

MANY PARTS, ONE BODY

How the Episcopal Church Works

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CHAPTER THREE

THE STRUCTURE *of* GENERAL CONVENTION

OVERVIEW

William White's original plan of 1782 envisioned for the government of the church in the United States a unicameral, triennial convention, representative equally of the clergy and laity of the church. The "continental representative body" (as well as all other representative bodies, from the parish vestry up) was "to make such regulations, and receive such appeals in matters only, as shall be judged necessary for their continuing one religious communion."¹ But all governments were to govern minimally, because, White stated, the least government is the best.²

The "Fundamental Principles of 1784" were concerned only with the organization of a General Convention.³ These principles provided that there should be a convention (Article I) composed of lay and clerical members from each state (Article II) or association of states (Article III), deliberating together but voting separately by orders, both orders concurring before a measure might be passed (Article IV). A bishop, if any, was an *ex officio* member of the convention (Article V), and the church should adhere to the doctrines and liturgy of the Church of England (Article IV).

1. William White, *The Case of the Episcopal Churches in the United States Considered*, ed. Richard G. Salomon (Philadelphia: Church Historical Society, 1954), 26.

2. *Ibid.*, 27.

3. Perry, *Journals*, 1:12-13.

"The General Ecclesiastical Constitution" of 1785 did not depart essentially from the plans of 1782 or 1784 as far as the organization and powers of the Convention were concerned.⁴ The Convention was made triennial, but the chamber remained unicameral (Article I) with bishops still being merely *ex officio* members (Article V). Importantly, however, voting by orders was replaced with voting by dioceses.

The 1786 Constitution did not change the structure or powers of the Convention at all, except to permit a bishop, when present, to preside over the Convention.⁵

Not until the summer of 1789 did the Constitution provide for what appears to be a bicameral convention.⁶ Article III provided that when there were three or more bishops in the church, they should "form a House of Revision; and when any proposed act shall have passed in the General Convention, the same shall be transmitted to the House of Revision for their concurrence."⁷ It was possible to overrule the negative decision of the bishops by a three-fifths vote of the General Convention. Whether favoring or disapproving a proposal, the bishops were to "signify... within two days after the proposed act shall have been reported to them for concurrence, and in failure thereof it shall have the operation of a law."⁸

A more complicated voting system was provided for the clerical and lay delegates:

When required by the Clerical or Lay representation from any state, each Order shall have one vote; and the majority of suffrages by States shall be conclusive in each Order, provided such majority comprehend a majority of the States represented in that Order. The concurrence of both Orders shall be necessary to constitute a vote of the Convention.⁹

Thus, for a measure to be enacted it was necessary to secure (1) a majority of both orders, (2) in a majority of all the dioceses in the church that had delegates to the Convention in either or both orders (not simply a majority of the orders-in-dioceses voting), and (3) the concurrence of both orders in the Convention.

A diocese was bound by the acts of the General Convention after the diocese had adopted the Constitution, even if no deputies were in attendance at the Convention from that diocese. However, if a diocese sent

4. *Ibid.*, 1:21-23.

5. *Ibid.*, 1:40-42.

6. *Ibid.*, 1:83-85.

7. *Ibid.*, 1:83, Article III.

8. *Ibid.*

9. *Ibid.*, 1:83, Article II.

deputies from one order only, the diocese was considered "duly represented."

The revised Constitution of October 1789 retained and strengthened the apparently bicameral Convention, and left unchanged Articles I and II.¹⁰ However, in Article III, concerning the House of Bishops, the old "House of Revision" terminology was done away with and the House given the "right to originate and propose acts for the concurrence of the House of Deputies."¹¹ Moreover, the previous possibility of the House of Deputies overriding a disapproval of the Bishops by a three-fifths vote was changed to four-fifths. Bishops were given three instead of two days in which to give in writing their reasons for disapproval.

No substantial changes were made in the structure and powers of the House of Deputies from the 1789 Constitution until the major constitutional revision of 1901.

In 1901, a number of alternations were incorporated into the Constitution.¹² At this time, the previous material on the House of Deputies, Article II, was included as Section 4 of the new Article I:

1. The number of representatives from each diocese was not changed.
2. The definition of "laymen" eligible for membership in the House of Deputies was clarified.
3. Provision was made for the possibility of canonical proportional representation.
4. The method of electing deputies was left up to each diocese, continuing although modifying a constitutional change made in 1856. Since 1789 the Constitution had required that each deputy be "chosen by the Convention of the State."¹³ After 1856, deputies were simply chosen in a manner prescribed by each diocese's convention.¹⁴ From 1901, they were simply chosen in a manner prescribed by each diocese.
5. For a quorum of the House it was necessary to have at least one lay deputy from a majority of the dioceses and one clerical deputy from a majority of the dioceses.
6. The voting procedure was unchanged, but clarified considerably.

10. *Ibid.*, 1:99-100.

11. *Ibid.*, 1:99, Article III.

12. *Journal of the General Convention* (1901), 35-36, and White and Dykman (1954), 1:24-30.

13. Perry, *Journals*, 1:99, Article II.

14. *Journal of the General Convention* (1856), 179-80.

