there is no monolithic attitude toward bishops, but rather at least two or three widespread and popular differences of opinion. These beliefs are both reflected in constitutional and canonical statements about the episcopate, and help to determine how constitutional and canonical provisions are interpreted in their operation. In order to understand the governing role of bishops in the Episcopal Church in the United States more fully, the following points are also important to note.

BISHOPS' JURISDICTION, MISSION, SELECTION, AND THE GENERAL CHURCH

Every bishop at the time of consecration receives both *mission* and *jurisdiction*: the power to perform the acts that are peculiar to a bishop, and a particular place and/or people over which to exercise that mission. Moreover, while he may be deprived of office, insofar as he may be removed from jurisdiction by certain canonical procedures, that mission may never be obliterated.

Thus, once a bishop, always a bishop, as far as the power of ordination, confirmation, and other episcopal powers are concerned. No bishop is allowed, in the canon law of the Episcopal Church following what is believed to be the practice of the ancient church, to exercise mission except in his jurisdiction, and according to the canons of the church. A bishop's mission, therefore, is restricted to the jurisdiction to which he is appointed. Save for exceptions specifically provided for in canon law, he cannot exercise episcopal powers outside his jurisdiction. To be sure, if a bishop were to perform an ordination, for example, outside of his jurisdiction, it would be a “real” ordination, because a bishop's power to ordain does not depend essentially upon his jurisdiction but upon the validity of his own consecration, his mission, the intent of his act in ordaining another, and the intent of the person receiving Holy Orders. It would be a defective ordination insofar as it was performed outside his jurisdictional sphere. The defect could only be removed by the power that established the canon whose contravention resulted in the defective ordination.⁸

8. See William J. Seabury, *An Introduction to the Study of Ecclesiastical Polity* (New York: Crothers and Korth, 1894), 124–42; and White and Dykman (1954), 2:107–9. For an earlier interesting statement, see Caesariensis, “On Episcopal Jurisdiction,” *Protestant Episcopalian* 3 (1832): 233.

Following logically from the strict definition of jurisdiction is the principle of episcopal co-equality, which is part of the theory of episcopacy of the Protestant Episcopal Church in the United States. While there are different types of bishops, and while bishops may be from weak or strong, large or small, rich or poor areas, each bishop is completely equal to every other in his mission.

In the American Episcopal Church, moreover, there is no archbishop, metropolitan, primus, or pope. Instead, there is a "Presiding Bishop," whose title was chosen originally because it accurately described his duties and has been retained partly because of the relative minuteness of authority manifest in the designation. This makes him or her unusual among catholic bishops, and while the powers of the office have gradually grown since 1789,⁹ the Presiding Bishop still has few of the powers of bishops of other churches who bear the titles mentioned above. In fact, he or she possesses few powers different from any other bishop in the American Church, although her or his activities are different and manifold.

There are, however, certain types of bishops in the Episcopal Church who may be distinguished by their jurisdictional duties.

1. *Ordinary, or Diocesan, Bishops.* An ordinary is a bishop who is given control, according to the national and diocesan canons, of a particular diocese.¹⁰ He or she¹¹ is superior, governmentally and under the canons, to any other bishops which a diocese may have. The ordinary's mission, however, is restricted to her or his own diocese only. He or she has no power outside of it, save under certain strictly canonical exceptions.

2. *Assistant Bishops.* A bishop who is responsible to an ordinary is an assistant bishop.¹² He or she is chosen by a diocese to aid the ordinary in the exercise of certain specifically assigned duties. Assistant bishops are not usually designated as such in the American Church today, being rather called:

- a) *Coadjutor.* This is an assistant bishop who has the right automatically to succeed to the diocesan episcopacy upon the ordinary's death, resignation, or deposition.
- b) *Suffragan.* A suffragan is an assistant bishop without the right of automatic succession to the ordinary's position. Generally, also, suffragans have been chosen to perform episcopal work over certain groups of people,¹³ while coadjutors have a more general assignment of jurisdiction within the diocese.¹⁴

3. *Missionary Bishops.* Both foreign and domestic missionary bishops are assigned to their jurisdictions by the church in General Convention.¹⁵

4. *Retired Bishops.* Retired bishops fully retain the episcopal mission but have resigned from their jurisdiction. They may exercise their office upon request, or may be assigned as priests to local parishes or missions. However, they retain certain prerogatives, such as that of co-equal participation in the House of Bishops of General Convention.

