

A Response to Mark McCall's "Is The Episcopal Church Hierarchical?"



Joan R. Gundersen, Ph.D.¹

September 17, 2008

Unfortunately, the Anglican Communion Institute's recently published essay by Mark McCall "Is The Episcopal Church Hierarchical?"² includes a number of historical errors, one of which undermines his entire argument by overlooking a key clause in the 1789 constitution of The Episcopal Church. In short, McCall argues that the individual state conventions (later called dioceses) were independent entities that did not give up their independence when they joined together to create The Episcopal Church and its General Convention. Central to this argument is the assertion that the dioceses existed before the "national" church was organized and that the original founding documents did not include language subordinating the state conventions to the General Convention. McCall elaborates on this theme with a discussion of the supposed widespread legal knowledge of the principles of subsidiarity and supreme law³ in the 1780s when The Episcopal Church was organized, and with an argument that the church

¹ Joan R. Gundersen holds a Ph.D. in American History from the University of Notre Dame and is professor emeritus in history at California State University San Marcos. She has served on the editorial board of *Anglican and Episcopal History* for more than 30 years and is the author of several books (including three on the history of the Church in North America) and of more than 20 articles or essays in scholarly journals, most on eighteenth-century America or Episcopal history. Most recently, she and Dr. Edward Bond co-authored *The Episcopal Church in Virginia, 1607–2007*.

² Mark McCall, "Is The Episcopal Church Hierarchical?" Anglican Communion Institute, 2008, http://anglicancommunioninstitute.com/wp-content/uploads/2008/09/-is_the_episcopal_church_hierdoc.pdf, accessed September 16, 2008.

³ The idea of a "supreme law" is that these set up a pecking order that determines, in a conflict, which enactment overrides the other. As the United States developed ideas of written constitutions, these came to be considered "supreme law," and laws that contradict them were "unconstitutional." "Subsidiarity" is a way of saying the same thing by setting up a clear ranking subordinating some units of an organization or government to another.

hierarchy ends at the diocesan level in The Episcopal Church, finally reaching the surprising conclusion that the *whole* church is not hierarchical.

The ultimate purpose of McCall's argument appears only on page 20 of his essay, where he asserts that "there is no prohibition in The Episcopal Church's constitution on a diocese withdrawing from its union with the General Convention." In other words, McCall is constructing an argument justifying the "realignment" that the Diocese of San Joaquin claimed to effect last year and on which the Diocese of Pittsburgh is about to vote.

This short essay will discuss some of the major problems with McCall's argument, including a fatal flaw that invalidates his entire discussion, and it will also correct a number of the smaller historical errors he introduced along the way. This is not intended as a comprehensive analysis of McCall's paper.

The Problem of Anachronism

To begin with, anachronistic assumptions permeate McCall's essay. If we are to understand what the eighteenth-century organizers of The Episcopal Church had in mind, we must be sure we are not reading later understandings into their documents. For example, McCall uses a U.S. Court of Appeals decision to define "accession" as becoming party to a treaty and refers to it as an "unusual" term in the law of contracts.⁴ That may be, but a simple consultation of the *Oxford English Dictionary* reveals a number of eighteenth-century examples of the use of the word "accede" to mean agreeing to a plan or opinion. Current dictionaries often use "submit" as a synonym. The founders thus used a word in a common context that people then would understand easily.