7. The requirement, found since 1789, that any diocese, once having been admitted into the Protestant Episcopal Church, was bound by the decisions of General Convention whether or not it had deputies at any General Convention, was not included in 1901. White and Dykman say this was "presumably because it was thought that so self-evident a truth required no constitutional provision."¹⁵

Since the revision in 1901, although a number of significant amendments have been proposed, the only significant change made in the structure of the House of Deputies up to 1959, the time of the original writing of this work, pertained to foreign and domestic missionary districts. In 1904 the Convention enacted a new Section 6 to Article I to allow each domestic missionary district to choose one lay and one clerical deputy with seats in the House of Deputies, but with no vote in a vote by orders.¹⁶ In 1907 the Convocation of the American Churches in Europe was also allowed one lay and one clerical deputy under the same conditions.¹⁷

An amendment was adopted in 1931 that allowed domestic missionary districts to vote in a vote by orders, but with their vote counting only one quarter of a diocese's vote, in each order.¹⁸ Deputies from foreign missionary districts and the American churches in Europe were still not allowed to vote in a vote by orders, and it was not until 1943 that these deputies were placed on a par with deputies from domestic missionary districts.¹⁹

Fuller discussion of the governing role of bishops in the American Episcopal Church is reserved for chapter 4. At the present time it is necessary, however, to describe briefly the structure and powers of the House of Bishops of the General Convention, as these have changed since 1789.

It was observed above that no provision was made for a House of Bishops until the first Constitution of 1789, at which time the bishops were to be a "House of Revision" that could, within a short time, limit, revise, or negate legislation of the "Convention."²⁰ Bishop Seabury and the New

15. White and Dykman (1954), 1:25.

16. *Journal of the General Convention* (1904), 31–32, 220, 228.

17. *Journal of the General Convention* (1907), 52, 91–92, 98–99, 284, 318.

18. *Journal of the General Convention* (1931), 33.

19. In 1970, the Constitution was amended to give foreign and domestic missionary dioceses equal representation with other dioceses (four clerical and four lay deputies) and to give them one vote in each order on a vote by orders. See White and Dykman (1981), 1:36–37. For a discussion of the implication of the governing role of missionary districts, see chapter 5.

20. The first Constitution of 1789 uniformly spoke of the House of Deputies as the "Convention" or the "General Convention" (see Perry, *Journals*, 1:83–84). The Bishops were almost an added, virtually nonessential feature in this Constitution (see the last two sentences of Article III, *ibid.*).

England clergy were able to secure a somewhat more strengthened House of Bishops in the second Constitution of 1789, as had been mentioned above. However, they were unable to obtain for the Bishops a "full negative," or, in other words, equal powers with the House of Deputies in law-making. But the October 1789 Convention did resolve "that it be made known to the several state conventions, that it is proposed to consider and determine, in the next General Convention, on the propriety of investing in the House of Bishops with a full negative upon proceedings of the other House."²¹

The proposed amendment was lost in 1792 when the Committee of the Whole of the House of Deputies refused to report it to the floor.²² However, in 1808, an amendment was finally adopted with the affirmative vote of all dioceses and orders, save for the negative vote of the laity only of the Diocese of Pennsylvania, which "were in favour of the resolution, but voted in the negative, because they supposed it necessary that they should have received instructions on the subject from the convention of the State, which instructions they had not received."²³

Thus, the provision that the rejection of a proposal of the Deputies by the Bishops could be overruled by a four-fifths vote of the House of Deputies was removed. However, until the constitutional revision of 1901, it was still necessary that the Bishops give their "approbation or disapprobation" in writing, in either case within three days, or an act by the Deputies would become law without the Bishops' concurrence.²⁴

No further amendments were made in the structure of the House of Bishops until 1901. At that time, all legislative inequalities between the two houses of General Convention were removed.²⁵ Specifically, no longer did the Bishops have to act upon the legislation of the Deputies within three days, nor did they have to declare their reasons for disagreeing.²⁶

21. *Ibid.*, 1:96.

22. *Ibid.*, 1:153. But the Convention resolved the next day to discuss the question at the next Convention.

23. *Ibid.*, 1:341, footnote 1.

24. Material for future research lies in seeking the answer as to how often and on what issues acts have passed General Convention because of the Bishops' failure to act within the time limit.

25. In the 1901 revision, the position in the Constitution of material referring to the two Houses was reversed. From 1789 to 1901, the House of Deputies was first considered (Article II) and the House of Bishops next (Article III). Since 1901, the Constitution has explained the House of Bishops first in Article I, Section 2, and the House of Deputies in Article I, Section 4.

26. *Journal of the General Convention* (1901), 35-36.

WHO ARE THE MEMBERS?

Having summarized briefly the changing structure of General Convention from 1782 through the present time, it is now possible to evaluate that struggle in terms of the question of confederalism, federalism, or unitarism. Specifically, five questions will be raised: (1) What is the method of apportionment for the General Convention? (2) Of what are the members of General Convention representatives? (3) What are the implications of the method of voting in the General Convention? (4) Is General Convention bicameral? (5) What is the extent of General Convention's powers?

William White's *Case of the Episcopal Churches in the United States Considered* assumed that the General Convention would be formed from delegates from what would now be called the provinces, not from the dioceses. All subsequent constitutional documents of the church have provided that the church in each diocese should send delegates to General Convention. Thus, neither a lower group (the parishes or association of parishes) nor a higher one (the provinces or—with but the one exception of the "Fundamental Principles of 1784"—group of dioceses) sends deputies.

