

The Episcopal Civil War

Douglas A. Kerr

Issue 5
September 2, 2011

ABSTRACT

The Episcopal Church, the U. S. arm of the worldwide Anglican Communion, is embroiled in a controversy—a “civil war”—so virulent as to hold the potential of schism of the denomination, or even of the worldwide Anglican Communion of which it is a member. This article summarizes the principal presenting issues in this controversy, describes significant events along the way, and characterizes the present state of the matter.

Appendixes summarize, and report on the current state of, ensuing litigation with respect to The Episcopal Diocese of Forth Worth (Texas) and The Episcopal Diocese of Northern Virginia.

INTRODUCTION

The Episcopal Church, the U. S. member of the worldwide Anglican Communion, finds itself in a controversy of such scale and intensity that it affords the prospect of an actual schism in the denomination. I often speak of it, half-jocularly, as “The Episcopal Civil War”. In this article, I attempt to summarize and synopsise the issues and ensuing events.

The issues and actions are so complex, and in many cases are discussed in such arcane theological terms, that I have taken the liberty of simplifying many of the issues and actions, and in some cases have forgone precise ecclesiological terminology for language that is hopefully more meaningful to the average reader.

THE EPISCOPAL CHURCH

Introduction

The Episcopal Church is a Christian religious denomination, principally operating across the United States of America (although it has dioceses elsewhere in the world).

It was essentially “spun out of” The Church of England shortly after the American Revolution.

Protestant?

The Episcopal Church is often considered a *Protestant* denomination (as distinguished from the *Roman Catholic* denomination), but because

of various theological subtleties, it is sometimes described instead as occupying a “middle way” (*via media*) between the Protestant and Roman Catholic hemispheres. As a consequence, its outlook is often described as “Anglo-Catholic” (although that term is held by some to delineate only a certain, “conservative”, outlook within The Episcopal Church).

The name

The term *episcopal* means “of, by, or pertaining to a bishop”, and refers to the structure of spiritual and administrative governance of the denomination, which centers on the role of bishops.

The proper adjective *Episcopal* means “pertaining to the Episcopal Church”. An *Episcopalian* is an adherent of the Episcopal faith, and the word can be also used as an adjective for matters pertaining to those adherents. Thus we have *Episcopal* churches, teaching the *Episcopal* faith, attended by *Episcopalians*, who may have an *Episcopalian* outlook on certain things.

The whole matter of the “official” name of The Episcopal Church is complex. As a “corporate” entity (on contracts and the like), it has a rather tortured name, “The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America”.

Its “church” name has changed over the years, being originally “The Protestant Episcopal Church in the United States of America”. At the present time, its official “church” name is “The Episcopal Church in the United States of America”, the acronym for which, ECUSA, was, until fairly recently, often used to quickly refer to the denomination. However, the denomination recently decided to style itself as (sort of its “doing business as” name) “The Episcopal Church” (TEC). I will use that name (and initialism) consistently here. Often, at first mention in press releases, the church today speaks of itself as “The U.S.-based Episcopal Church.”

Structure

The basic operational unit of the Episcopal Church is the *diocese*. A diocese normally has a geographic realm, perhaps an entire state, or perhaps a fraction of a state (often an area surrounding a major city). The overall structure of governance of The Episcopal Church is very much a “federal” scheme, with a great deal of autonomy on the part of the individual constituent dioceses.

The spiritual and administrative head of an Episcopal Diocese is its bishop (as suggested by the name of the denomination). The bishop has a high degree of autonomy in the operation of the diocese, subject to the advice (and in some cases consent) of a Standing Committee—

sort of a board of governors of the diocese. Significant policy matters are decided by the diocese through a *diocesan convention*, normally held annually. Delegates to the convention include both clergy and lay members, elected by their individual churches. The convention is, in effect, a unicameral legislature for the diocese.

Each diocese has a Constitution and a set of Canons, the latter of which (at the diocesan level) essentially play the role that is played in the U.S. federal government by both the United States Code (laws) and the Code of Federal Regulations (rules).

The chief pastor of The Episcopal Church (as a “national” church) is the Presiding Bishop, who is also the chief executive officer of the national church headquarters structure. The Episcopal Church also has a Constitution and a set of Canons. Major policies are decided by a bicameral legislature, the General Convention, which meets in regular session every three years.

The Presiding Bishop is not the “boss” of the bishops who govern the various dioceses. But the constitution of each Diocese, as it is formed, must declare that the diocese agrees to be bound by the Constitution and Canons of The Episcopal Church.

Flavors

There is an immense diversity of details of liturgy, church “decoration”, the vestments worn by the clergy, and such across The Episcopal Church. Often, a rather arbitrary distinction is made between two *genres*, popularly called “high church” and “low church”. To simplify the matter, a *high church* looks, smells, sounds, and feels a lot like a Roman Catholic church. A *low church* looks, smells, sounds, and feels a lot like, perhaps, a typical Methodist church.

Often the “high church” outlook is described as the “Anglo-Catholic” outlook (although in other cases that term is applied to the entire Episcopal faith, and other times to only the “conservative” outlook within the church). Sometimes, in contrast, the “low church” outlook is described as “evangelical” (a term that has become almost meaningless in its inconsistent application across the entire field of religious institutions, and is equally meaningless here).

Individual churches

A self-supporting individual Episcopal church is formally called a *parish*¹. It is headed, on both spiritual and administrative fronts, by a

¹ Unlike in Roman Catholic usage, in The Episcopal Church a *parish* does not have a defined geographic area that it serves.

priest usually called the *rector*. It is governed by a body known as the *vestry*, sort of a board of trustees, elected from the membership, of which the rector is, *ex officio*, the “president”.

An exception is in the case of a church that is not self-sufficient (usually meaning from a fiscal standpoint), often a young church. Such a church may be operated (and heavily subsidized) by the diocese itself (rather like a “company store” in a fast food chain), and is formally called a *mission*. The rector of any mission is, by definition, the bishop of the diocese. The “on site” spiritual and administrative head of a mission is a priest sometimes called a *vicar* (or perhaps *priest-in-charge*). In this case, what in a parish would be the Vestry is formally called the Bishop’s Committee.

THE ANGLICAN COMMUNION

The Anglican Communion is an association (rather like a “caucus”) of 44 “national” or “regional” churches, with the common characteristic that they are all descended, in one way or another, from The Church of England. The term *Anglican* means “of or pertaining to England”.

From an administrative standpoint, 39 of the national/regional churches are each considered to be a *province* of the Anglican Communion. The Episcopal Church is the province of the Anglican Communion in The United States.

With a few exceptions, the names of the Anglican provinces do not have the word “province” in them. Rather, they are the names of the “national” churches (*e.g.*, “The Episcopal Church”, “The Anglican Church of Canada”, “*L’Eglise Episcopale au Rwanda*”, “The Church of Nigeria”) which constitute the provinces. When we speak of “the [Anglican] province of Nigeria”, that term is descriptive, not nominative, and is used to emphasize the role of that church within the Anglican Communion.

The Anglican Communion has no overall Constitution nor Canons. It has no “legislative” or “executive” authority over any of the national churches that are its members.

The head of the Anglican Communion is, *ex officio*, the Archbishop of Canterbury, the principal chief pastor of the Church of England. His role in The Anglican Communion is described as “first among equals” (*primus inter pares*), where the “equals” being referred to are the heads of the various national churches.

With respect to The Anglican Communion, those heads are all said to be the *primates* of their national churches, even though their title in their own national church may actually be, for example, Archbishop, Presiding Bishop, Moderator, and so forth.

The current Archbishop of Canterbury is The Most Rev'd and Rt. Hon. Rowan Douglas Williams, D.D. He was previously (Anglican) Archbishop of Wales (The Church in Wales is separate from the Church of England.)

"Membership" in the Anglican Communion is defined as these national churches being "in communion with the Archbishop of Canterbury". Sometimes it is described as being "in communion with the See of Canterbury" (a "see" is the religious realm over which an Archbishop presides).

Exactly how this state of communion is declared to be achieved is unclear, a matter that introduces some uncertainty in matters now underway. (This will be discussed at some length later in this article.)

THE CONTROVERSY

Overview

A strident controversy now embroils the Episcopal Church and, in parallel, the Anglican Communion.

In summary, the controversy relates to the position, by a certain camp, that, over time, the Episcopal "national church" has inappropriately adopted policies, practices, and outlooks that depart unacceptably from the tenets of what that camp considers "the traditional faith", thus supposedly weakening the value of the Episcopal faith to its adherents.

This camp feels that the national church (through actions and policies of its leadership and structure of governance) has pliantly accommodated the changing mores of society, whereas in their opinion the Episcopal Faith should be an unchanging guide to spiritual, moral, and ethical life.

Often, this camp further focuses the problem as that the leadership of The Episcopal Church has made changes in policy, practice, or outlook that are at odds with the prescriptions of The Holy Bible, which they see as having a fixed single and manifest interpretation and as being an absolute document defining the Episcopal Faith.

Labels

Of course, there are not two clearly divided and defined "parties" to the overall controversy. Interested individuals have a wide range of outlooks on the various issues.

Nevertheless, as in civic politics, it is convenient (if hardly precise) to speak as if there were two well-defined opposing camps, and we will generally follow this conceit in our discussion here.

The camp that strongly complains about the course of The Episcopal Church typically characterizes the church (or its policies), its leadership, and those that support its stance as “liberal”, often characterizes itself as “conservative”, or sometimes as “orthodox”.

Those labels are frequently used in reporting about the controversy. But the labels are themselves judgmental, and relate to often ambiguous and self-contradictory concepts.

In an effort to identify the camps on the basis of actual observable properties, I will here identify the camp that complains about the behavior of The Episcopal Church as “the complainants”, and (in the spirit of Boolean logic) the camp that does not generally share their positions as “the non-complainants²”. This usage is not intended to mock either camp—merely to provide a semantically-based, although still arbitrary, set of labels.

The complainants often describe The Episcopal Church, pejoratively, as “innovative”³ or “revisionist”. They sometimes describe their own ideals of church policy, practice, or outlook as “orthodox”. They often claim to be the guardians of “the true faith, as delivered to the saints”.⁴

Disclosure

Although I make every effort to be objective in my presentation here, I don’t claim to be “neutral”. I am, in many cases, not sympathetic to the positions or actions of the complainants, and that may be reflected in my tone. I’ll present some overtly personal opinions near the end of the article.

THE HOT BUTTONS

Introduction

As in any situation of this type, the concerns of any given member of the conservative camp typically result from the impact of many events and issues. And in fact, controversies over policy changes in the Episcopal Church are hardly new.

² Of course, the non-complainants on occasion complain about the actions of the complainants. (We even have that in law suits, so this is not paradoxical.)

³ It may be difficult to get used to the notion that “innovative” can be an insult.

⁴ Note however that in Episcopal doctrine “saints” comprises all baptized Christians (not just persons given special stature or recognition by the church), so the delivery must be ongoing.

The prayer book

In 1979 the General Convention of The Episcopal Church adopted a new edition of The Book of Common Prayer, the “shooting script and user’s guide” of the Episcopal liturgy, to succeed a version adopted in 1928. The complainants of the time felt that this change seriously disrupted their faith (although most of the liturgical content and outlook of the 1928 book is essentially retained as one of the two alternative “rites” in the 1979 book). Some Episcopal congregations left The Episcopal Church over this, while others just ignored the decision and continued to conduct all their services in accord with the 1928 Prayer Book (some emphasize that in their newspaper ads).