A second anachronistic instance involves a misreading of the clauses involved. McCall argues that the constitution of the church is completely confused about use of the phrase "communion of this Church."⁵ McCall creates a conflict by misreading the present preamble to the constitution, and then contrasting it to passages in the rest of the constitution. McCall claims the preamble defines the "communion of the Church" to mean communion with the Archbishop of Canterbury and the Anglican Communion. If one reads the constitution historically, all confusion disappears. The objective in writing the constitution for The Episcopal Church, according to the preamble included with the 1785 draft, was to "unite in a Constitution of Ecclesiastical Government" given "the importance of maintaining uniformity of doctrine, discipline and worship in the said Church." The language here makes clear the intent of deputies to the 1785 meeting to form one church. "Communion" was the relationship of members (not conventions) with one another created by being in union. Throughout the constitution and canons, the phrase "the Church" or "this Church" consistently refers to the whole Episcopal Church. There *was* no Anglican Communion for the constitution to reference when the Episcopal Church constitution was first written. When the current preamble was added in the 1960s, it merely described an *additional* relationship that had developed over the intervening years and that was then taking specific form with the establishment of the Anglican Consultative Council, of which The Episcopal Church was a founding member. The definition of the Anglican Communion in the 1960s described the Communion as a "fellowship" having certain characteristics, one of which was that it was a relationship among "particular or national Churches." The tie being described is clearly a relationship between the whole Episcopal Church and other parts of the Anglican Communion, not a diocesan relationship.⁶

⁴ McCall, p. 20

⁵ McCall, pp. 18–19.

⁶ Resolution 49, Lambeth Conference 1930, <http://www.lambethconference.org/resolutions/1930/1930-49.cfm>, accessed September 16, 2008; the Anglican Consultative Council specifies that those represented are "provincial, national, or regional" bodies and does not provide membership for any of the extraprovin-

The biggest problem with McCall's anachronistic reading is found in his discussion of the idea of a supremacy clause. The constitution of The Episcopal Church ratified in 1789 was drafted in 1786 and approved after small but significant changes were made by the 1789 General Convention. McCall emphasizes the concept of supremacy as it is used in William Blackstone's *Commentaries* and discusses two specific instances involving John Jay and James Duane as proponents of the idea of constitutional supremacy. Jay and Duane participated in the conventions that shaped the constitution of The Episcopal Church. His point is that these concepts of supremacy were so well established (at least to Jay and Duane) that the omission of a clear statement of supremacy or a clause subordinating the state conventions to the constitution or to the General Convention in the Episcopal Church constitution had to be deliberate.⁷ Historians, however, would be surprised by such a statement, since all major texts covering the period agree that the 1787 U.S. constitutional convention struggled to find some way to bind the states to decisions of the national government and that it was not until after the so-called Great Compromise that the article now called the "supremacy clause" was fully developed.⁸ If this was new territory for the framers of the U.S. Constitution in 1787, it could hardly have been obvious to the drafters of the church constitution a year earlier exactly what wording they should use.

The Supremacy and Subsidiarity Issue

McCall argues that there is no evidence that the functioning state conventions had any intention of subordinating themselves to a central church authority. To make this claim, he misreads the records of the 1784 preliminary convention for The Episcopal Church held in New York and those of the 1784 and 1785 "conventions" in Pennsylvania. In fact, the records show that the state conventions responded to actions by the national church conventions by trying to conform to decisions of those conventions or by deferring decisions until the general conventions provided guidance.

On March 29, 1784, a small group of clergy and laity from three congregations met to discuss forming an organization in Pennsylvania. However, they "were of the opinion, that a subject of such importance ought to be taken up, if possible, with the general concurrence of the episcopalians in the United States."⁹ Two days later, at another gathering of the group, they called a meeting for May 24 for clergy and lay representatives from every Pennsylvania parish. When that convention met, it appointed a standing committee to "confer with representatives from the episcopal church in other states, or any of them; and assist in framing an ecclesiastical government." This convention then outlined a list of principles for forming such a government and called for a meeting of the larger church in New York in October 1784. One of the principles was "That no powers be delegated to a general ecclesiastical government, except such as cannot conveniently be exercised by the clergy and laity in their respective congregations."¹⁰ McCall reads

cial dioceses. Constitution of the Anglican Consultative Council, Section 3, "Membership," <http://www.anglicancommunion.org/communion/acc/resources/docs/constitution.cfm#s3>, accessed September 16, 2008.

⁷ McCall, pp. 8–10.