But what has been the method of apportionment? Has each diocese been permitted to send delegates proportionate to its church membership, or has every diocese been allotted the same number of deputies? White's *Case* does not specify a number: "The continental representative body may consist of a convenient number from each of the larger districts formed equally of clergy and laity, and among the clergy, formed equally of presiding ministers and others."²⁷ The "Fundamental Principles of 1784" stated simply "that the Episcopal Church in each State send deputies to the Convention, consisting of Clergy and Laity." However, "associated congregations in the two or more states may send Deputies jointly."²⁸ The Constitution both of 1785 and 1786 provided that "there shall be a representation of both Clergy and Laity of the Church in each state, which shall consist of one or more Deputies, not exceeding four of each Order."²⁹

The division of the General Convention into a House of Bishops and a House of Deputies was first allowed in the Constitution of July 1789. Although differently worded, both Constitutions of 1789 retained the same substance regarding the House of Deputies as the two previous documents had regarding General Convention as a whole.³⁰ In 1856 the wording of

27. Salomon, in White, *Case*, 26.

28. Perry, *Journals*, 1:12.

29. *Ibid.*, 1:22, 41.

30. *Ibid.*, 1:83, 99.

the 1789 Constitution was changed, but still each diocese was allowed four deputies in each order in the House of Deputies.³¹

In 1901, the revision of that year retained the number four in each order, but allowed General Convention canonically to reduce the number to two.³² General Convention has never implemented this provision, and there has been no constitutional revision regarding apportionment of the House of Deputies since 1901.

That there has been no constitutional change does not mean that there have been no suggestions for change. As noted above, Bishop White felt that the time would come when it was necessary to have deputies to the House of Deputies elected proportionate to the diocese's church membership.³³ This might be essential, he felt, both to keep General Convention from getting too large and to see that General Convention was truly representative and that the dioceses' disproportionate size did not mean minority, and hence unrepresentative, rule.

Thus, from an early time, there have been suggestions for proportionate representation in the House of Deputies. Those in favor of a system of apportionment on the basis of a diocese's numerical size have argued that:

1. The existing system allows General Convention to be unrepresentative of the will of the members of the church in the United States as a whole.
2. The smaller dioceses can and/or do unfairly limit the power of the larger dioceses.
3. One way to make General Convention smaller is to reduce the number of delegates that less-populous dioceses may send to General Convention.³⁴

Those opposed to proportionate representation and in favor of retaining the present system allege that:

1. This is the way the church was originally established. They cite Bishop White to the effect that this is the only basis upon which the church could have been first formed.
2. It is unfair to the smaller dioceses to take away the legislative equality they now have with larger dioceses.

31. *Journal of the General Convention* (1856), 64–67, 179–80.

32. *Journal of the General Convention* (1901), 35–36.

33. See above.

34. For variations on these three positions, see Thomas L. Cole, "Three Questions and Their Relation," *Virginia Seminary Magazine* 2 (1889): 380–87, and Randolph H. McKim, "The Democratization of the Church," *Chronicle* 20 (1919): 29–33.

3. The present system helps prevent hasty, ill-considered decisions by the necessity of securing a wide consensus before action can be taken.
4. Proportionate representation would aid in destroying the principle of diocesan equality and independence that is "the very foundation upon which the church in the United States has been built up."³⁵

Thus, in spite of several attempts in General Convention³⁶ and some agitation in the church press at various times, there has been no sufficient move toward proportionate representation for it to become part of the church's constitutional structure. The House of Deputies remains based upon the equality of each diocese, and within each diocese, each order, as far as apportionment is concerned. Each diocese, regardless of its size, can have up to four delegates in both orders in the House of Deputies, depending upon how many are chosen by the diocese and how many actually attend the Convention.

The status of missionary districts, both foreign and domestic, in the church's polity has been mentioned above and will be described in more detail in chapter 5. However, regarding apportionment, each missionary district, while for a considerable time denied any representation in General Convention, after 1943 has been allowed not more than one delegate in each order in the House of Deputies. Hence, while not equal to a diocese in the number of delegates that it may send, the principle of equality-regardless-of-size is retained. Each missionary district is allowed only a total of two deputies, without reference to the comparison of its size with other dioceses or missionary districts.³⁷

From 1789 until 1901 there was no clear constitutional statement as to which bishops were to be allowed to attend and vote in General Convention. This is in part because the original Constitution assumed only one kind of bishop—a bishop who was head of a diocese; a bishop, in short, who had "jurisdiction." There had arisen, however, a need for "assistant"

35. The quotation is from White and Dykman (1954), 1:5, but it is not their position (see 1:37). Also Francis L. Hawks, *The Constitution and Canons of the Protestant Episcopal Church in the United States, Annotated* (New York: Stanford and Swords, 1841), 20; John W. Andrews, *Church Law* (New York: T. Whittaker, 1883), 66–69; and William J. Seabury, *An Introduction to the Study of Ecclesiastical Polity* (New York: Crothers and Korth, 1894), 223–55. See also his "The System of Representation in the General Convention," *Church Eclectic* 17 (1889): 579–92, and W. T. Gibson, "Proportionate Representation," *Church Eclectic* 17 (1889): 523–27.