Some other controversies (many of much longer standing) revolve around even more arcane theological issues, which thankfully are beyond the scope of this article.⁵

The ordination of women

For many years, the Episcopal Church, like its parent, The Church of England (and like its parent, The Roman Catholic Church) did not permit women to be ordained to the clergy in any of its three “orders” (deacons, priests, and bishops). For some while, The Episcopal Church had allowed woman to serve as deacons (but not of the subtype recognized as on the way to priesthood). After a long and agonizing period of debate (always characterized as “prayerful debate”), The Episcopal Church, by decision of its General Convention, decreed in 1976 that henceforth, qualified persons of either gender may be ordained as priests or consecrated as bishops.

This was considered an outrage by the complainants of that era. A number of bishops who did not agree with the new policy did not subsequently follow it in good faith. Two dioceses in fact announced openly that they did not consider the policy valid, and officially would not accept nor follow it. (They have all held to that “to the end” — we’ll hear subsequently what that means.) A third diocese, created in 1983, also joined this camp.

Amazingly, this matter is still an issue of the current controversy (for some complainants).

The election of V. Gene Robinson as Bishop of New Hampshire

In 2003, the Episcopal Diocese of New Hampshire, proceeding under its Constitutions and Canons and those of The Episcopal Church,

⁵ But, just to give the flavor, here’s one: “Should the priest at the altar, serving mass, face toward the congregation or toward the far wall?”.

elected V. Gene Robinson, a well-respected priest, as the new Episcopal Bishop of New Hampshire.

Robinson was at the time (and still is, at this writing) openly living in a homosexual partnership. His election stirred outrage among the complainants.

The canons of The Episcopal Church require that the election of a bishop must be ratified by the church at large. At that time, the canons required that if a session of the General Convention is scheduled within 120 days, the matter was to be treated there. Otherwise, both the diocesan bishops and Standing Committees of all the dioceses are polled for what are essentially letter votes. (Today, this latter is the procedure followed in all cases.)

In this case, the former procedure applied, and the matter was brought before the 2006 session of the General Convention. It voted ratification of Bishop Robinson's election. He was subsequently duly consecrated (wearing a bulletproof vest, in reaction to death threats).

The vote for ratification precipitated enlarged outrage by the complainants, who now considered the entire leadership of The Episcopal Church to be complicit in what they saw as an unacceptable deviation from the doctrine of the traditional faith (in conflict, they felt, with the proscriptions of The Bible). The issues were not just that Robinson's homosexual "lifestyle" was, *per se*, repugnant to Biblical teaching, but also that he was presumably engaging in sexual contact outside of marriage, which would be sinful regardless of the genders involved.

In fact, to this day, a "black list" of bishops who voted in favor of ratification at Convention is maintained and often cited by the complainants.

Blessings on same-gender unions

In some cases, Episcopal priests have offered blessings on same-gender unions (which, conceptually, could include marriage or civil union, where eventually provided for by state law, or unions characterized by open proclamation of commitment). There was considerable ambivalence across The Episcopal Church as to the appropriateness of this. Some felt it was an appropriate forward movement of the church's expressed dedication of mission to all mankind. Others felt it was highly inappropriate, as it lent legitimacy to activity they felt was deemed sinful *per se* by the Holy Bible.

There was not any formal "authorization" to provide such blessings given by the central authority of The Episcopal Church, and there were not any standard "scripts" for such established. But neither did the

national church authorities “prohibit” clergy from, at their discretion, performing such blessings. That position was strongly denounced by the complainants.

At the 2006 session of the General Convention, there was in fact earnest discussion of the possibility of adding, to the standardized rites of the Episcopal liturgy, various formulas for blessing same-sex unions (especially when such unions were not considered, under civil law, “marriages”). But the body concluded that it was probably not prudent to actually do so at that time, given the rising pitch of controversy over the matter.

However, at the 2009 General convention, a commission was chartered with the responsibility of developing liturgical tools for the blessing of same-sex partnerships and for the conduct of same sex marriages (where such were permitted by state law).

The Election of Katharine Jefferts Schori as Presiding Bishop.

The Presiding Bishop of The Episcopal Church is elected by the General Convention for a nine-year term. In its 2006 session, the General Convention elected, as the new Presiding Bishop, Katharine Jefferts Shori, at the time Episcopal Bishop of Nevada.⁶

This prompted outrage by many of the complainants. After all, there were bishops who did not believe that women should be permitted to be priests, much less bishops or Presiding Bishop. Some bishops (especially those in the three dioceses that had openly never accepted the 1976 decision admitting women to the clergy) declared that she was not really a bishop at all, that her election as Presiding Bishop was invalid, and that they would, in any case, not in any way be “governed” by her.

Additionally, to her further discredit in the eyes the complainants, Bishop Jefferts Schori had voted in favor of ratification of the election of V. Gene Robinson as Bishop of New Hampshire.

Perhaps even worse yet, it was known that same-gender blessings were performed in The Diocese of Nevada under her jurisdiction there.

The Presiding Bishop’s Theological Outlook

In an interview shortly after taking office, the new Presiding Bishop was asked if she believed that the Christian faith was the only route

⁶ Jefferts Schori had been, before her entry, relatively late in life, into the Episcopal priesthood, a respected marine biologist.

to “spiritual salvation”; whether, in effect, adherents of non-Christian faiths were just out-of-luck, salvation-wise.

She replied that “we would be putting God in a rather small box” were we to believe that.

The complainants were outraged, saying that she had discarded what they saw as an immutable and universal tenet of the Christian, and thus Episcopal, faith: that only through embrace of the meaning of the life and death of Jesus Christ could any mortal “find God”.

IN CANADA

A rather parallel overall situation exists within the Anglican Church of Canada (which constitutes the Anglican province in Canada). There, the principal presenting issue is the matter of performing blessings on same-gender unions, which at least one diocese of that church has done. I will not further discuss the details of the Canadian situation.

IMPACT IN THE ANGLICAN COMMUNION

The controversy in The Episcopal Church in fact exists, in parallel form, within the Anglican Communion.

Overview

The constituent “national churches” (provinces) of the Anglican Communion have full autonomy under its umbrella. There is a wide range of the details of their interpretation of, and practice of, the Anglican Faith, often as a result of local historical and cultural realities.

A number of the provinces do not admit women to any order of the clergy. The fact that The Episcopal Church, like several other provinces, admits women to the all orders of the clergy is considered “a bit out of whack” by many other province leaders, but no serious problems have generally arisen over it.

But the election and consecration of Gene Robinson as Bishop of New Hampshire was another matter altogether, and outrage was expressed over it by the leaders of many Anglican provinces.

A pragmatic objection of many Anglican leaders (especially those of provinces in parts of Africa) to Robinson’s installation, *per se*, has in part to do with many of their churches’ uneasy coexistence with the Islamic faith, whose adherents in many areas far outnumber Christians.

Some camps of Islam are said to have a very low tolerance for homosexuality in any form. Any enlarged “acceptance” of anything homosexual by any branch of the Anglican Communion might be

treated by such Muslims as evidence that the entire Anglican church was an agent of the Devil, which could actually lead to eruptions of sectarian violence, possibly even to the murder of Anglican clergy.

A recurrent theme was that, although of course formally, The Episcopal Church had every "legal" right to do as it saw fit in this matter, it nevertheless had been irresponsible in not considering the impact Robinson's election and consecration would almost inevitably have on the relationships between The Episcopal Church and (some of) its fellow members of the Anglican Communion. Perhaps, it was suggested, as a matter of brotherly courtesy, it should at a minimum have first discussed the matter of the proposed ratification of Robinson's election in one of the councils of the Anglican Communion.

There were cries for The Episcopal Church to expiate itself for this breach of "the bonds of affection" that are said to link the members of the Anglican Communion, perhaps by deposing Bishop Robinson (that is, by revoking his "commission" as a priest and thus as a bishop); by apologizing for having consecrated him as a bishop, or perhaps even for ordaining him as a priest; and by adopting a clear strict policy not to ever again ordain to the priesthood, and certainly not consecrate as a bishop, anybody who—well, you know.

There were also cries for the Anglican Communion to somehow actually discipline The Episcopal Church for its un-brotherly (perhaps even sinful) behavior. But of course, for one thing, there are no provisions within the guiding principles of the Anglican Communion to do so. (Recall that it has neither an overall Constitution nor Canons.) There were even cries for The Episcopal Church to be expelled from membership in The Anglican Communion. But of course, in any case, there wasn't any mechanism for doing such, either.

Impairment of communion

As the concern of various portions of the Anglican Communion over the situation in the Episcopal church unfolded (and as The Episcopal Church showed that it seemingly did not plan to make any substantial change in course), some Anglican provinces ("national" churches) declared that they were in a state of "impaired communion" with The Episcopal Church. Some said that they were no longer "in communion" with the Episcopal Church at all.

Some, more surgically, said that they were "no longer in communion" with those specific dioceses of The Episcopal Church whose bishops had voted in favor of ratification of the election of Gene Robinson as Bishop of New Hampshire.

Of course none of this had any substantive effect. But it did serve as an explicit way for these provinces to express the focus, and degree, of their concerns.

The Lambeth Commission

In 2003, The Archbishop of Canterbury, the leader of the Anglican Communion, chartered a learned commission (*The Lambeth Commission on Communion*, named after the palace in London that is the headquarters of The Archbishop of Canterbury) to look into the situation of "impaired communion", essentially charged with giving guidance as to how the solidarity of the Anglican Communion could be maintained in the face of controversies such as the current one centering on the election of Bishop Robinson.

Their output, in October, 2004, was a document called *The Windsor Report*. One of its recommendations was that, in order to defuse the tensions within the Anglican Communion, the Episcopal Church should "effect moratorium on the election and consent to the consecration of any candidate to the episcopate who is living in a same-gender union until some new consensus in the Anglican Communion emerges".

This of course was not in any way binding on The Episcopal Church, which is not in any way "governed" by the Anglican Communion or by any of its deliberative bodies.

The Episcopal Church did not establish such a policy at that time.

In the Episcopal Church, many complainants made sympathy with the "dictates" of the Windsor Report a litmus test of loyalty to their cause. Bishops who supported the fulfillment of those dictates came to be spoken of as "Windsor Bishops". One complainant organization still maintains a frequently-updated report of the "Windsor compliance" of various dioceses of The Episcopal Church.

The response of The Episcopal Church

The Episcopal Church, not too long after the issuance of the Windsor Report, expressed regret for the fact that its actions had offended its brother churches in the Anglican Communion.

It more recently adopted, on an "interim" basis, moratoriums on the consecration of bishops "whose lifestyle presented a problem to the wider church" and on the performance of blessing on same-gender unions (both further described later herein). But these have subsequently, in effect, been dissolved.

“Demands” of the Primates of the Anglican Communion

The General Convention of The Episcopal Church, in its 2006 session (essentially in response to the recommendations of the Windsor Report), resolved thus:

“[Resolved] that this Convention therefore call upon Standing Committees [these are the “boards of trustees” of Episcopal dioceses] and bishops with jurisdiction [that is, those who govern dioceses] to exercise restraint by not consenting to the consecration of any candidate to the episcopate [that is, the body of bishops] whose manner of life presents a challenge to the wider church and will lead to further strains on communion.”