⁸ See for example, Clinton Rossiter, *1787: The Grand Convention*, New York: 1966, pp. 150, 169, 178, 184, 227; Michael Les Benedict, *The Blessings of Liberty: A Concise History of the Constitution of the United States*, Lexington, Mass.: 1996, p. 84; Max Farrand, *The Framing of the Constitution of the United States*, New Haven: 1913, pp. 85, 120; Alfred H. Kelly, Winfred A. Harbison, and Herman Belz, *The American Constitution: Its Origins and Development*, 6th edition, New York: 1983, pp. 90–97, pp. 102–105; Forrest McDonald, *A Constitutional History of the United States*, New York: 1982, pp. 84–85.

⁹ *Journal of the Meetings Which Led to the Institution of a Convention of the Protestant Episcopal Church in the State of Pennsylvania, Together with the Journals of the First Six Conventions of the Said Church*, Philadelphia: 1790, pp. 1–4.

¹⁰ *Ibid.*, p. 6.

this as reserving power to the state conventions (dioceses).¹¹ However, that is not what it says. State conventions are not even mentioned, since Episcopalians in many states, including Pennsylvania, had no such convention. Pennsylvania numbers its state conventions beginning with that of 1785, rather than with the 1784 meeting.¹²

The 1784 meeting in New York had people in attendance from 8 states, and they, in turn, endorsed the same set of principles for a general ecclesiastical government adopted by the Pennsylvania group and set a date in 1785 for the first meeting of a general convention.¹³ The convention recommended that Episcopalians in states not yet forming associations do so in order to send deputies to the 1785 general convention. The Pennsylvania clergy and laity met in state convention in 1785, and the minutes of that meeting began: "In consequence of a recommendation of the clergy and laity assembled in New-York, for organizing and associating the clergy and congregations of the protestant episcopal church in the different states, the following gentle men met in Christ Church, in the city of Philadelphia, on Monday, May 23rd"¹⁴ Note that what the national gathering in New York was organizing was the clergy and congregations, not the dioceses or conventions. Also note that the rationale for the Pennsylvania meeting is now that participants are following the recommendation of the national body. Similarly, when Pennsylvania Episcopalians, later in the meeting, adopted articles of association (not a constitution), the "Whereas" sections that introduced the articles again repeated the assertion that they were meeting in response to the recommendation of the 1784 organizing meetings for a national church that Episcopalians form a convention or association at the state level. Later in the articles of association, the powers of the convention to act and legislate are limited in these words: "provided always, that the same shall be consistent with the fundamental principles agreed on at the two aforesaid meetings in New York and Philadelphia." Thus, from the beginning, Pennsylvania subordinated itself to principles set out as the framework for a national church.¹⁵

When the first General Convention of the church, meeting in New York in 1785, drafted a constitution, it justified creating a General Convention because of "the importance of maintaining uniformity in doctrine, discipline, and worship in the said Church."¹⁶ Such an objective could only be achieved if deputies presumed state conventions would be bound by the acts of the General Convention. The first draft of the constitution made the General Convention responsible for the Book of Common Prayer to be used in all of the states and concluded the constitution, in Article XI, by specifying that the constitution "shall be considered as fundamental; and shall be unalterable by the Convention of the Church in any state."¹⁷ In constitutional theory, "fundamental law" is that which cannot be changed by simple legislative act.¹⁸ Thus, from the first draft of the constitution for The Episcopal Church, it was clear that the framers of that document expected the General Convention acts to prevail over any enactment of state conventions. The 1785 convention, furthermore, took the responsibility for negotiating with England to secure consecration of bishops. This had become more pressing because Samuel Seabury had returned to Con-

¹¹ McCall, p. 32.

¹² *Journal of the First Six Conventions*, p. 10.

¹³ *Journal of the First Six Conventions*, pp. 8–9

¹⁴ *Journal of the First Six Conventions*, p. 10.