5. *Provincial President.* The bishop elected by a provincial synod to be head of a province is called a Provincial President. She or he retains, however, jurisdiction as ordinary (or whatever he may be) and does not devote her or his time exclusively to provincial duties. In recent years, lay people have served as Provincial Presidents.

6. *Presiding Bishop.* There is only one Presiding Bishop, elected by the General Convention, and acting mainly as the executive and administrative head of the national church. A bishop resigns from her or his old jurisdiction to take over the duties of Presiding Bishop.

While the method of choosing bishops shall be mentioned in a different context below, it seems necessary to note at present that bishops are now elected to their office in one of two six-stage procedures:

1. a) A diocese, destitute of a bishop, chooses, at its diocesan convention, and according to diocesan and national canons, a person it wishes to have as its bishop. He or she does not have to

9. More recent Presiding Bishops have added the designation "Primate." In 1967, the designation "Chief Pastor" was added and the status and duties of the Presiding Bishop were stated in more detail. See White and Dykman (1981), 1:202.

10. A diocese is always geographically defined in the Episcopal Church.

11. The first woman elected as bishop in the Episcopal Church—indeed, in the Anglican Communion—was the Rev. Barbara C. Harris, elected as bishop suffragan in the Diocese of Massachusetts in 1988.

12. See White and Dykman (1954), 2:27–31.

13. For example, the Bishop Suffragan for Federal Ministries.

14. White and Dykman (1954), 1:50–54; 2:57–69. See also John H. Hopkins, "Assistant Bishops," *Church Review* 42 (1883): 226–50. In reply, see William P. Orrick, "Assistant Bishops: A Rejoinder," *Church Review* 43 (1883): 376–90.

15. See Thomas H. Vail, "Our American Episcopate: Comments on Title I, Canon 15 of Digest," *Church Review* 41 (1883): 301–30, especially 313–14 regarding missionary bishops.

be a resident of the diocese, or to have had any previous connection with it.

- b) The House of Deputies then consents to the election.
- c) The House of Bishops subsequently consents to the election.
- d) The Presiding Bishop notifies the diocese and the bishop-elect of General Convention's approval.
- e) The bishop-elect accepts his or her election.
- f) The Presiding Bishop and two other bishops of his or her¹⁶ choosing, or three bishops appointed by the Presiding Bishop, consecrate the person bishop. If the person is already a bishop (if he or she is a bishop suffragan or a missionary bishop), he or she is not re-consecrated. Only suffragans and missionary bishops are "translated," however. That is, only they may be moved from one jurisdiction to another. Ordinaries and coadjutors by custom have not been translated in the Episcopal Church, although there is nothing in the Constitution or Canons specifically to prevent this.¹⁷

2. If the election of a bishop is within three months of a meeting of General Convention, the above procedure is used. If not, then steps "b" and "c" are replaced with:

- a) The approval of a majority of all the Standing Committees of every diocese in the church.
- b) The approval of a majority of all the bishops having jurisdiction in the United States; that is, all diocesan bishops.

Thus, election to an episcopal office is a procedure requiring the intimate participation of diocesan and national church personnel.¹⁸ It should especially be noted that the laity are a part of the procedure of election on both the diocesan and national level.¹⁹ Finally, the process is marked by the elec-

tion by the convention of the diocese over which the bishop is to serve, not by cooptation by other bishops, on the one hand, or, except in the case of missionary bishops (as shall be seen) by General Convention, on the other. This election, nonetheless, must subsequently be approved by a majority of persons acting as representatives of the clergy and laity of the dioceses of the church in the United States. This is not expected procedure for confederal governments and would be unusual for a federal one, but not exceptional for a decentralized unitary government.

