

THE REVEREND CANON ROBERT J. BROOKS
19 Ellise Road
Storrs, Connecticut 06268

MEMORANDUM

To: Canon Ed Hebb
From: The Rev. Canon Robert J. Brooks
XC: The Right Reverend Andrew D. Smith
The Right Reverend James Curry

Date: April 6, 2007

Subject: Anglican Communion Constitution: Relation to Current Disputes

Introduction: The prior condition for holding a conversation about any topic is that there be a transparent framework previously agreed to by the parties as the context of that conversation. Whether the framework is an agreed understanding of conversational etiquette, in the literal case of a conversation, or whether it is a constitution, in the case of an organization, a basic, agreed, transparent framework is essential for the discussion of anything. Even “group process” occurs within pre-agreed standards of behavior. In contrast, a child playing a game with others in a schoolyard who keeps making up new rules when losing and who makes loud threats to enforce them, is usually called a bully. Since Magna Carta in 1215 A.D., there has been a norm, as originally stated, of “rule of law, not men.” On the Field at Runnymede, barons and king publicly agreed to the written framework of the “Great Charter” that anyone could read and know what was the law. No capricious whim of the king, changing the rules from day to day or hour to hour, would be enforceable as law. The rights of all were transparently protected from caprice and bullying in a written law. That is the tradition and standard that this country, this Church, and most of the world has received and enshrined in its law.

In accord with that tradition, the House of Bishops and the President of the House of Deputies have defended the rule of law in this Church, not allowing anyone to tempt them into shredding our Constitution and Canons which protect all, laity, clergy, and bishops, through the transparent framework that includes them in all governance. Yet, the proper framework for the current disputes in the Anglican Communion is not the Constitution and Canons of The Episcopal Church. Since the dispute involves the Anglican Communion, it is to its framework of law that we must look in the first case for the proper context and rules by which any issue can be discussed. The debate on certain issues has been allowed to commence without acknowledging the constitutional framework that all have agreed to, that preexists the debate, that is the required context for the discussion. The test of any constitution is not how it functions when everything is going well but how it functions in a crisis. It is time to invoke and enforce the only universally pre-agreed written constitution of the Anglican Communion as the framework for any discussion going forward. Those who have continuously asserted new rules and

new structures in the last few years have consistently ignored the constitutional framework for addressing their proposals. They seek to create new structures solely by loudly asserting them, accompanied by thinly veiled threats, counting on many in the leadership of the Anglican Communion or The Episcopal Church not to hold them accountable to the rule of law. Up until now, their strategy has worked. Building on the action of the House of Bishops and the President of the House of Deputies, it is time to insist that any proposed new structures or any revised status in the Anglican Communion for The Episcopal Church or the Anglican Church of Canada be discussed within the framework that presently exists in the only written constitution of the Communion. Any actions taken outside that constitutional framework are, and are to be regarded as having no legal standing, and are therefore unenforceable and null and void.

Constitution of the Anglican Consultative Council: I have noted that there exists in the Anglican Communion only one written constitution that pre-exists the current controversy and that has universal acceptance. That written constitution is the Constitution of the Anglican Consultative Council which was adopted unanimously by the General Synods/General Conventions of every Province in the Anglican Communion in 1969. That constitution (available on-line at www.anglicancommunion.org) makes provision for a Council representative of every Province in the Communion with delegates from the laity, bishops, and priests or deacons. In Article 2 (“Object”), it lists 18 “powers” that the Council exercises. The 18th. power is a sweeping authority “to do all such other things as shall further the objects of the Council.” The ACC Constitution explicitly defines the role of the Primates’ Meeting and the Archbishop of Canterbury in relation to the Council. In Article 3 (“Membership”), it constitutes a list of the schedule of membership, which is attached to and made a part of the ACC Constitution, which explicitly lists by name all the Provinces of the Anglican Communion, including The Episcopal Church and the Anglican Church of Canada. Because this list is part of the only written constitution of the Anglican Communion, the usual way of deleting a Province from the list is by constitutional amendment. The ACC Constitution provides that any amendment must be passed by the Anglican Consultative Council (which next meets in 2009) and ratified by 2/3 of the General Synods/General Conventions of the Provinces before it becomes part of the ACC Constitution. There is a permissive clause in this same Article 3 that allows the Council, “with the assent of two-thirds of the Primates of the Anglican Communion”, to “alter or add to the schedule”. Again, this requires a meeting of the Council to invoke this clause and a meeting of the Primates to obtain the required two-thirds assent. The only written constitution of the Anglican Communion makes it clear that neither the Primates nor the Archbishop of Canterbury acting alone can legally “alter the schedule” of Provinces of the Communion listed in the ACC Constitution. Any claim or threat to the contrary has no constitutional standing. The Episcopal Church explicitly acknowledges that the Anglican Consultative Council is the body through whose authority all the work of the Anglican Communion is done by labeling the line-item for the assessment to the Communion in the General Convention Triennial Budget, “Anglican Consultative Council”.

Constitutional Standing of Asserted New Structures: The following new structures that have been asserted in the last two years by various individuals, organizations, or the Primates' Meeting have no standing in constitutional law in the Anglican Communion: There is no mention in any article of the ACC Constitution of:

- "alternative primatial oversight"
- a "pastoral council" appointed by the Primates' Meeting to exercise primatial oversight of any primate of this Communion
- a "primatial vicar" appointed by a so-called "pastoral council" that reports to that "council" instead of to the Primate of the Province
- secret sessions of the Anglican Consultative Council to debate an issue with no minutes taken as occurred at the Nottingham ACC Meeting in 2005
- secret sessions of the ACC where votes on issues are taken as occurred in Nottingham
- authority of the ACC acting alone to immediately suspend or expel Provinces without the assent, subsequent to that action, of 2/3 of the Primates.

If these ideas for new structures are so compelling, they should be brought by their advocates to the next meeting of the ACC in 2009 as proposed amendments to the ACC Constitution. The proponents can then take their chances on others agreeing with them in a free and open debate in the ACC, and should they be passed, in the General Synods of all the Provinces, with 2/3 required for ratification. It is past time to return to the rule of law, not "men" (which I am using explicitly since that is who the proponents are), and stop acquiescing to bullies who loudly assert new structures without submitting to the written constitutional framework unanimously put in place for this purpose by all the Provinces. It is past time to stop giving these asserted new structures credence by acting as if they really existed and had standing in constitutional law.

The Tanzania meeting of the Primates defined a deadline of September 30, 2007, for the House of Bishops of The Episcopal Church to violate the Constitution of its own Church to accede to the two actions demanded in the ultimatum. As noted previously, this ultimatum from the Primates has no constitutional legality in the Communion itself because the ACC Constitution would have to be amended by October 1 to remove The Episcopal Church from the constitutional schedule of Provinces in order to deliver on their threat. Also, the Anglican Consultative Council, of which we and the Canadians are still members by that membership schedule, would have to be convened to pass the amendment, with 2/3 of the General Synods ratifying it, or "alter the status" of this Church with the assent of 2/3 of the Primates at a convened meeting.

It is time to insist upon a return to the written constitutional framework as the context for discussion of the life and mission of the Anglican Communion. The message to others about the ACC Constitution is simple: Either obey it or amend it. Out of respect for all the Provinces of the Anglican Communion whose General Synods unanimously put in place this one written constitution for the Communion as the framework for its on-going life, we should honor and obey this constitution. Then let the conversation continue.