¹⁵ It is the proviso that McCall misinterprets. He argues that this shows that the national documents were not supreme. However, the proviso is a *limitation* placed on the Pennsylvania convention in favor of a statement of principle guiding the whole Church. McCall, p. 32; *Journal of the First Six Conventions*, pp. 11–13.

¹⁶ *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 September 27th to October 7th, 1785*, Philadelphia: 1785, p. 9.

¹⁷ Canon 11, *Ibid.*, p. 11.

¹⁸ McDonald discusses the idea of what was meant by "fundamental law" in his discussion of the U.S. constitutional convention. McDonald, pp. 84–85.

necticut after consecration as a bishop by the Scottish Episcopal Church. Seabury had been elected in a secret meeting from which all laity and some Connecticut clergy had been excluded. His election was a direct challenge to the principles of lay participation outlined in the 1784 conventions.¹⁹

When the next General Convention met in 1786, the negotiations with England were bearing fruit, and, by the end of the second session of the General Convention, the constitution had been revised and three state conventions (Virginia, Pennsylvania, and New York) had elected bishops. The English bishops wanted not only a testimonial from the state conventions, but also one from the General Convention for each of the three.²⁰ The convention passed these, but it did not find that the deputies of the various states had been granted proper authority in all cases to accede to the constitution. Thus, approval of the constitution was scheduled for the 1789 General Convention, after the church would have acquired its bishops.²¹

McCall's Fatal Flaw

The 1789 convention opened with scrutiny of credentials to ensure that all deputies had been properly authorized to ratify and accede to the constitution.²² Virginia deputies, for example, had received instructions to try to change several things in the liturgy, but they were also authorized to “confirm and ratify a General Constitution respecting both the Doctrine and Discipline of the Protestant Episcopal Church.” The explicit mention of “Discipline” in the instructions reflects a conscious awareness that they were acceding to governance, as well as tenets of faith. Samuel Provoost of New York and William White of Pennsylvania attended the opening of the 1789 General Convention as consecrated bishops. The third candidate, David Griffith of Virginia, had been unable to raise funds to go to England, resigned his election, and died at the very start of the convention.²³

¹⁹ Frederick V. Mills, Sr., *Bishops by Ballot: An Eighteenth Century Ecclesiastical Revolution*, New York: 1978, pp. 209–233; Paul Victor Marshall, *One, Catholic, and Apostolic: Samuel Seabury and the Early Episcopal Church*, New York: 2004, pp. 66–73.

²⁰ For certification of bishops-elect White, Provoost, and Griffith, see *Journal of a Convention of the Protestant Episcopal Church in the States of New-York, New-Jersey, Pennsylvania, Delaware and South Carolina, Held in Wilmington, in the State of Delaware, October 10th and 11th, 1786*, Philadelphia: 1786, p. 21. McCall wrongly identifies the three men seeking consecration as bishops by substituting William Smith of Maryland for David Griffith of Virginia. Smith had been chosen as bishop by clergy in Maryland in 1783, but, by 1786, his candidacy had been buried by a reaction to the lack of lay participation in his selection and a rumor concerning drunkenness. Mills, pp. 195, 247

²¹ *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 June 20th to the 26th, 1786*, Philadelphia: 1786, pp. 9, 13–14. McCall again gets a number of points about the negotiations with England wrong, since he did not consult Peter Doll's, book, *Revolution, Religion, and National Identity: Imperial Anglicanism in British North America, 1745–1795*, Madison and Teaneck, N.J.: 2000, pp. 210–236. Furthermore, he anachronistically assigns significance to the fact that the Archbishop of Canterbury's letter to the American Church was dated July 4. Independence Day had not yet become a widely celebrated holiday, and, in fact, the date for the celebration of independence was not fixed. The U.S. actually declared independence on July 2. On July 4, it approved the wording of the document explaining that decision. The document was not published for several more days.

²² *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: 1789, pp. 5, 7.