Thus, in the manner of election and in many other ways, the episcopate of the Episcopal Church is "constitutional." While it is not unique for the catholic episcopate to be canonically defined, it is unusual to find the canons subjecting bishops to such considerable control (both in the election and continuance in office) by lesser clergy and the laity. Not only are decisions for the general church made by a representative convention of which the bishops are only one part of three, but also, in their diocesan office, bishops have been required since the earliest canons to maintain Standing Committees.²⁰ Bishops thus perform both their ecclesiastical (for example, ordination and confirmation) and administrative duties under canons that provide for the approval or dissent of representative bodies of clergy and laity.²¹

Finally, since Samuel Seabury, the first American bishop, bishops in the American Episcopal Church have been non-civil personnel. Under the

20. Perry, *Journals*, 1:81. A Standing Committee is a group of lay and clerical persons, chosen according to both diocesan and national canons, to serve as the ordinary's Council of Advice, to act as the ecclesiastical authority for the diocese when the ordinary is disabled and there is no coadjutor or suffragan empowered to act, and to perform other duties assigned to it by diocesan and national canons.

One other institutional feature concerning the American episcopate that merits intensive study is the "cathedral system." Cathedrals—that is, churches built exclusively or primarily as the ecclesiastical seats for diocesan bishops—were a new and controversial feature in the American Church beginning during the latter part of the nineteenth century (and continuing to some extent today). See Thomas Duncan, "Cathedrals and the Cathedral System in the Light of Church History," *Protestant Episcopal Review* 10 (1887): 568–87; Carl E. Grammer, "Cathedrals and Representative Government," *Southern Churchman* 85 (February 14, 1920): 4–5 (see a reply to this article on page 8, July 17, 1920); Francis Granger, "Primitive Cathedrals: Reasons and Hints for Adopting Them," *Church Review* 29 (1877): 283–301; John E. Egar, "Cathedrals and Parishes," *Church Review* 29 (1877): 16–42; William Adams, "The Cathedral," *Churchman* 33 (1876): 488, 516; and Walter H. Stowe, "The Cathedral in America," *Historical Magazine of the Protestant Episcopal Church* 19 (1950): 324–39.

21. Suggestions have occasionally been made that the election of bishops should be for only a few years and that bishops should be more inclusively subject to recall. For example, it was affirmed "if bishops were elected for a definite term of years, it would be a great incentive for them to so 'make good' that their re-election *might* be reasonably sure" (Alpha Centauri, "Quis Custodiet Custodes?" *Chronicle* 18 [1918]: 296).

16. The first woman elected as Presiding Bishop of the Episcopal Church was the Rt. Rev. Katharine Jefferts Schori, elected in 2006.

17. See two articles by Joseph Beale and John R. Crosby on "Should the Church Allow the Election of Bishops from One Diocese to Another?" in Harold A. Prichard, ed., *The Hartford Papers* (Spencer, Mass.: Heffernan Press, 1932), 101–36. Since 1967, the Constitution has explicitly provided for the translation of a diocesan or coadjutor to another diocese as long as he or she has served at least five years prior to his or her translation (see White and Dykman [1981], 1:66–70). There are at least two recent instances of translation: one cited in White and Dykman (1981) on page 70 and that of the Rt. Rev. Don A. Wimberley, who was diocesan bishop of the Diocese of Lexington from 1985–1999 and was then elected and served as diocesan bishop of the Diocese of Texas from 2003–2009.

18. See Murray Hoffman, "Bishops Elect: The Office of Deputies, and Standing Committees in the Election of a Bishop," *Church Review* 28 (1876): 235–51.

19. G. MacLaren Brydon, "New Light on the Origins of the Method of Electing Bishops Adopted by the American Episcopal Church," *Historical Magazine of the Protestant Episcopal Church* 19 (1950): 202–13.

American system of church-state relations, bishops officially exercise duties pertaining to the ecclesiastical and administrative affairs of the church only. They are not state officials by virtue of their episcopal office.²²

What is the significance of these attributes of the American episcopacy to the question of the constitutional structure of the church's government? These three points seem especially distinctive.

Bishops are elected by the dioceses, but confirmed in that election by other bishops and by representatives of the clergy and laity in the dioceses of the American Church as a whole. They are not appointed by General Convention or the House of Bishops alone (which would be a distinctly unitary method) nor by the dioceses alone (which would be a distinctly confederal method). Since bishops play both a diocesan and national role, the present method of election (which perhaps could, by itself, be considered federal or decentralized unitary) seems justified.