36. See White and Dykman (1954), 1:35–38, and White and Dykman (1981), 1:34.

37. Since 1970, missionary districts have had the same number of deputies as dioceses. See White and Dykman (1981), 1:36–37.

bishops in some dioceses who are called "bishops coadjutor," if they possess the right automatically to succeed the "ordinary" or "diocesan" (*i.e.*, a bishop who is head of a diocese) upon the ordinary's death, resignation, or deposition. "Bishops suffragan," though fully consecrated to the episcopal office, are simply delegated some functions by the ordinary and are not allowed to succeed him unless specifically chosen by the diocese.³⁸

Moreover, during the years before 1901, some bishops had resigned their jurisdictions because of age or other reasons, but still retained the episcopal order. Should such persons be allowed seats and equal rights with other bishops in the House of Bishops?

Whereas the Constitution from 1789 until 1901 had not defined which bishops were allowed seats in the House of Bishops, the 1901 revision remedied the deficiency. Article I states:

Every Bishop of this church having jurisdiction, every Bishop Coadjutor, and every Bishop who by reasons of advanced age and bodily infirmity arising therefore has resigned his jurisdiction, shall have a seat and a vote in the House of Bishops. A majority of all Bishops entitled to vote, exclusive of foreign Missionary Bishops and Bishops who have resigned their jurisdictions, shall be necessary to constitute a quorum for the transaction of business.³⁹

In 1904 the word "and" between "advanced age" and "bodily infirmity" was changed to "or."⁴⁰ In 1919, provision was made for a bishop who resigned his jurisdiction in order to accept an office created by General Convention to retain his full powers in the House.⁴¹ Not until 1943 were bishops suffragan allowed equal powers in the house.⁴² And attempts have

38. See chapter 4 for a fuller explanation of the different types of bishops in the American Episcopal Church and the implications thereof. See also Seabury, *Ecclesiastical Polity*, 249–50, and Francis Vinton, *A Manual Commentary on the General Canon Law and the Constitution of the Protestant Episcopal Church in the United States* (New York: E. P. Dutton, 1870), 138–41.

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

40. *Journal of the General Convention* (1904), 45–47, 240, 245.

41. *Journal of the General Convention* (1919), 48, 275, 318. In 1970, the words "or for reasons of missionary strategy determined by action of the General Convention or the House of Bishops" were added after "bodily infirmity" (*Journal of the General Convention* [1967], 390). The result is that bishops who resign other than due to advanced age, bodily infirmity, to take an office created by the General Convention, or for reasons of missionary strategy do not have a vote.

42. *Journal of the General Convention* (1943), 185–86. In 1982, the position of assistant bishop was added and those bishops also have a vote (*Journal of the General Convention* [1982], C–21). See White and Dykman (1981), 1:18–19.

subsequently been made to remove their voting privileges, along with those of retired bishops.⁴³

While in the House of Deputies each diocese is allowed four delegates in each order, there is no constitutional limit to the number of bishops that may be in the House of Bishops from each diocese. To the extent that larger dioceses tend to have more bishops than do smaller ones to aid the ordinaries in the exercise of their episcopal duties, semblances of proportionate representation may be found in the House of Bishops that may not be found in the House of Deputies. The possibility that smaller dioceses may send fewer representatives to the House of Deputies than do larger, and thus in this way achieve proportionate representation, is offset by the provision of a vote by orders (and thus by diocese on an equal basis) in this House.

As far as the method of apportionment alone is concerned, the organization of General Convention, at least in the House of Deputies, tends toward confederalism or federalism. That each diocese is equal to every other diocese regardless of size in the number of deputies it may have in the House of Deputies—with no formal provision for a more proportionate representation—trends strongly in the direction of a federal, if not a confederal, structure.

Within the House of Bishops, the situation is different. Each bishop of the Episcopal Church is entitled to a seat, a voice, and a vote in the House of Bishops. It is not a question of apportionment, as such. Bishops are entitled to places in the House of Bishops by virtue of their office, not on the basis of diocesan apportionment. Thus several bishops may be from one diocese, and some—retired bishops—from no diocese, strictly speaking, at all.

WHOM DO THEY REPRESENT?

Of what are the members of General Convention representatives: do they represent their orders and/or their orders in their dioceses, their diocesan conventions, or the church in their dioceses? In seeking to answer these questions, five further problems must first be explored:

1. What have the church's constitutional documents said regarding representation?

43. See White and Dykman (1954), 1:15–17; *Journal of the General Convention* (1955), 190–92; *Journal of the General Convention* (1958). See also White and Dykman (1981), 1:21–22; *Journal of the General Convention* (2003), 669; and *Journal of the General Convention* (2006), 567.

2. What qualifications have the church's constitutions placed upon the deputies?
3. How and by whom are the lay and clerical deputies elected?
4. What have been the opinions of leading commentators on the church's polity regarding the problem of representation?
5. What is the distinction between the houses of General Convention regarding representation?

The "Fundamental Principles of 1784" stated "that the Episcopal Church in each State send Deputies to the Convention, consisting of Clergy and Laity."⁴⁴ And "that in every State where there shall be a Bishop duly consecrated and settled, he shall be considered as a member of the Convention *ex officio*."⁴⁵

The 1785 Convention uses the following language in reference to the 1784 meeting and the question of representation:

And, whereas, at a meeting of Clerical and Lay Deputies of the said Church, in sundry of the said States. . . , held in the city of New York . . . it was recommended to this Church in the said States represented as aforesaid, and proposed to this Church in the States not represented, that they should send Deputies to a convention to be held in the city of Philadelphia. . . .