Some of the Anglican primates (most stridently, Archbishop Peter Akinola, then Primate of The Church of Nigeria) felt that this did not in fact constitute the establishment of a “real” moratorium, owing the language “to exercise restraint”. The Episcopal Church later pointed out that the language did establish an absolute moratorium, and the phrase “to exercise restraint” was to explain the nature of the moratorium, not to establish it as optional.⁷

In February, 2007, the Meeting of the Primates of the Anglican Communion (one of the deliberative bodies of the Communion) issued a communiqué that called upon The House of Bishops of The Episcopal Church to:

- Confirm that the resolution mentioned above in fact established an “absolute” (not optional) moratorium on consent to the election as bishop of anyone who is living in a same-gender relationship .
- “Make an unequivocal common covenant” not to grant approval of the giving of blessings to same-gender unions.

The Episcopal Church pointed out that The House of Bishops is but one of two houses of the General Convention of The Episcopal Church, and significant policy matters can only be decided by the General Convention (we might say, “in congress assembled”), of which the next session is scheduled for 2009. Thus, it could not, even if it wanted to, accede on behalf of The Episcopal Church to those demands.

Attention was also pointed to the resolution, taken by the General Convention in 2006, mentioned above, regarding consent to the election of “problematical” bishops.

⁷ The phrase “by not consenting” is the key. Were the moratorium meant to be optional, the wording might have been, “to exercise restraint in consenting”.

Nevertheless, In September, 2007, the House of Bishops (which periodically meets on its own to discuss topical matters), in response to the communiqué of the Primates, reaffirmed that resolution and confirmed its intended meaning. It also pledged not to authorize public rites for same-gender blessings “until a broader consensus emerges in the Communion, or until General Convention takes further action” (again, a commitment earlier undertaken with respect to that matter).

The Lambeth Conference

The Lambeth Conference is a gathering, normally held every ten years, of essentially all the bishops within the Anglican Communion. Its purpose is for these church leaders to reflect on “the state of the union” and help to provide insights to guide the overall evolution of The Anglican Communion. Invitation to the conference is at the discretion of The Archbishop of Canterbury.

It is not nominally a legislative body, but in prior sessions it had taken some resolutions that are considered to establish important policy benchmarks within the Anglican Communion.

A Lambeth Conference was held, on the normal schedule, in July and August of 2008. The Archbishop of Canterbury pointedly did not invite V. Gene Robinson, Bishop of New Hampshire.

There had in fact been calls, from conservative Anglican leaders, to not invite any Episcopal bishop who had voted in favor of the ratification of the election of Bishop Robinson, including the Presiding Bishop of The Episcopal Church, Katharine Jefferts Schori. And there had been threats to boycott the Conference on the part of some conservative leaders if Bishop Robinson was invited. Some in fact did not attend, and some attended instead another conference held just prior to Lambeth by a group of “highly conservative” primates.

Many complainants hoped that the Conference, in a “legislative” mood, would take some action that would deal with “the troubles”—perhaps even a vote to expel the Episcopal Church from the Communion (although of course there is no provision for such a thing).

The Archbishop of Canterbury, and a commission he had chartered to plan the Conference, set up a structure that was unavoidably reflective, rather than legislative, and included no provision for the taking of resolutions at all.

Many of the attendees, including both those of a strident “complainant” leaning and those not so inclined, reported that the thoughtful sessions gave them better insight into the thinking of their colleagues. Others expressed disappointment that the body took no concrete steps to actually dispose of or mitigate the controversy.

An Anglican Covenant

This controversy has fueled a movement, put forth in the Windsor Report, to establish for the Anglican Communion a "Covenant", a document that could guide the relationships among the members of the communion. Initial views were that it might contain:

- A definition of what The Anglican Communion is, and of its purposes and objectives.
- A definition (probably by the invocation of existing documents) of the minimum defining tenets of the Anglican Faith, which all members of the Communion that subscribe to the Covenant commit to embrace.
- The establishment of some actual structure of "governance" of the Communion, with certain powers given to various established deliberative bodies.
- The establishment of provisions for disciplining any member church that breaches its obligations under the Covenant (perhaps including the imposition of what might be effectively called "probationary" status within the Communion).
- The establishment for provisions for, in the extreme, expelling a member national church from the Communion.

Outlooks on this notion varied. Two extremes (not opposite, actually) were:

- "A good idea. Any real organization should have a constitution and `bylaws', and an established structure of governance, with procedures for important transactions."
- "Be careful. The timing of this shows it as a transparent attempt to put into place a way to punish The Episcopal Church for its supposed breach of fellowship with its fellow members (or worse). This could lead to a document that is seriously unbalanced in its emphasis."

In any event, a learned commission was chartered to produce a draft of such a Covenant for adoption thorough the deliberative bodies of The Anglican Communion. Then, it was to be presented to all the constituent national churches (provinces) for the following (which might be done by the same action or not):

- Ratify the Covenant for adoption by the Anglican Communion.
- "Sign up to it" on behalf of the individual national church, in effect agreeing to be "bound" by it.

Three drafts were released for study and comment by the various Provinces, with the hope that the provinces would take the first formal action on it in 2009.

Of the draft issued in April of 2009, it was said that it is essentially in "complete" condition except for Section 4. That is in effect the section that, among other things, describes what happens if a province, having subscribed to the Covenant, moves toward, or actually takes, actions that some may consider a breach of its commitments under the Covenant. This section, when completed and refined, is expected to include provision for the "discipline" of such an errant province should the provisions for persuading it to "straighten up and fly right" be ineffectual.

One form of such discipline that has been widely discussed is that such a province, if "convicted" (in not yet being clear in what forum) would be put in some sort of "tier 2" standing in the Anglican Communion (made, as it were, to wear a scarlet letter). Of course, many complainants hold out for the establishment of some arrangement in which such a province could actually be ejected from the Anglican Communion.

At the regular triennial session of the General Convention of The Episcopal Church held in June, 2009, essentially based on the fact that there was not yet a "complete" draft, nearly ready to be presented for actual approval (in particular, owing to the state of Section 4), it was concluded that no real action could be taken on the matter.

A matter that has been widely discussed is the possibility that individual dioceses of a member church (province) of the Anglican Communion could "sign up to" the Covenant even if the national church of which it was a component had not (yet) done so. It is not clear whether the instrument would be susceptible of such adoption.

At the 2009 session of its Convention, The Episcopal Diocese of Dallas held a substantial session discussing the proposed Anglican Covenant. A number of addresses seemed directed at establishing the rationale, and in fact "legal" basis, for the diocese itself, independent of The Episcopal Church, subscribing on its own to the Covenant.

In December, 2009 the Anglican Communion office released what was characterized as the final proposed text of the Anglican Covenant for consideration by the member provinces.

The Episcopal Diocese of Dallas, in a special session of its Convention in March 2010, "endorsed" the Anglican Covenant in that form. Again, this is a very questionable proposition, about which the Archbishop of Canterbury has been somewhat ambiguous.

A pivotal clue that such a thing is not contemplated by the framers of the Covenant is this passage from early in the current draft of the proposed Anglican Covenant:

We, as Churches of the Anglican Communion, under the Lordship of Jesus Christ, solemnly covenant together in these following affirmations and commitments.

The document then continues, repeatedly introducing its various clauses with the phrase, "This Church [commits, etc.]. . .".

The Episcopal Diocese of Dallas is hardly a "church of the Anglican Communion"; it is not in fact "a church" in any reasonable sense of the term.

The Diocese of Sydney (Australia), a Diocese of the Anglican Church of Australia, highly sympathetic to "complainant" positions, has announced that it will subscribe to the Covenant on its own behalf.

SHIFTING POLITICS IN THE ANGLICAN COMMUNION

The unfolding of the Episcopal Church controversy within the Anglican Communion has brought to the surface a movement within parts of the Communion to move it away from its "Church of England centered" nature (somewhat paralleling the devolution of the British Empire itself). One aspect of this movement is often described as the ascendancy of the "Global South", a term that seems to include the Anglican provinces in Africa, Asia, and South America.

Some within this movement have suggested that the central leadership of the Anglican Communion (personified by the Archbishop of Canterbury) has an unacceptable "liberal drift", and that the guardians of the true faith might need to create an "alternative" world-wide Anglican establishment in which that faith could persist without threat of damage through "innovation".

ALTERNATE OVERSIGHT

At the individual church level

A concept often presented by the complaining camp is that the rectors of individual Episcopal churches (parishes) which have a "conservative" leaning, but which are part of a diocese headed by a "liberal" bishop, may be "oppressed" by the bishop.

There does not seem to be much evidence of such "oppression". Perhaps the closest thing may be that a bishop might say to the rector of an individual church, "Father Davis, I am assigning to your church Mary Smith, recently ordained as a deacon, to assist in your ministry." Father Davis does not believe that women should be ordained into the

clergy at any level, and finds this proposition (not presented to him as an option) oppressive.

In any case, drawing upon a historical precedent in the Church of England (related to earlier disputes over the acceptance by that body of women as priests), the Archbishop of Canterbury strongly encouraged the establishment of a system in The Episcopal Church in which a rector "in serious theological dispute" with his bishop could be placed under the "pastoral oversight" of another bishop, presumably one of similar theopolitical leanings to the rector.⁸

In fact, The Episcopal Church did put into effect such a scheme, described as the "Episcopal Visitor" system. The structure provides that the "alternate bishop" can only take that role in a parish with the concurrence of the (real) bishop of the diocese, and the alternate bishop has no actual administrative authority over the affairs of any part of the diocese. (In fact, nothing to the contrary would have been permissible under the Constitution of The Episcopal Church and probably under the Constitution of the diocese itself.)

The complainants feel that, in this form, the system is essentially useless, and makes a mockery of the intent of the Archbishop of Canterbury's recommendation.

I do not know if there are yet any situations in which alternate oversight has been put into place under this system.

The Archbishop of Canterbury has established a special body within the Anglican Communion, the "Panel of Reference", to which "oppressed" rectors could appeal if "alternate oversight" could not be put into effect within the workings of the diocese or the national Episcopal Church. This body has no jurisdiction over Episcopal Church matters, and so it is not clear exactly what it could do. It has issued some "sympathetic" opinions on cases presented to it for consideration.

Escalation

Taking this concept to the next organizational level, several of the "most conservative" bishops in The Episcopal Church have applied to the Panel of Reference to be placed under the leadership of an "alternate primate" (rather than the Presiding Bishop of The Episcopal Church), based on the concept that they are oppressed by the

⁸ Although in concept this could work for "disputes" of either polarity, in fact the proposition is always raised in terms of a "conservative" rector oppressed under a "liberal" bishop.

Presiding Bishop, with whom they say they have serious, irresolvable theological differences.

It is not clear exactly how that could work, or even what it would do. The Presiding Bishop is not, for example, the “boss” of any bishop. And the Panel of Reference has no power to make arrangements regarding the internal working of The Episcopal Church.

No such arrangements have been put into place.