That bishops must restrict the exercise of their mission to the jurisdiction to which they were elected (almost always a diocese, although the Presiding Bishop and the Constitution's provision for a bishop for the U.S. Armed Forces seem to be exceptions), and that the mission of all bishops is equal, although their jurisdiction may vary in importance and the specificities of their governmental powers differ, may seem to tend toward either confederalism or federalism. If each bishop is equal, it may be argued, then each diocese must be equal. If each bishop must restrict the exercise of his mission to his own diocese, then there must be something "sovereign" in each diocese upon which no other diocese (nor combinations of dioceses through General Convention) may impinge.

These arrangements of ecclesiastical government, however, are offset by the fact that General Convention determines them, often by canon without constitutional authorization. In any event, the Constitution itself is amended solely by General Convention and this scheme may be abolished or altered. Consequently the episcopal system may not be federal or confederal at all, but rather a form of decentralization decided by what is ultimately a unitary government.

It is now possible to describe the constitutional and canonical position of bishops in relation to the general church. Such a consideration of the episcopate should be examined especially at three points: (1) the House of Bishops, (2) the Presiding Bishop, (3) other considerations of the episcopate in the Constitution and Canons.

22. Neither are priests or deacons, although the line is somewhat blurred when clergy are permitted to sign marriage licenses on behalf of state governments.

At the present time the Constitution defines the role of the episcopate on these ten points, apart from the provisions regarding the House of Bishops and the Presiding Bishop:

1. Method of choosing bishops
2. Limits on a bishop's jurisdiction and mission
3. Ecclesiastical trials of a bishop²³
4. Ordination by bishops
5. Assistant bishops: coadjutors and suffragans
6. Missionary bishops
7. Suffragan bishop for the Armed Forces
8. Resignation of a bishop
9. Standing Committees and bishops
10. New dioceses and bishops.

The "Fundamental Principles of 1784" were silent on all points concerning bishops except their right of attendance at General Convention. The 1785 Constitution added three other items regarding their mode of election, their jurisdiction, and their trials. In 1786, there were added the first mention of the right of a bishop to preside at General Convention, the possibility of more than one bishop per diocese, and the diocesan's duty to examine candidates for Holy Orders. The role of bishops in the creation of new dioceses was explained in 1838, and an "assistant bishop" was specifically mentioned for the first time.

Besides reorganizing and restating all previous constitutional sections pertaining to the episcopate, the 1901 revision first stipulated the relationship between bishops and Standing Committees, prohibited bishops from resigning their jurisdictions without permission of the House of Bishops, and defined how missionary bishops were to be chosen.

Dioceses were allowed to choose bishops suffragan in 1910, although they were not given equal privileges in the House of Bishops until 1943.²⁴ In 1940, bishops were required to retire at age seventy-two, and provision for a bishop suffragan for the Armed Forces was made in 1949.²⁵

23. Since 2003, the Constitution has provided that only the Court of Review for the Trial of a Bishop must be made up of bishops only (*Journal of the General Convention* [2003], 571).

24. In 1955, the General Convention voted to amend the Constitution to deprive the retired bishops of their voting rights. This failed to secure the necessary concurrence of the 1958 Convention, however. See note 43 in chapter 3 on attempts to take the vote away from retired bishops.

25. The bishop suffragan for the Armed Forces is under the direction of the Presiding Bishop and the General Convention. The office was first filled in 1964 and has been held by five bishops; the office's current title is Bishop Suffragan for Federal Ministries.

Article VI of the 1785 Constitution stated, "The Bishops or Bishops in every State shall be chosen agreeably to such rules as shall be fixed by the respective Conventions."²⁶ Article VI of the 1786 Constitution clarified this by concluding instead, "by the Convention of that State,"²⁷ and this language was retained in the 1789 Constitution and up until 1901, except when, in 1838, "state" was changed to "diocese" throughout the Constitution.²⁸

In 1901, the Constitution was reworded to read, "In every diocese the Bishop or Bishop Coadjutor shall be chosen agreeably to rules prescribed by the Convention of that Dioceses. Missionary Bishops shall be chosen in accordance with the canons of the General Convention."²⁹ However, Section 2 of Article I at the same time added that no one could be consecrated bishop unless:

1. He was thirty years of age.
2. He had the consent of a majority of all the Standing Committees in the dioceses.
3. He had the consents of a majority of all the bishops exercising jurisdiction.
4. Consecration was performed by no fewer than three bishops.

Provision was made, however, to allow consent by the House of Deputies to replace that of Standing Committees if a bishop's election occurred within three months of a meeting of General Convention.