And whereas, in consequence of the said recommendation and proposal, Clerical and Lay deputies have been duly appointed from the said Church in the said States. . . .

This Church, in a majority of the States, aforesaid, shall be represented before they proceed to business, except that the representation of the Church from two States shall be sufficient to adjourn. . . .

There shall be a representation of both Clergy and Laity in each State. . . . In the said Church in every State represented in this convention.

Bishops were still members *ex officio*.⁴⁶

The Constitutions of 1786 and 1789⁴⁷ use almost exactly the same language regarding the House of Deputies. The article creating a House of Bishops did not change the position either regarding episcopal representation. The terminology for both houses was unchanged until the 1901 revision, except for the substitution of "diocese" for "state" in 1835 wher-

44. Perry, *Journals*, 1:12, Articles II and V.

45. *Ibid.*, 1:21-22.

46. *Ibid.*

47. *Ibid.*, 1:40-42 and 1:83-84, 99-100, respectively.

ever the word appeared in the Constitution. In 1901, though reworded and reorganized extensively, the principle of representation of the church in the dioceses was retained in the House of Deputies:

The Church in each Diocese which has been admitted to union with the General Convention shall be entitled to representation in the House of Deputies. . . .

To constitute a quorum for the transaction of business, the Clerical Order shall be represented by at least one Deputy in each of a majority of the Dioceses entitled to representation, and the Lay Order . . . likewise.⁴⁸

In 1943, the foreign and domestic missionary districts and the Convocation of the American Churches in Europe were declared "entitled to representation in the House of Deputies."⁴⁹ While the article on bishops was extensively altered in other regards, no change was made in reference to the problem of representation. Thus, the church's constitutional documents uniformly refer to the lay and clerical deputies as being deputies from the church in the states or dioceses. Careful attention shows that the wording always refers to the "church" (singular) rather than "churches" (plural), affording the connotation that the deputies are not representatives of the dioceses or of diocesan conventions, but rather deputies of the Episcopal Church in (and not "of") the state or diocese.

The first instance of a Constitution of the church proscribing qualifications for diocesan representative to the House of Deputies of the General Convention (save that each diocese should—later, might—have clerical and lay representatives) was in 1856 when the Constitution was amended to require that all lay deputies must be "communicants of this Church" and "residents in the Dioceses" from which they were chosen.⁵⁰

In 1901, this was altered to require that clerical deputies be "canonically resident in the Diocese" and the lay deputies be "communicants of this Church, having domicile in the Diocese" that they represent.⁵¹ To have "canonical residence" means that a clerical deputy can only represent a diocese to whose canons and episcopal discipline he is subject, regardless of where, at the moment, he may actually have his home. The contrary is true of a layperson, whose eligibility for election to General Convention is

48. *Journal of the General Convention* (1901), 35–36.

49. *Journal of the General Convention* (1942), 186–88.

50. *Journal of the General Convention* (1856), 64, 67, 179–80.

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

dependent upon the location of his or her home.⁵² No constitutional change was made in the qualifications of persons to the House of Deputies from 1901 until 1970, at which time the first woman lay deputy was seated.⁵³

Not until 1786 did a constitutional document of the American Episcopal Church state by whom lay and clerical deputies were to be elected.⁵⁴ In conjunction with the first establishment of deputy qualifications in 1856, the Constitution was amended to read that deputies were to be "chosen in the manner prescribed by the Convention" of the deputies' diocese.⁵⁵

Still further change was made in the 1901 revision, which stated, "each Diocese shall prescribe the manners in which its Deputies shall be chosen."⁵⁶ No change has been made in this provision.

Thus, since the first requirement of 1786, each change has apparently been a gradual relaxation of General Convention's control over who should be elected to the House of Deputies. At first, all deputies were to be elected by the diocesan convention. Then they were simply elected as the diocesan convention required. Finally, election was as each diocese prescribed—although this was in effect simply another way of leaving it up to the diocesan convention, unless a diocese were to be organized without a convention, perhaps leaving all government in the hands of its bishop or with the deputies being chosen popularly in a diocese-wide election.

What is the pattern of practice for the dioceses in the election of representatives to the House of Deputies? Hoffman in his *Law of the Church* examined the practices of several dioceses of his time (ca. 1850) and ob-

52. See Vinton, *A Manual Commentary*, 102–18, for a more complete discussion of the meaning of "residence" in the Constitution before 1901. For the meaning of "communicant" see *ibid.*, 102, and White and Dykman (1954), 1:338–354. Since 1979, lay deputies no longer have to be domiciled within the diocese and must be "in good standing" (*Journal of the General Convention* [1979], B–48).

53. In the Episcopal Church, women did not receive Holy Orders until they began being ordained as deacons in 1970 and as priests in 1974. Women were not seated as lay deputies until 1970. Frequent attempts were made to allow women to become deputies—they served on many parish vestries, as wardens, as deputies to diocesan conventions and provincial synods—but with no success until the General Convention of 1970 (see White and Dykman [1954], 1:25, 29, 653). A requirement that lay deputies be "in good standing" was added in 1976 (see *Journal of the General Convention* [1976], C–76). Since 1982, deacons have been able to serve as clerical deputies (see *Journal of the General Convention* [1982], C–21–22). In 1988 the requirement that lay deputies be "confirmed adult" members was added (see *Journal of the General Convention* [1988], 612).