REAL ESTATE

It is rightly said that “brick and mortar do not a church make.” But some adequate physical facility is usually needed for a church to conduct its mission, and a church building, no matter how modest, is a source of pride and identity to the congregation. The church building is, to the rest of the world, the physical manifestation of the church.

Very commonly, an individual Episcopal parish holds the title to its land and buildings in its own name, perhaps as an “unincorporated association”.

One might think that when such an individual parish congregation, by action of its own governing body (its “vestry”), chose to detach from The Episcopal Church, perhaps instead affiliating with some other religious body, it would have the right to continue to own, occupy, and use that property.

However, under the Canons of The Episcopal Church, to which each Episcopal Diocese has acceded via its own Constitution (a precondition for the diocese’s formation within The Episcopal Church), all such property, regardless of how it is titled, is declared to be “held in trust” for the Episcopal diocese, and through it for the national Episcopal church, a long-standing doctrine that was codified in the Canons of The Episcopal Church in 1979.

So, in the event of the defection of the congregation of an individual parish (assuming that is not with the blessing of the bishop of the diocese—sometimes it is), the position of the diocese is typically, “Sorry to see you folks go—Godspeed, and don’t forget to turn out the lights and leave the keys to our building under the doormat”. But they usually don’t go.

Thus, sadly, the issue of control of the real estate will often end up in the civil courts. Now, several complications arise.

One is that, generally, there is no legally-recognizable filed document that actually establishes the “in trust” status of the property—the kind of document that you or I would have to have drawn, executed, and

filed with the county recorder if we were to, for example, put our home into trust for our heirs as part of an estate conservation strategy.

On a broader front, the provisions of state law, and the inclination of state courts, vary on this issue, with the extremes being:

- Such matters are internal to the religious organization, and the civil courts are not inclined to intervene.
- Such matters are governed by civil law just like any other property ownership matter, and if there is some instrument, filed with the county, that establishes a “trust arrangement” for a particular property, the court would like to see it; church internal rules and policies don’t of themselves create an enforceable arrangement.

The complaining camp often characterizes efforts by a diocese, or The Episcopal Church, to solidify control of individual church real estate through legal action, pursuant to the “trust” doctrine, as being “unchristian” — “Christians do not sue one another over such things”. The diocese will often reply that it has an obligation to preserve use to the property by those church members who have not chosen to leave the Episcopal Church, of which the property is a facility.

Further complications exist in the case of a few dioceses that have arranged for title to the land and buildings of most of the constituent parishes to be actually held in the name of the diocese, or in the name of the bishop. (Several states in fact recognize a special kind of corporation—consisting only of a Bishop, with no need for a Board of Directors or such⁹—to this end.)

In still other cases, the titles are held by a conventional corporation established by the diocese for that purpose. Typically, such arrangements are not really “allowed” by the Constitution and Canons of The Episcopal Church, but those dioceses have put them into place anyway.

A few of the contemporary legal disputes over church property have been finally resolved. In those, there have been a variety of outcomes. Others are still underway.¹⁰

⁹ Known as a *corporation sole*, a wonderful pun.

¹⁰ Appendixes A describes in some detail the litigation in The Episcopal Diocese of Fort Worth (Texas), along with its current status. Appendix B describes in some detail the litigation in The Episcopal Diocese of Northern Virginia, along with its current status.

Overall, in a substantial number of cases, the trial court (and in some cases appeal courts at various levels) has held in favor of The Episcopal Church (and its Dioceses), generally ordering that the physical property be returned to the control and use of the pertinent dioceses of The Episcopal Church.

In the case of The Episcopal Diocese of Fort Worth, there is the additional issue, beyond that of real property, of the use of the name "The Episcopal Diocese of Fort Worth" and the use of the long-used seal of the diocese, by the religious organization (not a part of The Episcopal Church) formed by the defecting bishop. Matters of trademark law are involved.

SAFE HARBOR

The "highly conservative" primates of several national Anglican churches (notably in various nations of Africa, plus the one serving the "Southern Cone of America", essentially the southernmost part of South America, including Argentina), have announced that their provinces offer a "safe point of attachment"¹¹ to the Anglican Communion for any element of The Episcopal Church which, dissatisfied with the direction of The Episcopal Church, wished to sever ties with it but still remain part of the Anglican Communion.

Several of these churches (provinces) have even established outposts in the United States and in Canada for that purpose (usually styled as "missionary establishments"). Some dissident Episcopal bishops have left the Episcopal church and been consecrated as bishops of those national churches.

The Archbishop of Canterbury has decried such "cross-border incursions" as out of line with the accepted principles of the Anglican Communion.

DEFECTION

At the individual church level

Over history, there have been many cases in which the clergy and membership of an individual Episcopal parish, at odds with the policies or practices of The Episcopal Church, or of the bishop of the diocese, have decided to sever their relationship with The Episcopal Church. Many of these groups have subsequently renamed themselves as Anglican churches, although they have no structural attachment to any recognized province of the Anglican Communion. A large wave of

¹¹ "Safe" is apparently meant to refer to the concept of oppression, or persecution, of elements of the complainant camp by The Episcopal Church.

this took place in the wake of the decision of The Episcopal Church, in 1976, to admit women as well as men to any of the three orders of the clergy. Another wave took place upon the adoption of the new Book of Common Prayer by The Episcopal Church in 1979.

The current controversy has also sparked the defection of the clergy and membership of individual Episcopal parishes, many of which have then affiliated with another “national/regional” church in the Anglican Communion (one that constitutes another province).

In some cases, this has been with the “blessing” of the bishop of the diocese (when he was sympathetic with the theopolitical position that lead the parish to take that action). In most cases, it was not with such a blessing.

One prominent case of the former is that of Christ Church of Plano, Texas (north of Dallas), formerly a parish of the Episcopal Diocese of Dallas, perhaps at the time the largest of the Episcopal parishes nationwide. It decided in 2006 to leave The Episcopal Church and instead affiliate with the Anglican Mission in America (AMiA), the North American arm of *L’Eglise Episcopale au Rwanda* (The Episcopal Church of Rwanda¹²), which constitutes another province of the Anglican Communion.

The change was amicable *vis-à-vis* the Episcopal Bishop of Dallas, James M. Stanton. Under what was described by the Bishop as a “Godly judgment”, Christ Church was allowed to purchase the “trust” interest held by the Episcopal Diocese of Dallas in the church’s rather extensive land and buildings. It is not clear how the “trust” interest of The Episcopal Church itself in that real estate was disposed of. The Episcopal Church itself did not concur in the arrangement.

Ironically enough, the church uses The Book of Common Prayer of The Episcopal Church in its services.

At the Diocesan level

Four dioceses of The Episcopal Church (Quincy, Illinois; Fort Worth, Texas; San Joaquin, California; and Pittsburgh, Pennsylvania), all headed by “highly conservative” bishops, have voted at their conventions in the time frame 2007-2008 to “leave the Episcopal church”¹³ and affiliate instead with *Iglesia Anglicana del Cono Sur de*

¹² Its name is a nice irony.

¹³ This characterization is not really accurate, as discussed shortly.

America (the Anglican Church of the Southern Cone of America¹⁴), an Argentina-based Anglican church serving primarily the southern portion of South America.

Three of those dioceses, Quincy, San Joaquin, and Fort Worth, were the only three Episcopal dioceses that officially and openly did not accept the policy of the national church that women as well as men may be admitted to the priesthood.

There is of course some question as to what these actions mean. The Episcopal Church takes the view that an Episcopal Diocese is established under the purview of The Episcopal Church, is an organic component of it, and cannot be “taken away” even by parliamentary vote of its membership. Thus, it says, the bishop, the governing committee, and the staff of the diocese, many of the clergy, and many of the members, can in fact leave the Episcopal Church, but the Episcopal Diocese remains in existence as a component of The Episcopal Church (albeit with a rather thin “complement” for the moment).

The bishops of those four dioceses, who shortly were stripped of their authority as priests and bishops of the Episcopal church¹⁵, were all promptly consecrated as bishops of *Iglesia Anglicana del Cono Sur de America*.

In two cases (Pittsburgh and Fort Worth), the “departed” organization still styled itself an “Episcopal Diocese”, justified by the fact that it is headed by a bishop (recall that “episcopal” means “of, by, or pertaining to a bishop”). Perhaps they are “episcopal dioceses” but not “Episcopal dioceses”.¹⁶

Reconstitution of the four dioceses impacted by defection

All four of the Episcopal Dioceses that lost their bishop, most of the governing structure of the diocese, and a substantial number of clergy and parishioners by defection have promptly taken steps to reconstitute and vitalize their operations. (Remember that, despite

¹⁴ “America” here is in the sense that we would often describe as “The Americas”; that is, North, Central, and South America.

¹⁵ In the case of the former Episcopal Bishop of Fort Worth, he was declared to have himself renounced the basis of that authority through a public proclamation that he was no longer under the jurisdiction of The Episcopal Church.

¹⁶ The Southern Cone diocese in Pittsburgh subsequently, pursuant to a court decision, gave up that name, now calling itself “The Anglican Diocese of Pittsburgh”. The Southern Cone diocese of Fort Worth still (as of this writing) calls itself “The Episcopal Diocese of Fort Worth”.

these actions, these dioceses—as integral parts of The Episcopal Church—continue to exist, albeit with gravely thinned organization charts.) While the details vary from diocese to diocese, these actions typically include:

- Elect a provisional, temporary, or consulting bishop.
- Fill the vacancies in the diocesan Standing Committees (in general, all the members had left).
- Make appointments to all the other positions involved in the governance and operation of the diocese and its relationship to The Episcopal Church.
- Rescind those amendments made to the Constitution and Canons of the diocese, during the process of defection, which supposedly unlinked the diocese from The Episcopal church, the rescission generally being on the basis that such amendments were illegal, being contrary to the provisions in all the diocesan Constitutions, before defection, that the Diocese was to be bound by the Constitution and Canons of The Episcopal Church.
- Make new arrangements for the physical offices of the Diocese, since in general, for the moment, the diocesan headquarters buildings are occupied by the new dioceses (not part of The Episcopal Church) that were formed at the time of defection.

At the parish level, often members who individually did not wish to leave The Episcopal Church have kept their respective parishes operating (as parishes of The Episcopal Church), often in alternative sites (since the original buildings were typically occupied by the defecting congregations).

As one example, in Parker County, Texas (within the Episcopal Diocese of Fort Worth), eighteen hours after the formal defection of the Bishop, diocesan staff, and many clergy and congregants from the Episcopal Church, a full-fledged Episcopal mass was held in a local school cafeteria by the newly formed Episcopal Church in Parker County.

Counterrevolution

On December 5, 2008, by a vote of its congregation, St. Paul's Episcopal Cathedral in Peoria, Illinois, the cathedral ("seat of the `bishop's chair' ") for the Episcopal Diocese of Quincy, whose bishop had left the Episcopal Church, and all of whose parishes were, by default, presumed to be leaving The Episcopal Church, voted to exclude itself from that presumption and remain in The Episcopal Church.

The Cathedral is the largest congregation in the diocese.

A NEW ANGLICAN PROVINCE?

The complainant camp has said that (and I paraphrase), “given that The Episcopal Church and the Anglican Church of Canada have refused to heed our warnings and reverse their current courses”, faithful Anglicans must seek to establish a new province of the Anglican Communion in North America¹⁷, of which individual churches, or perhaps entire dioceses, whose members had defected from the Episcopal Church, or from the Anglican Church of Canada, would become components. Various groups have been formed in pursuit of this, and a number of them were brought into an umbrella group called the Common Cause Partnership.