²³ For the instructions to the Virginia deputies, see *Journal of a Convention of the Protestant Episcopal Church in Virginia, Held in the Public Buildings in the City of Richmond, May 16, 1787*, Richmond, Va.: 1787, p. 3. Griffith had been a leader in the General Convention, serving as secretary in 1785 and presiding

Deputies at the first session of the 1789 General Convention made several significant changes (one of which is discussed below) before ratifying the constitution and approving a set of canons for the church. The second session of the convention modified these documents after negotiations with Bishop Seabury and New England clergy so that they, too, acceded to the constitution and joined the general union. The final constitution no longer had a preamble, and Article IX had been altered to allow for amendments in a process requiring a vote by two General Conventions, with time in between for states to receive notice and, presumably, to instruct their deputies concerning the proposed amendments. The 1789 constitution, however, did something better than declare an intent to promote uniformity or proclaim itself the fundamental law of the church (which was, in a sense, self-evident as a constitution). Article II described the process of representation in the General Convention, ending with this statement:

And if, through the neglect of the Convention of any of the Churches, which shall have adopted, or may hereafter adopt this constitution, no deputies either lay or clerical, should attend at any General Convention, the Church in such state shall nevertheless be bound by the acts of such Convention.²⁴

Here is exactly what McCall said did not exist. Thus, the deputies from all the conventions, including those from New England who had previously held back from participation, those from Virginia who were supposedly reluctant to compromise their just-achieved independence from state control, and the Pennsylvanians who supposedly had reserved power to their convention, all agreed to a constitution that bound the states to acts of the General Convention *even* if their representatives were absent. Note that the wording is not just “bound by such constitution” but “bound by the acts” of the General Convention, including, of course, the canons adopted at that same 1789 meeting and at subsequent conventions. McCall wanted a statement of subsidiarity,²⁵ and that is exactly what the framers of the Episcopal Church constitution included. Each state’s accession bound it to the acts of the General Convention, and every new deacon, priest, or bishop was bound in, Article VII, by a declaration to conform to the doctrine and worship of the church, which were and remain under the control of the General Convention, as the keeper of the Book of Common Prayer.

Article VII also refers to compliance with certain canons. Thus, the constitution is linked to the canons in its original 1789 form. Among those canons, by the way, was one requiring a bishop-elect to obtain a testimonial from the General Convention before being consecrated.²⁶ It was not until 1799 that an alternative method of approving the consecration of a bishop by bishops and standing committees was added.²⁷ In the canons, other specific requirements were placed upon

at the first session in 1786. General Convention business was placed on hold while the deputies marched en masse to Griffith’s funeral. *Journal of a Convention, 1789*, pp. 11–12. For more on David Griffith, see Edward L. Bond and Joan R. Gundersen, *The Episcopal Church in Virginia, 1607–2007*, Richmond, Va.: 2007, pp. 48–51.

²⁴ *Journal of a Convention, 1789*, pp. 23, 25.

²⁵ McCall, p. 13.

²⁶ Canon II, *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, 1789*, Philadelphia: 1789, p. 26

²⁷ This is one of the places where McCall is in error. He gives special significance to the fact that confirmation of a bishop’s election can now be done by those bishops with jurisdiction and standing committees. However, in the early years of the Church, the norm and only method of approval was by the General Convention or a special committee appointed by the General Convention. Consecrations of bishops were also commonly done at the General Convention. For the change in canons to allow an alternative way of seeking approval when the General Convention was in recess, see Canon II, 1799, *Constitution of the Protestant Episcopal Church in the United States of America and the Canons of the Said Church from A.D. 1789 to A.D. 1804 Inclusive*, New York: 1805, p. 23.

the actions of state conventions, upon individual parishes, and upon bishops.²⁸ McCall wanted a statement of subsidiarity, and that is exactly what the framers of the Episcopal Church constitution included. Each state's accession bound it to the acts of the General Convention, and every clergyman was bound by a declaration to conform to the doctrine and worship of the church. That same constitution refers to compliance with certain canons. Bishop William White was so clear about what had happened that, although charged by the Pennsylvania convention to prepare a set of canons for the 1790 convention to approve, rather than draft specific ones, he simply laid the constitution and canons of the whole church before his state convention in 1790. The convention then asked him to prepare for a future convention any additional canons that might be needed for the state. The 1792 General Convention added a canon requiring all clergy individually to document their accession to the constitution of The Episcopal Church,²⁹ thus ensuring that all those in orders when the constitution was adopted would also be personally bound by the discipline of the church.