54. Compare Perry, *Journals*, 1:12 (1784) with 1:21–23 (1785) and 1:41 (1786). In 1786 it was decided that deputies were to be "chosen by the Convention of each State." The wording is identical in 1789 (*ibid.*, 1:83, 99).

55. *Journal of the General Convention* (1856), 179.

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

served that the normal practice was for the entire diocesan convention to have final approval on the election of its deputies to General Convention.⁵⁷ In some dioceses, the lay and clerical deputies might first be nominated and/or elected by their own orders alone, but at the time he was writing, the Constitution of the church required that deputies be "chosen by the Convention of the Dioceses." While this was uniformly the practice for a diocese's primary delegates, some dioceses allowed the bishop or standing committee to appoint alternates in the event that convention-chosen deputies could not attend. While General Convention recognized these deputies as validly chosen, Hoffman felt the method used by some dioceses—the choosing by the diocesan convention of alternates—was superior and more nearly according to the church's Constitution.⁵⁸

However, the manner of choosing deputies to General Convention is now left up to each diocese. While there are at the present time different methods of balloting and counting ballots, diocesan conventions themselves still elect lay and clerical deputies to the House of Deputies of General Convention. Again, while some dioceses may make an initial selection by orders, they nonetheless provide some method for having both orders jointly in Convention, rather than either order exclusively, decide finally upon both clerical and lay deputies.

The evidence of the constitutions of the church in its national and diocesan organizations leads to the conclusion that the lay and clerical deputies to the House of Deputies of the General Convention are deputies of the church in their dioceses and representatives of their orders in their dioceses, and not simply representatives of their orders or of their diocesan governments alone. The major writers on the church's government all agree that the deputies are representatives of the church in the dioceses, although they often draw different inferences from their common conclusions. Hoffman, White and Dykman, and especially Vinton stress that this means that it is the *church*, only incidentally organized into dioceses, that is represented.⁵⁹ Perry, Seabury, Andrews, and Hawks assert that it is the dioceses-as-the-basis-of-the-church that is represented.⁶⁰

57. Murray Hoffman, *A Treatise on the Law of the Protestant Episcopal Church in the United States* (New York: Stanford and Swords, 1850), 144–49.

58. *Ibid.*, 148–49.

59. Hoffman, *A Treatise on the Law*, 149; White and Dykman (1954), 1:35; Vinton, *A Manual Commentary*, 93–95.

60. Seabury, *Ecclesiastical Polity*, 242–46; William S. Perry, *History of the Constitution of the American Church* (New York: T. Whittaker, 1891), 104–5; Hawks, *Constitution and Canons*, 20–21; Andrews, *Church Law*, 66–69.

As of the time of the original writing of this work, no major commentator of the church's polity has maintained that the deputies were solely representatives of their orders—although some stress this as of significant importance—or of their diocesan conventions. The members of the House of Clerical and Lay Deputies, then, are chosen as representatives of the church and their orders in their dioceses. Persons in the House of Bishops, however, hold their membership by virtue of their office. Indeed, episcopal attendance in General Convention even before the creation of a House of Bishops—from 1784 to 1786—was *ex officio*. In July 1789, bishops, when three or more in number, were to form a House of Revision during General Convention. In October 1789, they were simply to form a "Separate House."

In 1901, the specific classes of bishops who were entitled to a seat and a vote in the House of Bishops were enumerated. Bishops, then, do not represent their dioceses nor their orders. Part of being a bishop in the American Episcopal Church is, now, the privilege of attending and participation fully in the proceedings of General Convention through the House of Bishops.

Consequently, there is no evidence sufficiently strong to lead to the conclusion that members of General Convention are representatives of the dioceses of the church. While membership in the House of Clerical and Lay Deputies is apportioned on an equal basis to the diocese, and, on a reduced but proportionate basis, to missionary districts, members of the House of Deputies are representatives of the church "in" the dioceses, not "of" the dioceses. It is the church, in two orders, which is being represented in the House of Deputies, not the dioceses.

In the House of Bishops there is no problem about representation. Since all bishops of the church are permitted full privileges in the House of Bishops, there is no question of whom they represent. The House of Bishops "represents nothing." It is composed of all the bishops of the church, holding their membership by virtue of their office.

Since there is nothing in the membership of General Convention to demonstrate that the Episcopal Church has a federal or confederal government, although the basis of apportionment to the House of Deputies does show federal or confederal characteristics, toward what conclusion does the voting procedure of General Convention seem to lead?

HOW DO THEY VOTE?

The method of voting in the House of Bishops has always been relatively simple, though not explicit in the Constitution until 1901.⁶¹ Each bishop who is qualified for a vote at all in the House is entitled to one vote only. Before this time, the only constitutional mention of voting procedure for bishops was in the last sentence of Article III of the October 1789 Constitution. There it was provided that when there were not enough bishops to form a separate house (*i.e.*, only one or two), they should vote with the clerical deputies of the diocese to which they belonged. A bishop, voting as an *ex officio* member of the Convention, has never been required to vote either in concert with other bishops from his diocese (if there are any), or with his diocese's delegates in the House of Deputies.