In December, 2008, that body held a conference in Wheaton, Illinois (near Chicago) at which a draft constitution and canons for such a new church and prospective Anglican province—now to be called “The Anglican Church in North America”¹⁸—were unveiled.

Some among the supporters of such a new province would hope for it to be recognized by the Anglican Communion as the only legitimate Anglican province in North America (requiring, essentially, that the Communion would expel The Episcopal Church and The Anglican Church of Canada and admit the new province to membership). A more modest aspiration is that the new province would be recognized by the Anglican Communion as an additional province in North America.

This would be a unique occurrence, the first time that a province was defined not just in terms of the nominal geographic area it served but also in terms of some supposedly-definable theological (or theopolitical) outlook. There is, however, no recognized procedure by which the Anglican Communion would admit a wholly-new member church/province. (Since the establishment of the concept of the Anglican Communion, new provinces have so far always come into existence by the partition of an existing province, typically owing to growth in a portion of their realm.)

¹⁷ “North America” is always used in this context as meaning “The United States of America and Canada”, not embracing Mexico.

¹⁸ That name was actually provisionally adopted in 1977 by another “alternate Anglican” constellation, but during the process of ratification of its constitution, a dispute erupted, leading to it immediately parting into three separate bodies. That name was not kept by any of them, and so is “available”.

Some feel that the Anglican Consultative Council (ACC), an advisory body within the Anglican Communion, has the authority to admit new provinces to the communion. This premise will be discussed later in the section on the ACC.

In any event, leaders of the movement said, at the time of the conference, that they did not feel that formal recognition by the Anglican Communion would be necessary for the new structure to be able to consider itself the authentic expression of the Anglican faith in North America, especially if the new structure is “recognized” by a significant number of the primates of the Anglican Communion (and several have supposedly already done so). (There is of course no formally recognized (!) significance to such “recognition”.)

The new entity held its “organizing convention” in the summer of 2009, in a church which is held to be the cathedral of the Diocese of Fort Worth (Anglican—Southern Cone). The constitution and canons of the new church (and proposed Anglican Province) were formally adopted there.

Robert William Duncan, formerly the Episcopal Bishop of Pittsburgh, moderator of the Common Cause Partnership, and now a bishop of The Anglican Church of the Southern Cone, was made Archbishop of the new structure.

The constitution of the proposed new province defines its theological baseline, in part by reference to various historical documents, such as the 1622 version of *The Book of Common Prayer* of the Church of England¹⁹ and a document called *The Thirty-nine Articles of Religion*, which was generated in 1563 in the Church of England principally to delineate its differences in theology and polity from those of the Roman Catholic Church²⁰.

Prominent in the definition is reliance on the “authority” of the Holy Bible under what is seemingly assumed to be a singular, fixed, manifest, and incontrovertible interpretation.

The defining documents provide that dioceses of the new province have local option whether or not to admit women as deacons and as

¹⁹ This has a lot of neat stuff in it, including, for example, “A Form of Prayer for the 5th Day of November, being the Day kept in memory of the Papists Conspiracy”.

²⁰ One of its clauses recognizes the King [sic] of England as the head of the church. The Episcopal church holds to a modified version of this document, which replaces that clause with a recognition of the legitimate authority, in temporal affairs, of the civil authorities. No notion of a modified form of the document (or anything else) is admitted by the draft constitution of the proposed new province.

priests, but rule out the possibility of women as bishops (or as archbishop) owing to the adverse impact that would presumably have on the “acceptance” of the new province by other Anglican provinces.

This has led to somewhat of a dilemma for some of the putative founding components of the new church, such as the Diocese of Fort Worth (Anglican—Southern Cone). After all, it was ostensibly largely over the matter of the ordination of women that its bishop and leadership left The Episcopal Church.

Another complication of some dioceses that are members of ACNA is that, in many cases, when they were formed (by defection from The Episcopal Church), they purportedly attached to *Iglesia Anglicana del Cono Sur de America*. By doing so, they claimed to still be recognized components of the Anglican Communion.²¹

We might assume that, should the new organization eventually become indeed a province of the Anglican Communion, these dioceses would give up their current national church/provincial connections (just as when an existing province is partitioned into two provinces, serving different geographic regions, which as mentioned before in fact is the typical way that in modern times new provinces come into existence). But to day, these dioceses anomalously consider themselves as components of two “national churches”.

At the present time, for example, the Web site of The Episcopal Diocese of Fort Worth (Southern Cone, although that modifier does not appear on the site) is wholly ambiguous as to of what church the diocese is a diocese of. Mentioned is only that it is a member of the Anglican Communion²² (which may or may not actually be so)²³.

MEANWHILE, IN LOS ANGELES

On December 5, 2008, the bishop of the Episcopal Diocese of Los Angeles, J. Jon Bruno, at the annual convention of the diocese, announced that he has authorized the diocese to use a rite for the “Sacramental Blessing of a Life-Long Covenant” and provided a proposed “script” for the rite. It is expected that the rite may be used

²¹ However, the current official list from the Anglican Communion Office of the various member churches (provinces) and their dioceses does not include any US dioceses of *Iglesia Anglicana del Cono Sur de America*.

²² The Anglican Communion is of course not a church, rather an association of national or regional churches.

²³ The official list issued by the Anglican Communion Office of the member churches of the Communion (as provinces), which lists their respective constituent dioceses, does not include any dioceses formed by defection from The Episcopal Church.

for lifelong commitments between persons of the same gender (other than in the case of actual marriage, which however is at the moment not legal in California) and also for such commitments between a heterosexual couple who decline to formally marry, perhaps out of concern for tax or insurance consequences.

The diocesan convention itself took a resolution "rejecting" the resolution taken (in 2006) by the General Convention of the Episcopal Church that established a moratorium on "[consent to] the consecration of any candidate to the episcopate whose manner of life presents a challenge to the wider church and will lead to further strains on the [Anglican] communion". That presumably means that, were such a person elected as bishop of some Episcopal diocese, when the dioceses were polled as to ratification of that election, the Bishop and Standing Committee of the Diocese of Los Angeles would feel free to vote in favor.

Presiding Bishop Katharine Jefferts Schori attended the convention and delivered a keynote address.

THE 2009 MEETING OF THE GENERAL CONVENTION OF THE EPISCOPAL CHURCH

During the 2009 meeting of the General Convention of The Episcopal Church, held in Anaheim, California in July, 2009, there was considerable discussion of the matter of the so-called "moratoriums" adopted in 2006 against the election and enthronement of practicing homosexuals as bishops and against the establishment, or authorization, of blessings for same-sex unions. The Presiding Bishop urged against any debate on the possible rescission of those resolutions and urged instead that, if General Convention is now of a different outlook, it should memorialize that in new, affirmative resolutions.

Indeed two pivotal resolutions were taken. One declared that all baptized Christians were eligible for ordination to any of the three orders of clergy: deacon, priest, or bishop. The second provided for "generous pastoral response" in the case of same sex unions recognized by the applicable state laws (opening the door to the giving of blessings to such unions), and chartered a group to develop rites for such blessings. These actions in practical fact "lifted" the moratoriums, much to the disappointment of the complainant camp.

Since then, a number of Dioceses within The Episcopal Church have formally adopted a policy of providing blessings for same-sex unions (and in some cases have established specific language for such). In almost every case, it is made clear that no member of the clergy would be obligated to do so should it conflict with their personal principles.

ATTAINMENT OF MEMBERSHIP IN THE ANGLICAN COMMUNION

Introduction

The formation of the Anglican Church in North America brings to the fore the issue of how membership in the Anglican Communion (and thus status as a province of it) is attained by a “national or regional” church.

If the Anglican Communion had a constitution (and it does not), we might expect that in that would be the provisions under which a new province could be admitted. But there is no such.

If indeed one of the objectives of the proposed Anglican Covenant was to be essentially a constitution for the Anglican Communion, we might expect that it would include the procedures under which a new province would be admitted. But there is no such portion in the draft now out for consideration.²⁴

History

In the early history of the Communion, new provinces were formed by being “split off” from the Church of England, often as a parallel of the country that it served gaining a greater degree of autonomy within (or independence from) the British Commonwealth. This was done with the concurrence (sometimes grudging) of the Church of England. (The Episcopal Church was formed that way, in the wake of the American Revolution²⁵.)

Later, new provinces “were split off” from other provinces, often as a result of growth or national development. Again, this was done with the assent of the “parent” province. (In fact, various “off-shore” portions of The Episcopal Church became separate national churches, and their own provinces of the Anglican Communion, that way.)

In each case, the basic scope of the new province was defined on a geographic basis.

But in the case of The Anglican Church in North America, we do not have such a scenario, It is not as if, for example some portion of the “territory” of The Episcopal Church that lay outside the actual United States was to be, with the assent of The Episcopal Church, formed into a new province.

²⁴ It does make glancing mention of a method that some people think is defined, but which I think is questionable. I will in fact discuss that presently.

²⁵ Although the Anglican Communion as such wasn’t established until long after.

Rather, we have the prospect that a new church, potentially operating any place in the United States and Canada (or beyond), would seek admission to the Anglican Communion not as the “spawn” of an existing province but rather from bare earth. (To some proponents, it should in fact **supplant** The Episcopal Church and The Anglican Church of Canada as the established provinces in the United States and Canada.) Its *raison d’être*, and thus the premise of its scope, is to provide a supposedly different “take” on the Anglican faith than the existing Anglican churches/provinces in those countries (ostensibly one that is more authentic).

The Anglican Consultative Council

The Anglican Consultative Council (ACC) is one of the four “Instruments of Communion” recognized by the Anglican Communion as organs of its guidance. As its name would suggest, it appears that its role is to advise the Archbishop of Canterbury on various matters. (The Archbishop is himself another one of the four Instruments.)

It has a self-generated constitution, which defines various of its activities.

Membership in ACC is defined at two levels. Every province of the Communion is a member-province of the ACC, and each province is entitled to a certain number of individual members (people) to represent it in the ACC, the number being essentially based on the “size” of the province. There exists, as an addendum to the ACC constitution, a “schedule” (table) listing the all the provinces of the Communion and stating the number of ACC members to which each is entitled.

The ACC constitution indicates that the ACC may amend that table:

The Council shall be constituted with a membership according to the schedule hereto. With the assent of two-thirds of the Primates of the Anglican Communion, the council may alter or add to the schedule.

Some have taken this to mean that the ACC may, by adding a new church to that table, cause that church to become a member and province of the Communion (a power that we do not find given to the ACC by any of the governing instruments of the Communion).

In the author’s opinion, more likely, this provision is intended to provide for:

- Adding to the list any province that has been admitted to membership of the Communion (however that is done), and establishing the number of ACC individual members to which such a new province is entitled, and

- Changing the number of individual members to which existing provinces are entitled (perhaps as a result of significant changes in their membership).

In fact, it is most likely that the power to recognize a church and prospective new province as “being in communion with the Archbishop of Canterbury” rests solely with the Archbishop of Canterbury, although there is no question but that a recommendation from the ACC would be an important factor in his exercise of this power.