Moreover, in 1901, bishops were specifically forbidden by the Constitution to resign their jurisdictions without consent of the House of Bishops. This was designed to end a number of unhappy incidents regarding bishops who had resigned with unfortunate repercussions.³⁰ In 1940, the Constitution was amended to require a bishop to tender his resignation at age seventy-two.³¹

Dioceses prior to 1910 had been prohibited from electing bishops suffragan. In that year, the Constitution was amended to allow a diocese to choose, with the ordinary's consent, one or more suffragans, with a seat but no vote in the House of Bishops.³² In 1919, amendment was made to allow diocesan constitutions to provide that a diocese's suffragan could be-

come temporary ecclesiastical authority for the diocese upon the ordinary's death or incapacity.³³

Thus, although the Constitution states that bishops shall be chosen according to the dioceses' rules, General Convention has, itself and by the Constitution and Canons, defined an increasingly large number of rules. There appears to be nothing on the face of the Constitution, at any point, to prevent General Convention from preempting the field entirely and determining all the rules for the election of bishops.

Since 1785, the church's constitutions have limited a bishop's exercise of his office to his own jurisdiction, or, in other words, to his own diocese. Article VI of 1785 states that "every Bishop of this Church shall confine the exercise of his Episcopal Office to his proper jurisdiction, unless requested to ordain and confirm by any Church destitute of a Bishop."³⁴ The Constitution added, "or perform any other act of the Episcopal office," in addition to confirmation and ordination.³⁵ In the first Constitution of 1789, this section, rearranged as Article IV, was reworded to replace "his proper jurisdiction" with "his proper Diocese or District."³⁶ It remained in this form until 1838, when the words "or district" were removed.

Inasmuch as no provision was made for the proper calling of a bishop to perform episcopal acts in a bishopless diocese prior to 1874, in that year the Constitution was amended to have the ecclesiastical authority (generally, the Standing Committee of the diocese) issue the request.³⁷

The 1901 revision did not significantly alter this section except to change it to Article II, to include missionary bishops and districts in the provision above, and to allow the House of Bishops to permit a bishop to operate in ecclesiastically unorganized territory.³⁸ There have been no subsequent changes to date.

It has been shown that while the Constitution states at one point that the dioceses over which the bishop is to exercise his office provides for his mode of election, the Constitution still provides a number of significant rules itself. General Convention has revealed even less reluctance toward defining the role of the episcopate through canonical legislation than by constitutional amendment.

26. Perry, *Journals*, 1:22.

27. *Ibid.*, 1:41.

28. *Journal of the General Convention* (1838), 24-25, 93, 96.

29. *Journal of the General Convention* (1901), 36.

30. See White and Dykman (1954), 1:54-57.

31. *Journal of the General Convention* (1940), 256.

32. *Journal of the General Convention* (1910), 231-32, 306.

33. *Journal of the General Convention* (1919), 48, 221. Also see sources cited above regarding the struggle for bishops suffragan in the American Church.

34. Perry, *Journals*, 1:22.

35. *Ibid.*, 1:41.

36. *Ibid.*, 1:84.

37. *Journal of the General Convention* (1874), 82, 96, 161, 164.

38. *Journal of the General Convention* (1901), 36-37.

Indeed, of the ten canons enacted by the first Convention of 1789 (and, interestingly, adopted before the Constitution of 1789 itself was adopted),³⁹ every one of them mentions, pertains to, or otherwise defines the role of bishops in the American Church. Moreover, they do not refrain from directing the bishops' activities not only at the national and diocesan level, but also at the parochial level. Thus, for example, Canon 2 of 1789 stated that a bishop-elect must receive from his diocesan convention and from the General Convention a certificate of their approval for his election. Canon 3 required that the ordinary should visit the parishes in his diocese "for the purposes of examining the state of his Church, inspecting the behaviour of the Clergy, and administering the Apostolic Rite of Confirmation."⁴⁰ Canon 8 forbade a bishop from ordaining a candidate until he had examined and been satisfied with the candidate's knowledge of "the New Testament in the original Greek, and can give an account of his faith in the Latin tongue, either in writing or otherwise, as may be required."⁴¹

Since August 1784 the body of canonical legislation of the Episcopal Church has grown. Many items regarding the episcopate, once governed by canons only, have been incorporated into the Constitution. Thus, the conclusion must be reached on the basis both of precedent and the analysis of the written Constitution and Canons that while in the absence of legislation by General Convention to the contrary the dioceses may define the roles of their bishops, there is no legal basis upon which General Convention can be kept from enacting its own all-inclusive canons for the election and conduct of the episcopate and from overriding all diocesan canons to the contrary.