Voting procedure in the House of Deputies is somewhat more complicated than that of the House of Bishops, and has had an interesting history of constitutional development. Article VI of the "Fundamental Principles of 1784" provided "that the Clergy and Laity assembled in Convention shall deliberate in one body, but shall vote separately. And the concurrence of both shall be necessary to give validity to every measure."⁶² For a measure to pass the proposed unicameral convention, then, it had to be accepted by two orders, clerical (including bishops) and lay, though voting was to be counted by dioceses.⁶³

Article II of the 1785 Constitution considerably modified this principle: "In all questions, the said Church in each State shall have one vote; and a majority of suffrages shall be conclusive."⁶⁴ No longer were votes to be taken by orders. The basis was to be the diocese, each having one vote. It was not necessary to have the concurrence of the orders. This procedure was retained in Article II of the 1786 Constitution.⁶⁵

With the August Constitution of 1789, the requirement of a vote both by orders and dioceses was combined into one of two voting alternatives, the second alternative being a simple majority vote of members present.⁶⁶ This feature was retained in all subsequent constitutional revisions, although the section was reworded and clarified in 1901.⁶⁷

61. *Journal of the General Convention* (1901), 35, Article I, Section 2.

62. Perry, *Journals*, 1:13.

63. The decision that voting should be taken by dioceses and not by the mere count of clergy and laity irrespective of their dioceses was made in regard to the 1784 "Fundamental Principles" by the 1785 Convention. It was not clearly stated in the principles themselves (*ibid.*, 1:18).

64. *Ibid.*, 1:22.

65. *Ibid.*, 1:41.

66. *Ibid.*, 1:83.

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

As of the 1958 General Convention, the last paragraph of Article I, Section 4 of the Constitution, pertaining to voting in the House of Deputies, could be outlined this way:

1. All questions carry by a simple majority of delegates present unless:
 - a) The Constitution specifically requires another method as, for example, it does in the case of constitutional amendments and Prayer Book alterations.
 - b) The canons require a different method.
2. A vote by orders (really a vote by dioceses and orders) is taken in this way:
 - a) The two orders (clerical and lay) vote by dioceses. The vote of the four lay deputies is counted together, and the vote of the four clerical deputies of a diocese is counted together.
 - b) Each diocese has but one vote in each order.
 - c) Each missionary district has only one-quarter vote in each order.
 - d) It is not necessary that the two orders in each diocese concur for a question to pass, but it is essential that both orders of the House of Deputies as a whole concur in a majority of their votes by dioceses for a question to pass.
 - e) Because each diocese is allowed four deputies in each order, it is possible that one or both orders in any or all dioceses might be split equally (*i.e.*, two for and two against). This is a "divided vote," and is construed to count as a vote in the negative, since "no action of either Order shall pass in the affirmative unless it receives the majority of all votes cast."⁶⁸
 - f) Missionary districts are given one-quarter vote in each order, but no question passes unless "the sum of all the affirmative votes shall exceed the sum of other votes by at least one whole vote."⁶⁹

"The government of the Protestant Episcopal Church is so organized as not to render it necessary for its ecclesiastical assemblies to transact a great deal of business."⁷⁰ Many others have agreed with this early observation. The voting method in General Convention does not encourage the hasty

68. See the Appendix for a brief discussion on the implications of counting a divided vote in the negative, instead of either as a blank vote or as half affirmative and half negative.

69. As of 1970, on a vote by orders each missionary district (now "missionary diocese") has one full vote in each order (*Journal of the General Convention* [1970], 260).

70. "The General Convention of the Protestant Episcopal Church," *Christian Journal* 1 (1817): 175.

passage of ill-considered questions by a mere majority vote.⁷¹ Rather, legislation is possible only by the joint action of a number of concurrent majorities. General Convention has disadvantageous aspects that may cause the passage of unfortunate legislation, or prevent the adoption of needed measures. But the voting method itself presents a formidable hurdle over which all measures must jump, and should act as a considerable deterrent to unusual or new legislation.⁷²

The voting method since 1789 appears to be a compromise between theories of diocesan representation and orders representation in the House of Deputies. While the two orders vote by dioceses and as dioceses, it is significant that the two orders in each diocese do not themselves have to concur for a bill to be enacted. A divided vote does not mean a division *between* the orders of a diocese, but an equal division of the deputies within one (or both) orders in a diocese.

Nonetheless, that the provision for a vote by orders and by dioceses was included in the Constitution, that it was retained, even in the 1901 revision, and that the provision has in practice been frequently used in General Convention is sufficient to enable this conclusion to be reached. The voting procedure of General Convention, at least in one alternative in the House of Deputies, has attributes that indicate the possibility of a federal or confederal government.⁷³

On the other hand, voting normally proceeds in the House of Deputies on the basis of majority rule in the House regardless of orders or dioceses. The vote by orders procedure may be requested by the members of either order of a diocese's deputies or may be constitutionally or canonically required on special measures.⁷⁴ There is no requirement for a vote to be taken

71. See "The Value of the Vote by Orders," *Virginia Seminary Magazine* 3 (1889): 91: "One of the most ingenious checks to hasty and inconsiderate legislation that was ever devised is the system of voting by Orders that obtains in our . . . Conventions." See also Seabury, *Ecclesiastical Polity*, 230–31.