However, the current draft of the proposed Anglican Covenant contains this passage (as an introduction to a certain provision):

Every Church of the Anglican Communion, as recognised in accordance with the Constitution of the Anglican Consultative Council, . . .

This seems to presume that the constitution of the ACC gives the ACC the privilege to “recognize” which are the provinces of the Anglican Communion.

Yet later language in the draft points out that if a church that is not a member of the Communion adopts the Covenant, that would not in any way presumptively give it standing as a member of the Communion. The passage continues:

However, adoption of the Covenant by a Church [referring to a church not currently a member of the Anglican Communion] may be accompanied by a formal request to the Instruments for recognition and membership to be acted upon according to each Instrument’s procedures.

This seems to be based on the presumption that somehow, the Instruments of Communion (the Archbishop of Canterbury being one) could, perhaps collectively, grant membership in the Communion. But again there is no such arrangement that I know of.

THE NEW ORDER OF THINGS: AMBIGUITY

I have already discussed the dilemma faced by some of the founding elements of The Anglican Church in North America—that its founding documents make provision for a component diocese to, at its sole discretion, ordain women as deacons and priests (but not as bishops). The bishops of some of the prospective founding dioceses, especially former bishops of the Episcopal church who left it partly because of that church’s policy of ordaining women to the priesthood, are unsure that they wish their dioceses to be part of a denomination that allows (even on a “local option” basis) the ordination of women. This may be one reason behind the uncertainty of the actual status of some of the founding dioceses—are they part of the Anglican Church in North America, or not?

Another reason for the ambiguity is that dioceses that are part of The Anglican Church of the Southern Cone rely upon that affiliation as the basis for considering themselves *bona fide* components of the Anglican Communion (although there is some question as to the full validity of that premise). As parishes of The Anglican Church of North America, not a recognized part of the Anglican Communion, they would lose that premise.

Another dilemma is that for some of the founding components of The Anglican Church in North America, such as the Anglican Communion Network, many of their member dioceses are dioceses of The Episcopal Church. Thus, if in fact the entirety of the Anglican Communion Network had been received into the Anglican Church in North America, that would mean that the Episcopal Diocese of Dallas (a component of The Episcopal Church), a member of The Anglican Communion Network, was also a part of The Anglican Church in North America (which is decidedly not associated with The Episcopal Church).

The membership of many Episcopal Church parishes near my home in North Texas decided (or had decided for them), as part of the “Fort Worth defection”, to leave the Episcopal Church. Those members now worship as congregations operating as parishes of The Episcopal Diocese of Fort Worth (Anglican—Southern Cone). In addition, a number of the parishes of The Episcopal Church from which those congregants departed continue to operate as parishes of The Episcopal Church, under their original names, holding regular Sunday services (but often not in their original buildings, which are occupied by the defecting congregations).

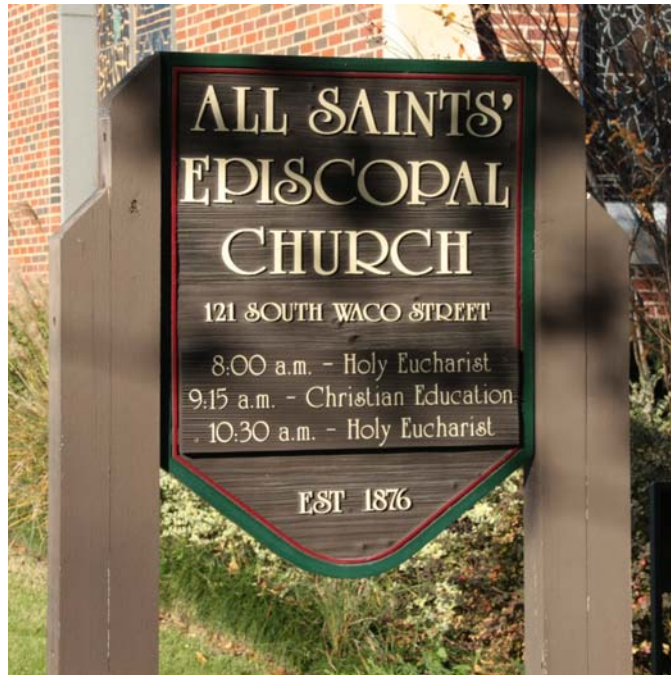
Adding to the confusion surrounding this, many of the defecting parishes still have “Episcopal Church” in their names—often using exactly the same name they had as parishes of The Episcopal Church.

Thus, worshipers in Weatherford, Texas (my own home town) may worship at, among the many churches in the area, All Saints’ Episcopal Church (a parish of The Episcopal Church) or All Saints’ Episcopal Church (a parish of *Iglesia Anglicana del Cono Sur de America*).

Interestingly enough, it seems that on their Web sites, almost none of the newly-created Southern Cone parishes give any indication what larger “church” (we might say, “denomination”) they are part of. A few, without elaboration, say that they are “Anglican”.

A few indicate that they are part of The Episcopal Diocese of Fort Worth, by which they mean what I call The Episcopal Diocese of Fort Worth (Anglican—Southern Cone). In fact the Web site of The Episcopal Diocese of Fort Worth (Southern Cone) itself does not (as of

this writing) give any indication of what church it is a diocese (again, it mentions that it is “Anglican”).



**Sign at All Saints' Episcopal Church, Weatherford, Texas
(Southern Cone).**

The church is not part of The Episcopal Church, but rather is a parish of *Iglesia Anglicana del Cono Sur de America* (The Anglican Church of the Southern Cone of America).

All of the newly-formed congregations of this nature in the Fort Worth area are listed as parishes of The Anglican Church in North America on its Web site.

The rector of one of the local parishes of *Iglesia Anglicana del Cono Sur de America*, and evidently a parish of The Anglican Church of North America as well, when asked, by a reader of the church Web site, “What denomination is your church, anyway?”, graciously replied:

“We are an Anglican Church, which in this country is called Episcopal. We are not affiliated with the Episcopal Church USA, but we are part of the [Episcopal] Diocese of Fort Worth.”

Who can argue with any given part of that!

ON THE IMPACT OF ALL THIS—SOME PERSONAL OPINION

Impact of the presenting issues on Episcopalians

One may wonder what impact the presenting issues here have had to date on the faith or religious life of a “typical Episcopalian”.

I fail to understand how, to pick perhaps the most virulent issue, the consecration of V. Gene Robinson as Episcopal Bishop of New Hampshire in any way weakened the premises of any individual Episcopalian's faith, the spiritual benefits of his pursuit of that faith, or its practice within his own Episcopal church—how The Episcopal Church has somehow “let down” such a person by “allowing” that consecration.

We could of course cynically posit the sad possibility of a person whose attraction to the Episcopal faith was in part based on his presumption that The Episcopal Church would never have a non-celibate homosexual (perhaps any homosexual at all) as a member of the clergy, much less as a bishop. I suppose that The Episcopal Church has “let down” such a person.

Impact of defection on the departing

The impact of the departure of, for example, the bishop and staff of an Episcopal Diocese, and the clergy, and many of the members of many of its parishes, from The Episcopal Church will probably have little impact on most of those members. Although now members of a different national church, they will continue to attend services, conducted with the familiar liturgy, in the accustomed building, generally led by familiar clergy.

Will their spiritual experience and the benefit they feel they derive from it be more satisfying, now that their church is no longer a part of The Episcopal Church? And if so, in what way? I cannot propose a satisfying answer to that.

Some will wonder how did it happen that they are no longer Episcopalians, a denominational affiliation that many had “since birth” and that others elected as adults, an affiliation that many of them did not individually decide to give up.

Some will not even realize that they are no longer Episcopalians (especially since their parish church and its diocese—although perhaps part of *Iglesia Anglicana del Cono Sur de America*—still have the same names, such as “All Saints’ Episcopal Church” and “The Episcopal Diocese of Fort Worth”).

Additionally, because of the emphasis on the departing folks having joined “The **Province** of the Southern Cone” (there being no such thing—what they have actually joined is “The **Anglican Church** of the Southern Cone”, to use its English name), some parishioners may not realize that they are now in a different church (“denomination”), but may think that the change is of no more significance than learning that their local Walmart store is no longer in Region 6 of the U.S division of Wal-Mart Stores, Inc. but rather in Region 5.

Impact on “remaining” Episcopalians

Episcopalians who have been members of parishes in dioceses that have had a mass exodus, but who themselves have not left The Episcopal Church, may face various temporary inconveniences. Some may find that instead of their congregation meeting in a handsome stone church, much beloved in their experience, they for the moment are meeting in a handsome school cafeteria²⁶. But their parishes, missions, or communities of faith are *bona fide* components of The Episcopal Church, and operate fully under its auspices.

My personal experience in one such situation is that the members typically, while experiencing sadness over the departure of many of their friends from an experience they have for some while jointly shared, have a very positive outlook on, and prognosis for, their faith, for The Episcopal Church, and for the still-extant and functioning Episcopal diocese and parish of which they have been, and remain, members.

Often not yet well recognized²⁷ is the fact that, with respect to the Episcopal Dioceses of Quincy, San Joaquin, and Fort Worth, the departure of the incumbent bishop and most members of the governing body means that now in those dioceses, for the first time, women may be admitted to the clergy.

In fact, in November of 2009, the first woman ever was ordained to the priesthood in the Diocese of Fort Worth of The Episcopal Church, with a second ordained in December of 2009. The latter is in fact vicar of The Episcopal Church in Parker County, a parish of The Episcopal Church formed in the wake of the “Fort Worth defection.”

And a special benefit to one departed Episcopalian

Bob Duncan got to be an archbishop of something.

ABOUT “SECESSION”

Those who have followed this article may note that in earlier editions, I used the term “secession” to describe the actions taken by, for example, the former Episcopal Bishop of Fort Worth and the diocese he led.

I have since thought better of that. “Secession” implies the withdrawal of a part of a larger entity. An Episcopal diocese, or parish,

²⁶ A hawk circling majestically is seen through the picture window behind the altar.

²⁷ Yet, curiously enough, explicitly mentioned by the departing bishop of The Episcopal Diocese of Fort Worth, Jack Leo Iker.

cannot be extinguished as such without the concurrence of The Episcopal Church, nor can it be transported to another church. It remains in existence, "where it was", as an integral part of The Episcopal Church, even should the bishop, or the clergy, or the members decide to leave The Episcopal Church and affiliate instead with another church.

Thus, in this issue of the article, I have used the term "defection" to refer to the actions described.

IN CONCLUSION

Probably no one has been killed in the Episcopal Civil War. Perhaps it is only a war game. Each participant, with the right attitude, can be a winner.

To quote from The Book of Common Prayer of The Episcopal Church:

Go in peace.

#

APPENDIX A

Litigation in The Episcopal Diocese of Forth Worth

INTRODUCTION

Various civil litigation has ensued in the wake of the defections discussed by this article. The most common centerpiece of this litigation is the ownership, occupancy, use, and control of real property, most prominently church buildings.

Although I have had a general interest in the overall fabric of such litigation across the country, I have followed in particular detail the litigation involving the Episcopal Diocese of Fort Worth (TEC), whose territory covers 24 counties in North Central Texas (including my home county, Parker County).

In this appendix, I discuss the principal threads of that litigation, as it stands at the current writing.