Once again, it must be mentioned that loyalty to tradition, the faith, and/or the ancient canons may restrain or prevent General Convention from acting outside what it considers to be the catholic tradition on the matter of episcopacy. Political realities necessitating heavy reliance upon diocesan and parochial support—and other factors—also may be limiting. But it seems that there is no legal barrier, within the church's polity itself as defined by the Constitution and Canons, to prevent legislation on the episcopate.⁴²

THE PRESIDING BISHOP

The Presiding Bishop now stands as the "chief executive" of the American Episcopal Church, although the development of the office was slow, and, as shall be seen, largely extraconstitutional. While the analogy is undoubtedly incorrect, the Presiding Bishop has frequently been likened to the President of the United States. Consequently, it is important to the purposes of this work to describe in some detail the office of the Presiding Bishop, including the Executive Council, in order to see whether it embodies federal, confederal, or unitary characteristics.

The first constitutional mention of a Presiding Bishop was made in the 1786 General Constitution, Article V. Here, assuming a unicameral General Convention, it was stated that "a Bishop shall always preside in the General Convention, if any of the Episcopal order be present."⁴³ The provision for a Presiding Bishop in a unicameral Convention was retained in both Constitutions of 1789. Although these Constitutions also mentioned for the first time a bicameral Convention, if there were not enough bishops in the church to form a separate house, then a bishop was to preside at General Convention. Otherwise, there was no constitutional mention of a Presiding Bishop.

Until 1901 there were only two places in the Constitution where the Presiding Bishop was mentioned. In 1823, the Constitution was amended to allow the "Presiding Bishop" to have the power to appoint an alternate place for General Convention to meet if some "good cause" made it necessary not to meet in the chosen place.⁴⁴ In 1844, Article X was added to the Constitution, which, in part, allowed the "Presiding Bishop" under certain circumstances to take order for the consecration of bishops for foreign countries.⁴⁵

Section 3 of the new Article I, in 1901, was finally written in an effort to attempt to define constitutionally the office of the Presiding Bishop. The office was to be determined by seniority from the point of consecra-

careful studies of diocesan constitutions, canons, and conventions, the operation and composition of Standing Committees and their actual relations to the episcopate, and their interaction, from a governmental view, between the bishops and the clergy and laity. On this last point, for one example, it would be interesting to test Thomas Vail's hypothesis in *The Comprehensive Church*, second edition (New York: D. Appleton, 1879), 113, that there is a wider gap between the bishops and their clergy than between the bishops and the laity. Vail feels that the laity are more willing to give political power to the bishops than are the clergy (who, instead, are trying to restrict this power) because the power of the bishops is more immediately and effectively felt over the clergy than over the laity.

43. Perry, *Journals*, 1:41.

44. Perry, *Journals*, 2:17, 19, 66, 95.

45. *Journal of the General Convention* (1844), 26, 36, 71, 73, 128.

39. Perry, *Journals*, vol. 1; compare 79–82 with 83–85.

40. *Ibid.*, 1:79–80.

41. *Ibid.*, 1:81.

42. The preceding discussion concerned bishops and the general church alone. There does not exist a good analytical study of the governing role of bishops in their diocesan situation. Bishop Lewis Bliss Whittmore's interesting book, *The Care of All the Churches* (Greenwich, Conn.: Seabury, 1955), is designed in its home way to aid new bishops in understanding their office more clearly, and it does the job adequately. But there still are lacking adequate

tion among bishops having jurisdiction in the United States. He was to "discharge such duties as may be prescribed by the Constitution and Canons of the General Convention."⁴⁶

After a struggle that had officially begun in 1887, the House of Deputies amended the Constitution in 1919 to make the office of Presiding Bishop elective by the House of Bishops and subject to confirmation.⁴⁷ There has been no subsequent constitutional amendment on the subject.