72. It has been complained that the Convention is too large, meets too infrequently, the delegates are mostly uninformed before they reach the Convention, committees and "experts" do all the work, etc. See, for example, "Is General Convention Obsolete?" *Living Church* 131 (October 2, 1955): 23–25; and John Cotton Smith, "The General Convention of 1880 and the Organization of the Church," *Church Review* 33 (1881): 65–75. On the other hand, it is contended with some force that the ancient councils did "no law-making in advance—no hunting after new statutes." Rather, "the truth was protected against none but actual assailants." See "The Divine Role of the Church's Legislation," *Church Review* 4 (1851): 404. It is there contended that this should be the "rule" for the Episcopal Church also.

73. See William J. Seabury, *Notes on the Constitution of 1901* (New York: T. Whittaker, 1902), 38–42.

74. The rule of majority vote was confirmed in 1976, but that provision was amended to provide that a vote by orders must be requested by three clerical or lay deputations rather than one (*Journal of the General Convention* [1976], C–74).

by dioceses in the House of Bishops. Consequently, while the vote by orders does appear federal or confederal, it is not a mandatory method in all instances, and the alternate voting procedures are not essentially connected with the federal, confederal, or unitary questions.

IS GENERAL CONVENTION BICAMERAL?

General Convention would appear to be bicameral. Says one church historian of the General Convention:

These representatives are divided into two houses, the one being the House of Bishops (corresponding, except in tenure of office, with the United States Senate) and the other the House of Clerical and Lay Deputies (corresponding to the House of Representatives).⁷⁵

Superficially, it is accurate to call General Convention "bicameral." There are two houses. However, the composition and apportionment of these two houses and the differences in their voting procedure is sufficiently unusual to merit special mention.

It was noted in chapter 1 that some persons considered a bicameral legislature essential to federal government, not to mention good government in any form. Marriott wrote "that whatever be the case with unitary states, the bicameral system is essential to the successful working of a genuinely federal system. . . . The second chamber embodies and enshrines the federal principle of the Constitution."⁷⁶

Whether or not this is the case—and this writer believes that, while perhaps having other merits, a bicameral legislature is not essential for federalism—a bicameral legislature in a federal system should emphasize the federal principle by allowing one house, the "lower," to include representatives of the "people," the nation, or the association as a whole. The "upper" house, or second chamber, incorporates representatives of the member governments to the federation.

The bicameralism of General Convention, as such, appears in no way to have been meant to emphasize a federal structure. The second chamber or upper house—the House of Bishops in the church—which, in federal states, is to embody the federal principle, does not serve this function at all in General Convention. Bishops have, since 1786, been members of General Convention *virtute officii*, not as representatives of the dioceses or diocesan governments. In fact, insofar as federalism or confederalism is evidenced at

75. George Hodges, *The Episcopal Church* (New York: T. Whittaker, 1892), 48.

76. John A. R. Marriott, *Second Chambers* (Oxford: Clarendon, 1910), 241.

all in the membership of General Convention, it is in the House of Deputies, the lower house, rather than in the House of Bishops. The bishops are present as an order, not as representatives of any temporal territory.⁷⁷

Moreover, within the House of Deputies, the voting-by-orders provision, which is frequently used, results in a system that is almost tri-cameral in its operation. Bills often not only pass two houses, but also within those two houses, three orders.⁷⁸

Finally, though when voting by orders the tally is taken by orders-in-dioceses rather than by the aggregate count of orders alone, the lack of a requirement that both orders in a single diocese must agree for a diocese's vote to count, coupled with the basis of apportionment in the House of Bishops, strongly suggests that General Convention, considered as both houses together, might actually be representative more of orders than of dioceses. Such a bicameral system would be unique for a federal system.

CONCLUSIONS

In a federal, or confederal, government, the power of the central government must be constitutionally limited in certain of the significant areas of governance, and protected for exercise by the member governments. If the governmental institutions of the central government are constitutionally unlimited or only self-limited, the government is unitary. The division of powers is the essence of the federal principles.

Since the General Convention is the major governing body of the American Episcopal Church, what is the extent of General Convention's powers? Are they—or have they ever been—limited by the retention of specified or residual powers within the dioceses?

In only one constitutional document has there been any specific inclination to limit the governing power of General Convention. The exception is White's *Case* in 1782. White, however, wished to limit the power of all parts of the church, favoring that the bulk of the political power should lie in the local parish. In no subsequent document has there been as express or implicit limit to the Convention's powers.

Thus, there appears to be no limit to the power of General Convention but its own self-limitations.⁷⁹ Specifically, there is no evidence in the Con-

77. See Vinton, *A Manual Commentary*, 94, and Hawks, *Constitution and Canons*, 217. See Seabury, *Ecclesiastical Polity*, 165, 248–355, to the contrary.

78. But see White and Dykman (1954), 1:80.

79. There is considerable controversy within the American Episcopal Church as to whether the so-called "Ancient Canons" and the canons of the Church of England in force before 1776 are now legally applicable and restraining upon the power of General Convention and the American Episcopal Church. This controversy is described and evaluated in the Appendix.

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.