

PEP Argument Briefing Paper

Title: Replacing the Accession Clause is Unconstitutional
Applicable to: 2008 Constitutional Amendment 1 (Resolution One)
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Date: 10/24/2007

Summary

The first two parts of Resolution One proposing amendments to the diocesan constitution replace the accession clause with a statement copied from the preamble to The Episcopal Church's (TEC's) constitution. The second clause tries to claim that a diocese has the right to choose the Anglican Communion province with which it affiliates. Both parts are beyond the power of the diocese to enact, and they usurp decisions that belong to General Convention (Section 1) and to the Archbishop of Canterbury and the Anglican Consultative Council (Section 2).

Background

- The diocesan conventions in 2003 and 2004 amended Article 1 of the diocesan constitution in an attempt to qualify the diocesan accession to TEC's Constitution and Canons. This violated the requirement that diocesan constitutions contain an "unqualified accession to the Constitution and Canons" of TEC. From the first draft of the TEC constitution in 1785 on, the constitution has contained provisions that subordinate dioceses to the General Convention and bind clergy to the Constitution and Canons of TEC. The requirement for an accession clause has appeared continuously since 1789 in the constitution, and Pittsburgh included such an accession in the constitution submitted as part of the process of its admission to General Convention in 1865. Resolution One proposes to replace the accession clause entirely. Section 1 of the new wording claims that the diocese is a constituent member of the Anglican Communion. Section 2 has been rewritten so that it supposedly allows the diocese to designate with what autonomous church (province) in the Anglican Communion it will affiliate.

Argument

- The Constitution of TEC has, from its first draft in 1785 on, contained language making the state conventions/dioceses subordinate to the constitution. The final draft of 1789 expressed this as a requirement that all new dioceses place a statement acceding to the constitution in their own constitutions as a precondition to admission. It also required all founding conventions to accede as part of the adoption of the document. The requirement was expanded in 1904 to include the canons of TEC. As of 1982, the constitution requires "an unqualified accession to the Constitution and Canons of this Church." Both clergy and laity holding "any office in this Church" are also bound to abide by the "Constitution and Canons of this Church" and by their diocesan constitutions. Working to qualify the accession declared in a diocesan

constitution is necessarily a violation of that constitution. Thus, once the accession clause is in a diocesan constitution, it is untouchable.

- The overwhelming opinion of chancellors, bishops, and lawyers in the church is that a diocese does not have the power to change its accession clause (see Briefing Paper AC07-02-01) and that any attempted changes are “null and void” and “shall be as they were as if such amendments had not been passed.” Similarly, *Robert’s Rules of Order* does not allow a subordinate unit to change a rule to conflict with a higher rule.
- The diocese is a subordinate unit of TEC. The state conventions/dioceses that existed at the founding of the General Convention voluntarily subordinated themselves by acceding to the constitution. Later dioceses were created and recognized under a process specified by General Convention and then specifically approved through legislation admitting the diocese. The Diocese of Pittsburgh was created in 1865 from the Diocese of Pennsylvania. The Bishop of Pennsylvania presided at the organizing convention at which the diocesan constitution was written, and the General Convention of 1865 reviewed the documents and admitted the diocese. The Diocese of Pittsburgh constitution contained an unqualified accession clause from 1865 until it was allegedly changed in 2004.
- TEC is, according to the one scholar who has studied its structure in detail from a political science point of view, a unitary church. All authority is derived from the General Convention. Dioceses have flexibility in their own governance, but ultimate authority resides with General Convention.
- Arguments pointing to the confederate church as a precedent supporting diocesan separation from the TEC are historically inaccurate. The confederate bishops met only because they assumed they were no longer part of the United States and, thus, could not belong to a church in that country. General Convention never recognized the separation of the Southern dioceses, and it acted on that position by continuing to read the roll of the absent states at the 1862 General Convention, by welcoming back two bishops from the confederate states in 1865, and by refusing to recognize the creation of the Diocese of Arkansas by the confederate church. Arkansas reverted to its 1858 status as a missionary district until General Convention voted to create a diocese there in 1871.
- The Lambeth Conference of 1930 spent much time clarifying the structure of the Anglican Communion. Its Resolution 49 specifies that the Anglican Communion is made up of those dioceses, provinces, and regional churches in communion with the See of Canterbury. The list of places in the Anglican Communion is included in the canons of the Church of England, which also specify that, when a question arises concerning Communion membership, the Archbishops of York and Canterbury shall consult to reach agreement. Hence, it is presumptuous of the diocese to declare itself unilaterally a member of the Communion. Similarly, only the Anglican Consultative Council can initiate the process by which a new entity is added to those represented in the ACC. Again, the matter is not up to the diocese.
- Neither the primates, as a group, nor the Archbishop of Canterbury have recognized any of the bishops who have been consecrated by bishops from other provinces to pursue “missionary” work inside the bounds of the United States. As the Report of the Joint Standing Committee noted, the Anglican Mission in America bishops are not considered “bishops of the Anglican Communion” and the recent consecrations by African bishops “would seem to fall into the same category.” Furthermore the

Archbishop of Canterbury told TEC's House of Bishops during its New Orleans meeting that he would not recognize another province in North America. Thus, the only way for the diocese to stay in the Anglican Communion is to remain a part of TEC and be subject to its Constitution and Canons.

Conclusions

The diocesan convention does not have the power to remove the accession clause nor to declare itself a member of the Anglican Communion. Attempting to do so is a violation of the ordination vows of those who vote for it and a violation of the fiduciary responsibility of lay deputies who vote for it. Should the diocese persist and act as if it were separate, its leadership, and those parishes following that leadership, could find themselves outside both TEC and the Anglican Communion.

Supporting Information

From the Constitution and Canons of The Episcopal Church:

Constitution, Article V, Sec. 1: ... After consent of the General Convention, when a certified copy of the duly adopted Constitution of the new Diocese, including an unqualified accession to the Constitution and Canons of this Church, shall have been filed with the Secretary of the General Convention and approved by the Executive Council of this Church, such new Diocese shall thereupon be in union with the General Convention.

Constitution, Article VIII (beginning): No person shall be ordered Priest or Deacon to minister in this Church until the person shall have been examined by the Bishop and two Priests and shall have exhibited such testimonials and other requisites as the Canons in that case provided may direct. No person shall be ordained and consecrated Bishop, or ordered Priest or Deacon to minister in this Church, unless at the time, in the presence of the ordaining Bishop or Bishops, the person shall subscribe and make the following declaration:

I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.

Canon 1.17.8: Any person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised.

From the 1930 Lambeth Conference of Anglican Bishops:

Resolution 49: The Anglican Communion

The Conference approves the following statement of nature and status of the Anglican Communion, as that term is used in its Resolutions:

The Anglican Communion is a fellowship, within the one Holy Catholic and Apostolic Church, of those duly constituted dioceses, provinces or regional Churches in communion with the See of Canterbury, which have the following characteristics in common:

- a. they uphold and propagate the Catholic and Apostolic faith and order as they are generally set forth in the Book of Common Prayer as authorised in their several Churches;
- b. they are particular or national Churches, and, as such, promote within each of their territories a national expression of Christian faith, life and worship; and
- c. they are bound together not by a central legislative and executive authority, but by mutual loyalty sustained through the common counsel of the bishops in conference.

The Conference makes this statement praying for and eagerly awaiting the time when the Churches of the present Anglican Communion will enter into communion with other parts of the Catholic Church not definable as Anglican in the above sense, as a step towards the ultimate reunion of all Christendom in one visibly united fellowship.