Actually, however, most of the regulation concerning the Presiding Bishop has been by Rules of Order of the House of Bishops, or by canons. In August 1789, Bishop White presided over the Convention that was being held according to the provisions of the 1786 Constitution. He signed the minutes as the "President of the Convention."⁴⁸ White, moreover, presided at the adjourned 1789 Convention that opened without the number of bishops requisite for forming a separate House.⁴⁹ When Bishop Seabury and the New England clergy joined the Convention, the body immediately became bicameral.

The very first business of the newly formed House of Bishops was to provide three rules for the government of the House, one of which was: "The senior Bishop present shall be the President; seniority to be reckoned from the dates of the Letters of Consecration."⁵⁰ Samuel Seabury twice in the records of this Convention suffixed his name with the word "President."⁵¹

The seniority rule for choosing a Presiding Bishop was changed in the next General Convention by the House of Bishops. In 1792, it was decided that:

The office of President of this House shall be held in rotation, beginning from the North; reference being had to the presidency of this House in the last Convention.

In consequence of the above rule, the Right Rev. Dr. Provoost took the chair.⁵²

46. *Journal of the General Convention* (1901), 35.

47. See White and Dykman (1954), 1:18–22, for a summary of this struggle. See also C. Rankin Barnes, "The Office of Presiding Bishop: An Evolution," *Pan Anglican* 8 (1957): 21–24.

48. Perry, *Journals*, 1:86.

49. *Ibid.*, 1:93.

50. *Ibid.*, 1:115.

51. *Ibid.*, 1:123 and 130.

52. *Ibid.*, 1:162.

The first use in the journals of General Convention of the words "Presiding Bishop" was in 1795 when Bishop White signed his name as such in two places.⁵³ The first use of the term in the canons was in 1799 when it was provided that special meetings of General Convention could be called "by the Presiding Bishop, or, in case of his death, by the Bishop who, according to the rules of the House of Bishops, is to preside at the next General Convention."⁵⁴

The House of Bishops readopted the seniority rule as the first action of business in 1804.⁵⁵ In 1820, Canon 6 of that year was added to require the Presiding Bishop to perform consecrations in conjunction with two other bishops; or any three bishops the Presiding Bishop should designate could perform consecrations.⁵⁶ At the same Convention, "the Presiding Bishop of this Church" was made the President of the Church's Missionary Society.⁵⁷

As noted before, in 1823 the Constitution for the first time mentioned the office of Presiding Bishop. Since that time, the duties assigned to him by the Constitution and Canons have continued to grow. The following is a summary of those provisions relating to the office in the American Episcopal Church since 1832. The purpose of the summary is to show the extent of Presiding Bishop's powers and responsibilities in order that the office may be analyzed in relation to the question concerning the constitutional structure of the church.

The "Presiding Bishop" was, in 1832, canonically required to announce when the House of Bishops had accepted an episcopal resignation.⁵⁸ A canon of 1841 required that presentments in the trial of a bishop be sent to the "Presiding Bishop of the Church" and that he notify all bishops in the American Church.⁵⁹ The canon on episcopal resignation was amended in 1844 to allow a bishop wishing to resign his jurisdiction when the House of Bishops was not in session to notify the Presiding Bishop, who in turn was to notify all other bishops.⁶⁰ The Presiding Bishop was required by a

53. *Ibid.*, 1:206, 210.

54. *Ibid.*, 1:249. William J. Seabury, in his *Memoir of Bishop Seabury* (New York: E. S. Gorham, 1908), 351, says that the first time the phrase "Presiding Bishop" officially occurred was in the Prayer Book rubric for the Office of Consecration as adopted in 1792. See C. Rankin Barnes, *The General Convention: Offices and Officers 1785–1950* (Philadelphia: Church Historical Society, 1951), 5.

55. Perry, *Journals*, 1:305.

56. *Ibid.*, 1:567.

57. *Ibid.*, 1:589.

58. *Ibid.*, 2:456–57, 539.

59. *Journal of the General Convention* (1841), 118.