Conclusions

Whatever elaborations or changes have been made to the Episcopal Church's constitution and canons since 1800, a close examination of the original documents proves conclusively that Mark McCall got it wrong in his paper. McCall claims that the Pennsylvania convention was an independent diocese that helped form a weak church union retaining all power at the diocesan level. But the canons that Pennsylvania deputies (and others) ratified with the 1789 constitution put a number of specific restrictions on the freedom of dioceses to ordain whomever they pleased, required the recommendation of the General Convention before ordaining a bishop, required bishops to make visitations on a regular schedule, required states to organize conventions and form standing committees, required parishes to keep certain records, and required the dioceses to report regularly to the national church on who served as clergy.³⁰ Even before ratification of the constitution and canons in 1789, state convention actions were often prefaced with phrases such as "until further provision be made by the general convention."³¹ McCall thought it unlikely that Virginia would give up its very recently won ecclesiastical independence to a general convention, but it did. The Virginia Convention of 1791, for example, specifically noted that it was following the provision in Canon VII of the Episcopal Church canons when recommending to Bishop Madison that he exercise the dispensation provided for in that canon and exempt deacons from testing in Latin and Greek.³²

The most significant flaw in McCall's argument, however, is the fact that the church in 1789 *did* include language binding the state conventions to all acts of the General Convention. When combined with the clauses requiring states to accede to the constitution and for all members of the ordained ministry of the church to have made a declaration that they would conform to the doctrine and worship of the church (after having given the General Convention sole authority to change the Book of Common Prayer, which contains the official statements of both doctrine and worship), the state conventions were subsidiary. As the church developed over time, this became even more evident. In the 1830s, the General Convention developed an approach to church growth that placed all of the territory where the church might expand under the authority of

²⁸ *Ibid.*, pp. 26–31.

²⁹ Canon I of 1792, *Constitution from A.D. 1789 to A.D. 1804*, p. 14

³⁰ *Journal of the Proceedings of the Bishops, Clergy, and Laity*, pp. 26–31.

³¹ *Proceedings of the Convention of the Protestant Episcopal Church in the State of New-York; Held in St. Paul's Chapel, in the City of New York, on the 27th of June, 1787*, New York: 1787, (bound with records of the conventions of 1785 and 1786), p. 16

³² *Journal of a Convention of the Protestant Episcopal Church in the State of Virginia*, Richmond, Va.: 1791, p. 6

some bishop, either a diocesan or a missionary bishop. The missionary bishops' charge was to grow the church and supervise the development of new dioceses.³³ Significantly, these bishops were elected by the House of Bishops itself, rather than by the local areas. New dioceses thus were not outside the church when they applied for union. This point was illustrated after the Civil War when the General Convention refused to recognize the Diocese of Arkansas that had been approved by the Confederate bishops, but not the General Convention. The diocese did not continue as an independent unit outside the church, but rather reverted to its status as part of a missionary district.³⁴ Within a decade, the General Convention would oversee formation of a new Diocese of Arkansas and admit it to union.

Built on premises that overlook a crucial clause granting supremacy to the General Convention and misreading of the actual historical record, often through anachronistic readings of phrases, McCall's essay simply will not stand scrutiny.

³³ David Hein and Gardner Shattuck, Jr., *The Episcopalians*, Westport, Conn.: 2004, p. 70.

³⁴ Michael, McNeeley, "Episcopalians," *The Encyclopedia of Arkansas History and Culture*, Little Rock, Ark.: 2008, <http://encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=1175>, accessed September 16, 2008.