THE FINE PRINT

Caveat

I am not an attorney, and the interpretations of various aspects of the litigation are those of an interested layman. They should not be taken as "legal opinion" in the sense that the rendering of such is limited by statute to members of the Bar.

Further, in the interest of conciseness and clarity, I will discuss many aspects of this litigation not in precise legal terms.

Disclosure

My wife and I are members of an Episcopal parish in The Episcopal Diocese of Forth Worth (a component of The Episcopal Church). This parish is a party to the principal litigation described here.

THE EVENT

On November 15, 2008, at the regular annual session of the Convention of The Episcopal Diocese of Fort Worth, resolutions were taken with the purported effect of detaching The Episcopal Diocese of Forth Worth, "intact" (more on what that was thought to mean shortly) from The Episcopal Church and affiliating it instead with *Iglesia Anglicana del Cono Sur de America*, a regional Anglican church, based in Argentina, serving primarily the southern portion of South America (the "Southern Cone"). It is a province of the Anglican Communion.

Two views

Two camps took different views on what happened.

The former Bishop of The Episcopal Diocese of Fort Worth, who led the event, can be said to take this view (my paraphrase, of course):

The Episcopal Diocese of Forth worth, is detached, intact, from The Episcopal Church and has affiliated instead with *Iglesia Anglicana del Cono Sur de America*.

By “intact” I mean including:

- Its bishop
- Its Standing Committee (sort of the “board of governors” of the diocese)
- Most of the administrative officers and personnel of the Diocese.
- Most of the clergy of the diocese.
- Many members of the various congregations of the diocese.²⁸
- The Corporation of The Episcopal Diocese of Fort Worth, a corporation formed to hold title to essentially all real property within the diocese, including the diocesan headquarters and the land and buildings of the various missions and parishes (individual local churches), and the Board of Directors of that corporation.
- That real property itself.
- Other assets (including cash) of the Episcopal Diocese of Forth Worth.
- The name “Episcopal Diocese of Fort Worth”.
- The seal of the Episcopal Diocese of Fort Worth.
- The names of the various parish churches (as, for example, “All Saints’ Episcopal Church”).

The Episcopal Church can be said to have taken this view (my paraphrase, of course):

The Episcopal Diocese of Fort Worth is a long-standing integral part of The Episcopal Church, established under authority of its General

²⁸ A few individual parishes (local churches) of the diocese “opted out” of this action; their clergy and members did not leave The Episcopal Church.

Convention, and cannot be extinguished, nor detached from The Episcopal Church, by the actions of its bishop, clergy, and/or congregants.

The former Episcopal Bishop of Forth Worth, the former staff of the Episcopal Diocese of Forth Worth, many of the clergy of The Episcopal Diocese of Forth Worth, and perhaps many of the former congregants of Episcopal Churches in The Episcopal Diocese of Forth Worth, have left The Episcopal Church and have evidently affiliated instead with *Iglesia Anglicana del Cono Sur de America*, under a structure calling itself "The Episcopal Diocese of Fort Worth."

Said bishop claims control of the assets of The Episcopal Diocese of Fort Worth, and, under his direction, former clergy of The Episcopal Diocese of Fort Worth are maintaining control of the physical plants of many parishes of The Episcopal Diocese of Forth Worth and are conducting there Anglican services, presumably under the banner of *Iglesia Anglicana del Cono Sur de America*.

The Episcopal Diocese of Fort Worth remains in existence and operation as a component of The Episcopal Church (albeit with, initially, no diocesan bishop and a very small complement of clergy). Its missions and parishes remain in existence, as components of The Episcopal Diocese of Forth Worth (a component of The Episcopal Church), and thus of The Episcopal Church. Many of them continue in operation, albeit in many cases in alternative venues and perhaps with temporary clergy.

The Corporation of The Episcopal Diocese of Fort Worth continues in existence as an agency of The Episcopal Diocese of Forth Worth (a component of The Episcopal Church); the seats of all of its directors are initially vacant.

THE LITIGATION

Introduction

Shortly after this event, litigation ensued, which we can simplistically describe as "The Episcopal Church, and persons representing The Episcopal Diocese of Fort Worth (a component of The Episcopal Church), filing suit against the former bishop of the diocese and other leaders of the new organization." Eventually, several suits were filed, in both the state district courts and the federal district court.

The principal issues

Simplistically, the plaintiffs (The Episcopal Church, and persons representing The Episcopal Diocese of Forth Worth, a component of The Episcopal Church) principally ask that:

- The defendants, essentially the former bishop and other leaders of the new organization, return to The Episcopal Diocese of Forth Worth (a component of The Episcopal Church) control of The

Corporation of The Episcopal Diocese of Fort Worth and possession and control of the physical assets of The Episcopal Diocese of Fort Worth (TEC) and its constituent parishes.

- The defendants cease and desist from the use of the name “Episcopal Diocese of Forth Worth” and the seal of the Episcopal Diocese of Fort worth in connection with their religious organization.
- The defendants cease and desist from representing themselves as leaders of The Episcopal Diocese of Fort Worth.

The parties

The *styling* of the major action (that is, who is suing whom, as for example, “William J. Smith v. Acme Machinery, Inc.”) was complicated by the fact that, on the plaintiffs’ side of the case, we had an organization known as The Episcopal Diocese of Fort Worth (a component of The Episcopal Church), while on the defendants’ side of the case we had an organization also known as The Episcopal Diocese of Fort Worth (presumably a component of *Iglesia Anglicana del Cono Sur de America*).

This led to some bizarre activity during the proceedings. The defendants filed an action asking the court to declare that the attorneys for the plaintiffs could not represent The Episcopal Diocese of Fort Worth, as they stated in the pleadings they filed, because the **defendants** were The Episcopal Diocese of Forth Worth and **they** had not engaged said attorneys to represent **them**.

The Judge, playing along, ruled that, indeed, said attorneys for the plaintiffs were not authorized to represent the defendants, pointing out that they had never claimed to do so.

Overall, in simplified terms, the situation resolved to essentially this order of battle for the principal suits:

Plaintiffs (suing)

The Episcopal Church

The current leadership of The Episcopal Diocese of Forth Worth (TEC)

The Corporation of The Episcopal Diocese of Forth Worth (TEC)

The Endowment fund of The Episcopal Diocese of Forth Worth (TEC)

The parishes and missions (local churches) of The Episcopal Diocese of Forth Worth (TEC)

Defendants (being sued)

The bishop and other leaders of the “breakaway faction”

The parishes and missions (local churches) of The Episcopal Diocese of Forth Worth (Southern Cone)

A prominent issue is the matter of which group of persons were the legitimate leaders of The Episcopal Diocese of Forth Worth and The Corporation of The Episcopal Diocese of Fort Worth.

In the proceedings that ensued, concise references in the various documents have referred to the plaintiffs as “The Episcopal Church” and “The Local Episcopal Parties” (I will here often say, collectively, “The TEC parties”), and the defendants as “The Southern Cone Parties” (which I will speak of in that way).

THE ISSUE OF THE HIERARCHICAL CHURCH

Prior case law in the State of Texas had clearly established, in matters of this general type, the importance of whether or not the church involved was *hierarchical* in its structure of governance or not. For comparison, The Roman Catholic Church is clearly hierarchical: all authority descends from the Pope thorough an organization chart involving archbishops (governing archdioceses), then bishops of dioceses, then finally the rectors of individual parishes.

This is as distinguished from churches following a *congregationalist polity* (including, notably, the churches identified as “Congregational”), in which each congregation is fully autonomous in every respect, and the national bodies to which they may belong are “associations” that provide support of various types across the “denomination”.

Essentially, the settled case law in Texas says that, with regard to a hierarchical church, while a group of clergy and/or members might decide to leave the overall church, control of the individual local “church”, and of a higher-level unit such as a diocese, remains in the hands of members and leaders remaining loyal to the national church involved.

The TEC Parties held that the Episcopal Church is in fact hierarchical (in the sense of interest). Among other facts, they pointed out that, under the Constitution of The Episcopal Church, it is required of each diocese that **its** Constitution recognizes the fact that it is subject to the Constitution and Canons (church laws) of The Episcopal Church, and that the election of a bishop (including bishops who lead

dioceses), while done by the diocese, requires the “ratification” of the national church overall before it becomes effective.

The Southern Cone Parties argued that The Episcopal Church was not a hierarchical church, in that a great deal of autonomy was granted to the individual dioceses, and that (for example), the Presiding Bishop (the head of The Episcopal Church) was not the “boss” of the bishop of a diocese. Rather, the bishop was hired by the members of the diocese, and was beholden to them by way of the Standing Committee (a sort of “board of governors” of a diocese, elected by the members).

A MAJOR RULING

On February 8, 2011, the presiding judge of the state district court hearing the major suit issued a Ruling on Summary Judgment which decided some, but not all, of the issues of the case. The principal parts of the Ruling were:

- The Episcopal Church is declared to be, as a matter of law, a hierarchical church.
- Accordingly, under Texas precedent, in the event of dispute among the members of the church, those members loyal to the higher church constitute the membership of the church.
- Accordingly, those individuals are those entitled to the use and control of church property.
- All property held by or for The Episcopal Diocese of Forth Worth (TEC) may be used only for the mission of The Episcopal Church, subject to its Constitution and Canons.
- The actions taken at the November 2008 Convention of The Episcopal Diocese of Fort Worth, which purportedly amended the bylaws of The Corporation of the Episcopal Diocese of Forth Worth to remove the Corporation from the hierarchy of The Episcopal Church, were *ultra vires* (that is, beyond the legitimate scope of authority of the body purportedly so doing) and are thus void.
- The defendants are ordered to return all property of The Episcopal Diocese of Fort Worth, and control of The Corporation of the Episcopal Diocese of Fort Worth, to the diocesan plaintiffs (the Local Episcopal Parties) within 30 days after the judgment becomes final.
- The defendants are ordered to desist from holding themselves to be the leaders of The Episcopal Diocese of Forth worth as soon as the order became final and appealable.

APPEAL

Defendants of course announced their desire to appeal this ruling to a higher court, but in fact, they could not do so at this time since the ruling only disposed of some of the issues in the suit, and thus the suit itself had not been brought to a conclusion (a necessity before any ruling could be appealed).

Defendants then petitioned the Court to sever the issues settled by the order (that is, to make them alone the subjects of a distinct suit, which would then be considered wholly settled by the order), and to stay (suspend) all further action on the remaining issues of the original suit, pending final resolution of the chain of appeals of the ruling on the separated suit.

The rationale for the former is that the February order could then be appealed, since it disposed of all issues in the (now separated) suit.

The rationale for the latter is that various of those remaining issues will turn on matters settled by the February order, and it would be most tidy for the chain of appeals of that order to have been completed so that those issues would be finally settled, one way or another, before matters potentially dependent on them (now in a separate suit) were further considered.

On April 5, 2011, the Court so ruled, severing the issues treated by the February 8, 2011 order into a separate suit, and staying (suspending) any further proceedings in the original suit (now containing only the remaining issues). Thus the February 8, 2011 ruling is considered final²⁹, and that ruling is eligible for appeal by the parties.