60. *Journal of the General Convention* (1844), 54–55, 157–58.

canon of 1853 to pronounce sentence of deposition on a bishop who abandoned his ministry.⁶¹

The Presiding Bishop was given a single five hundred dollar appropriation for expenses in 1871. This was made a regular appropriation of two hundred and fifty dollars annually in 1874.⁶²

A "Chairman of the House of Bishops" and "Assessor to the Presiding Bishop," elected by the House, was provided by a Rule of Order of the House of Bishops in 1886. He was to be the presiding officer of the House in the absence or at the request of the Presiding Bishop and to aid the Presiding Bishop between meetings of the General Convention.⁶³ In 1889, the Assessor was allowed take on any of the duties of the office of Presiding Bishop that that person might wish to devolve to him.⁶⁴ In order further to lighten the load of the Presiding Bishop, the House of Bishops in 1892 resolved that the Presiding Bishop might devolve all his duties upon the Assessor, or decline to accept the office in the first place, or resign it later at his discretion. It also enabled the bishops of the seven dioceses adjoining that of the Presiding Bishop to call a special meeting of the House of Bishops if they felt the Presiding Bishop was incompetent and mentally unable to resign.⁶⁵

The first standing rule of the House of Bishops was amended and reworded in a special meeting of the House of Bishops in 1896:

The Senior Bishop of the Church, in the order of consecration, having jurisdiction within the United States, is the Presiding Officer of the House of Bishops. He shall discharge such duties as may be prescribed by the Constitution or Canons of the General Convention, or for its own needs by the House of Bishops; and shall hold office for life, unless he resign or be relieved from that office by a vote of a majority of the Bishops entitled to vote in the House of Bishops.⁶⁶

In 1919, the office was for the first time made elective, under the Constitution, and a canon was written providing for a term of six years. Election

61. *Journal of the General Convention* (1853), 37, 42, 60–61, 160, 173. The Presiding Bishop's role in the discipline of bishops has been expanded by a number of amendments to the canons, including the authority to temporarily inhibit a bishop from functioning while allegations of misconduct are investigated (*Journal of the General Convention* [1997], 769–79 and 811–71).

62. *Journal of the General Convention* (1871), 79–80 and *Journal of the General Convention* (1874), 179–80, respectively.

63. *Journal of the General Convention* (1883), 633.

64. *Journal of the General Convention* (1889), 10–13.

65. *Journal of the General Convention* (1892), 12, 88.

66. Contained in *Journal of the General Convention* (1898), 427.

was by the House of Bishops, subject to confirmation by the House of Deputies.⁶⁷

The Presiding Bishop was also made executive head of the National Council in 1919.⁶⁸ In 1922 he was made administrative head of that body as well.⁶⁹

A new resolution of General Convention in 1931 allowed an assistant to the Presiding Bishop to be nominated by the Presiding Bishop and approved by the Convention to serve as the Presiding Bishop saw fit, and to have the right to temporary succession.⁷⁰ The Presiding Bishop was made *ex officio* Chairman of the National Council in 1934.⁷¹ In 1937, the General Convention made the Presiding Bishop the President of the National Council, removed the six-years limit to the term of the office, and made tenure last until sixty-eight years old, and finally required the Presiding Bishop to relinquish the administration of his diocesan office.⁷² Not until 1943, however, was it impossible for the Presiding Bishop to retain his position as bishop of the diocese and also be Presiding Bishop. He was required to resign his previous jurisdiction entirely.⁷³

THE EXECUTIVE COUNCIL

The canon that established the National Council [which is now called "Executive Council" and will be referred to as such for the remainder of this work] has been extravagantly called, by the foremost annotators of the church's Constitution and Canons, "one of the greatest pieces of constructive legislation, if not the greatest, ever enacted by [General Convention] since the First General Convention of 1789."⁷⁴ Until 1919, the "executive branch" of the Episcopal Church had comprised the Presiding Bishop, a few relatively uncoordinated boards and joint commissions established by General Convention to handle particular affairs (the most important of which was the Domestic and Foreign Mission Society), and several specifically chosen officers. Indeed, the persons who served to execute the legislation of General Convention were, for the most part, extra-constitutional officials responsible only to the Convention and not

67. *Journal of the General Convention* (1919), 32, 48, 275, 318.

68. *Ibid.*, 165–70.

69. See Canon 61, Section 1, 1, 159, in *Journal of the General Convention* (1922).

70. *Journal of the General Convention* (1931), 87, 326.

71. *Journal of the General Convention* (1934), 233–39.

72. *Journal of the General Convention* (1937), 178–81, 196–208.

73. *Journal of the General Convention* (1943).

74. White and Dykman (1954), 1:176–77.