On April 13, 2011, the Southern Cone Parties filed with the Supreme Court of Texas a formal notice that they planned to file a petition for the Supreme Court of Texas to review the ruling of the trial court (“to take jurisdiction on appeal”) even though there had been no review by the cognizant Court of Appeals—a so-called *direct appeal*. On June 1, 2011, they in fact filed a petition for such a direct appeal.

The Supreme Court of Texas, under state statute, has the discretion to accept such a direct appeal (to “take jurisdiction” for the case) under limited, strictly-defined circumstances. With the exception of certain very specialized types of case, this is only permitted when the trial court granted or denied *injunctive relief* (that is, ordered the “losing” party to do something, or refrain from doing something, to the benefit of the prevailing party) **predicated on its ruling that a state**

²⁹ Note that the eligibility of this order for appeal does not make it any less **final**.

statute was or was not constitutional, the issue of its constitutionality having been raised in the trial.

No issue of the constitutionality of any state statute was introduced in the trial, nor did the trial court make any ruling on such a matter, nor predicate its grant of injunctive relief in favor of the TEC parties on any such ruling.

The Southern Cone parties, however, argued that (and I paraphrase) if the ruling of the trial court were allowed to stand, it would in effect vitiate two state statutes (which those parties hold **should have** clearly led to a decision in their favor), thus in effect having become a ruling on the constitutionality of those statutes, and in turn making it permissible for the Supreme Court of Texas to accept the appeal on a direct basis.

In any case, the Supreme Court of Texas must first decide whether it will take jurisdiction over the matter (that is, actually review the decision). The first step is that at least one Justice must "take an interest" in the petition, initiating the process of considering jurisdiction. If no Justice does so within 45 days of the petition having been filed, the petition is automatically considered denied (and is announced as such by the Clerk of the Court). (In this specific case, that period would expire during the summer recess of the court; presumably such an announcement would come after the session has resumed.)

If the process of consideration jurisdiction does commence, the Court may take jurisdiction (accepting the decision for review) or explicitly decline jurisdiction (explicitly deny the petition).

Either automatic or explicit denial would be "without prejudice"; that is, would not preclude the Supreme Court of Texas from later taking on an appeal of the same decision after an review of it has been by undertaken by the cognizant Court of Appeals and disposed of, one way of the other.

Should the Supreme Court of Texas decline (in either way) to accept the case directly, an appeal to the cognizant Court of Appeals would have to be filed within ten days.

At this writing (September 2, 2011), the Supreme Court of Texas has not issued any order indicating that the appeal has died for lack of support or that jurisdiction been explicitly denied or accepted.

THE SUPERSEDEAS BOND

In the February court decision, the Southern Cone parties were ordered to return control of the disputed real property to the Local

Episcopal Parties within 30 days after the judgment became final³⁰. The judgment became final upon the severance of the case into two parts, one of which is deemed completed.

An established US law is that, if, say, a court has ordered "B" to give some property to "A", and B appeals the judgment, B may apply to the court to delay rendering the property to A (so as to accommodate the possibility that the order to do so will be reversed in the appeal process). If the court concurs, the order to do so is called a *supersedeas* writ (from the Latin for "you shall desist").

Under Texas law (as in many other states), in such a case, the court will ordinarily require A to post a bond (its amount related to the value of the property in some sense) in order to protect A from the possibility that, if the order to award the property to A is sustained on appeal, by that time the property might have deteriorated or "disappeared". Such a bond is called a *supersedeas* bond.

In such an event, there ordinarily ensues a controversy on the amount of the bond, with A and B presenting arguments in favor of different amounts, the matter to be ultimately resolved by the court.

In this case, the Southern Cone parties have proposed that the amount of the bond should be zero. The Local Episcopal Parties have suggested that a more substantial amount is appropriate. The court has ordered the two parties to attempt to negotiate a mutually-acceptable position, which the court would then probably embrace. This has not yet happened.

#

³⁰ Note that being "final" does not requires than all appeals have been exhausted.

APPENDIX A

Litigation in The Episcopal Diocese of Northern Virginia

The Episcopal Diocese of Northern Virginia

The Episcopal Diocese of Northern Virginia embraces 38 counties in the northern and central portions of Virginia. It abuts the Washington, D.C. area.

Litigation regarding the defection of 15 congregations of the diocese involves a unique feature of Virginia law, and thus prompts my discussion of this litigation here.

The event

Between December, 2006 and November, 2007, 15 congregations³¹ in the Episcopal Diocese of Northern Virginia individually voted to leave The Episcopal Church and affiliate instead with The Church of Nigeria (Anglican Communion), which constitutes a province of the Anglican Communion. In particular, these congregations become part of the *Convocation of Anglicans in North America* (CANA), a "missionary arm" of The Church of Nigeria.

Two of the defecting congregations were those of churches with special historical significance.

Truro Church, in what is now Fairfax, Virginia, was founded in 1732. George Washington was appointed to its vestry in 1762.

The Falls Church, Falls Church, Virginia (after which the city was named) was "spun out of" Truro church in perhaps 1734.

The brick and mortar

In general, the defecting clergy and congregations continued to operate, and hold their accustomed worship services and other events, in the same buildings as before defection.

In many cases, the members of defecting congregations who themselves did not wish to leave The Episcopal Church have continued the operation of their churches (parishes or missions), still part of The Episcopal Diocese of Northern Virginia, in other facilities (perhaps the social halls or chapels of other churches, school gymnasiums, and so forth).

³¹ I use the term "congregation" here recognizing that it can have two meanings in this context: a local church, or the membership of that church. These in fact match two different outlooks on what has actually happened here. It has been said. "When Kerr uses a word that can have two meanings, that's what he means."

About CANA

CANA, under the name *Convocation of Anglican Nigerians in America*, was originally formed by The Church of Nigeria to support North American “satellite” mission churches of the Church of Nigeria catering primarily to Nigerian expatriates, members of The Church of Nigeria.

As “the troubles” unfolded, the then archbishop of The Church of Nigeria, Peter J. Akinola, highly conservative in his outlook, avidly critical of The Episcopal Church, and sympathetic to the position of the complainants, offered his church as a “safe haven” to dissident congregations of The Episcopal Church and The Anglican Church of Canada, through CANA. Its name was updated to *Convocation of Anglicans in North America* to better reflect this expanded charter.

Through attachment to The Church of Nigeria via CANA, it was felt that these congregations, after leaving The Episcopal Church (or the Anglican Church of Canada), could maintain (maybe) their status as components of The Anglican Communion (a matter that is of widely-varying importance to former Episcopalians).

The particular sector of CANA involved here, embracing the congregations being discussed in this appendix, is The Anglican District of Virginia (ADV). It is sometimes described as the diocese to which the defecting congregations belong.

Litigation

In brief summary, The Episcopal Church and The Episcopal Diocese of Virginia filed suit in the Virginia courts against The Falls Church (Anglican), Truro Church (Anglican), and others of the defecting congregations, now operating as churches within The Church of Nigeria. Among other things, the suits asked that the current leadership of these congregations return control of the church property to The Episcopal Diocese of Northern Virginia.

These suits were initially filed in different courts, depending on the jurisdictions in which the various parcels of real property were located. These suits were later consolidated by the courts and the combined suit placed before the Circuit Court of Fairfax County (“the trial court”).

The Virginia “Division Statute”

A Virginia statute provides that when a division occurs in a church or religious society, each congregation within the original church may by its own vote (a majority of the members of record of age 18 or greater) decide with which of the resulting branches it wishes to be affiliated, and any real property held in trust for the congregation by

the original parent church will now be held in trust for the congregation by the “branch” with which it elects affiliation. The congregation is required to record its election in that regard with the circuit court of the jurisdiction in which the property is located.

This statute turns out to be pivotal in the litigation here.

Petitions for relief

Nine of the defendant congregations filed, supposedly pursuant to the provisions of that statute, petitions requesting the court to enter orders permitting them to continue to occupy and control real property held in trust for the congregations.

Decision by the court

In April, 2008, the trial court entered the requested orders and declared that, the central issue (occupancy and control of the real property) now having been disposed of, the remaining issues in the suit by The Episcopal Church and The Episcopal Diocese of Virginia were moot, and thus would not be further addressed by the court. The court’s basis for the ruling was, essentially (I of course paraphrase):

- By virtue of the overt defection, in the same time frame, of numerous congregations in the wake of internal disagreements over church policy, a *de facto* division of The Episcopal Church and of The Episcopal Diocese of Northern Virginia had occurred.
- The defecting congregations had indeed, prior to defection, been a part of The Episcopal Church.
- The defecting congregations had elected not to remain affiliated with the “original branch” of the episcopal church but rather with “the new branch”, as provided for by the statute.
- That new branch with which the defecting congregations had voted to affiliate was The Church of Nigeria, in particular, CANA.
- Accordingly, their real property, formerly held in trust for them by The Episcopal Diocese of Virginia (now divided into two branches), was now held in trust for them by “the branch of their choice”, namely CANA.

Appeal

The Episcopal Church and The Episcopal Diocese of Virginia filed an appeal before the Supreme Court of Virginia, asserting that the trial court had erred in applying the “Division Statute” to this case. They argued, primarily, that (I of course paraphrase):

- No division had occurred in The Episcopal Church or The Episcopal Diocese of Virginia; there was no action by which a decision to “split” had been taken. Certain congregants had just decided to leave The Episcopal Church, as individual congregants often do.
- If there had been a division, CANA was not one of the two resulting branches. It (and its parent church) had existed before the so-called “division” had occurred, and it had no roots in the pre-division Episcopal Church or Episcopal Diocese of Virginia—it was most decidedly not a branch, new or otherwise, of The Episcopal Church.

Appellate decision

On June 10, 2010, the Supreme Court of Virginia ruled on this matter, essentially as follows (I of course paraphrase):

- The trial court was **correct** in concluding that a *de facto* division of The Episcopal Church and The Episcopal Diocese of Northern Virginia had occurred.
- The trial court was in fact **correct** in concluding that two branches of the Episcopal Church had thus been created.

[Comment: We note, however, that the supposed newly-formed second branch never coalesced into tangible form, and no defecting congregation ever recorded its election to affiliate with it rather than “the original branch”.]

- The trial court was **correct** in acknowledging that the defendant congregations had in fact been, prior to the “division”, components of The Episcopal Church and The Episcopal Diocese of Northern Virginia.

[Comment: An intimation was that these congregations would have thus been eligible to choose to constitute, and affiliate with, “the new branch”—perhaps they would have named it, for example, “The New Episcopal Church”. They did not.]

- The trial court was **in error** in declaring that CANA is a branch of The Episcopal Church or The Episcopal Diocese of Northern Virginia, created by the “division”. It is not. Rather, it was part of a wholly unrelated, and long-existing church, a part itself created before the “division” occurred.

Accordingly, the “Division Statute” did not apply to the benefit of the defendants, and:

- The trial court was **in error** in accepting defendants’ petitions for relief under the statute.

- The trial court was **in error** in granting the defendants relief under the statute; that is, in declaring that control of their real property was now properly in the hands of CANA.

The Supreme Court of Virginia vacated those orders, reinstated the claims of the plaintiffs (which had been declared “mooted” by the trial court’s order), and remanded the case back to the trial court for action on those claims.

The recommencement of the case in the trial court was set for April 25, 2011. It is in process at this writing. Six weeks of the court’s time were blocked out for it, but its course has run beyond that.

#