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Constitutional Methodism in Crisis: Historical and Operational Perspectives on Divisions Threatening United Methodism

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Abstract

In the fifty years since The United Methodist Church became a denomination, the body has experienced well-documented declines in the United States, expansions in much of Africa, and deepening divisions over human sexuality. Those divisions have impacted moral, legal, theological, ethical, pastoral, and vocational matters in the life of the church. They threaten to undermine and overwhelm the constitutional system that the church has used for more than two centuries to order its operations and maintain accountability.

John Wesley had devised and led the Methodist *connexion*. After the end of the colonial era in America, he relinquished any pretense of control over his *connexion* in the newly independent nation. American Methodists governed themselves around two centers of authority—conferences, and an episcopacy. Yet expansions into distant frontiers and suspicions about imbalances of power led them to explore other structures with standards for church doctrine and organs of church government.

The General Conference of the Methodist Episcopal Church made a momentous decision in 1808 to adopt an approach to polity that established a connectional system on a constitutional basis. The concept of a church polity constructed on a Constitution is neither self-evident nor necessary.

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In two major sections, this article examines constitutional Methodism in historical and operational perspectives. It looks at the constitutional crisis looming in United Methodism over church laws regarding homosexuality and the denominational efforts to address them. Those efforts may be unconstitutional.

Introduction

The United Methodist Church, as a body, is critically ill and its organic systems are failing. The denomination is deeply divided over issues that involve human sexuality and is deeply challenged by declines in numbers and influence. Even more troubling is that the church is trying to deal with these difficulties while appearing to distrust the constitutional system that Methodists devised to order their theology and their polity.

The General Conference of the Methodist Episcopal Church in 1808 made a momentous decision to establish a constitutional basis for its connectional life. For more than two hundred years, numerous Methodist bodies have embraced and expanded this constitutional approach. When streams of Methodism divided, the newly created bodies continued their own forms of constitutional Methodism. When streams reunited, they ordered their new bodies on a constitutional basis. They trusted a constitutional system that offered methods of accountability and means for equitably distributing ecclesial power. Constitutional Methodism persisted and endured.

This essay examines constitutional Methodism from historical and operational perspectives. It also looks at the constitutional crisis looming in United Methodism over church laws regarding homosexuality. It questions efforts to address the crisis. Indeed, this essay argues that such efforts give evidence of the church's turn to unconstitutional methods for addressing the crisis, perhaps because it no longer trusts some constitutional approach to protect church doctrine or preserve church polity.

The United Methodist Church, at its creation in 1968, chose a Constitution as an essential means for ordering the body and for holding its systems accountable. Now, the body is in critical condition. Its organizational, missional, and financial challenges are immense. And the denomination may be, intentionally or unintentionally, choosing to abandon the constitutional approach that has maintained, constrained, and sustained Methodism for more than two centuries.

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A Body in Critical Condition

From ancient days when apostles wrote epistles,[1] to current days when worshipers sing hymns of faith,[2] theologians and practitioners of Christianity have found "body" to be a helpful metaphor to discuss the nature of the church. The United Methodist Church is one such "body." But these days the body is critically ill—with its systems failing.

Those systems are a result of a choice made by American Methodists centuries ago as a means to be effectively in mission. That choice was a decision to embody the Methodists' connectional doctrine and polity in a constitutional system.

This is an essay about that decision—one that has shaped Methodism for more than two hundred years. In choosing a constitutional system, The Methodist Episcopal Church in 1808 created a framework of interlocking authorities to decentralize and distribute power for governing the church. It also crafted a constitutional method for defining doctrinal standards. It is the architecture of The United Methodist Church.

Now this constitutional system of The United Methodist Church is critically unstable. Born fifty years ago, the church constitutionally ended the racial segregation built into The Methodist Church in 1939. Through five decades, The United Methodist Church has welcomed increasing numbers of women and persons of color to the highest levels of church leadership, has become an increasingly global body, has developed new patterns of worship, and has devised new orders of ministry for clergy.

But the body has also lacerated itself, almost from birth, issuing pronouncements and enacting laws on matters of human sexuality. These cutting actions were, to some, signs of spiritual discipline. They were, to others, signs of spiritual disorder. They occurred while The United Methodist Church was experiencing some well-documented difficulties with aging demographics and attendance declines in nearly every global region except Africa. Now the body is not only divided, but it no longer seems to trust the systems that have sustained the organism and its predecessor bodies for centuries.

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[1] Thus, "all the members of the body, though many, are one body" (1 Corinthians 12:12).

[2] See the refrain, "we, though many throughout the earth, we are one body in this one Lord." John B. Foley, "One Bread, One Body," *The United Methodist Hymnal* (Nashville: The United Methodist Publishing House, 1989), no. 620.

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The Origins of an Approach to Church Order

The United Methodist Church has its origins in a Methodism that arrived in North America with an influx of immigrants. Some, like Robert Strawbridge and Barbara Heck, developed their own versions of a Wesleyan movement. Others, like Francis Asbury and Thomas Coke, came with credentials from Mr. Wesley himself, who had named them to be the joint superintendents of American Methodism. Wesley wanted the conference of preachers to have authority for the movement. The superintendents were to oversee it.

Then American Methodism declared itself to be a church in 1784. Gradual growth in numbers, distance, and diversity meant Methodists along the coast differed from those on the frontier, and those in the north differed from those in the middle states and south. In the process, annual conferences reflected their regional cultures. And superintendents called themselves bishops. By the first decade of the 1800s, The Methodist Episcopal Church in America had a mixture of governing authorities. Annual conferences decided who the preachers would be. A quadrennial general conference of all preachers decided what the doctrines and regulations of the church would be. The bishops (in practice, one Bishop, Francis Asbury) decided where preachers under appointment would be.

Conflicts arose, divisions formed, and fears about church doctrine stirred. Then American Methodists took an unprecedented step. They devised a system for governing the church that distributed power constitutionally within the organism and that made the body accountable to restrictive rules that assigned and restrained authority.

A Durable System Amid Signs of Doubt

This constitutional system sustained Methodism's connectional polity through periods of expansion, revivalism, and social activism in ecclesial life. Over two centuries, the power of women rose, institutions for education and health care emerged, standards for educating clergy deepened, and foreign missions flourished. The constitutional system endured schisms that fractured the church into parts that created their own constitutional systems. The constitutional approach to connectional polity endured centuries of global and domestic turbulence: slavery ended; world wars raged; democracy rose; despots fell; economies rose and crashed; racial segregation was legalized; lynching was overlooked; segregation and discrimination were banned, at least in law; and colonies were liberated.

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Now there are signs of doubt about the constitutional system. It seems no longer to be trusted. It might not endure. And, without it, the body might not survive. The United Methodist Church is in critical condition because it is plagued by deep distrust in, and disuse of, the constitutional systems that have sustained it as a body. The organism is breaking down.

In 2016, the General Conference—locked into divisions about the church laws that declare homosexuality and Christianity incompatible—narrowly adopted a proposal from the Council of Bishops for a commission (with members named by the Bishops) that was to find a way to move the body forward in dealing with these divisive laws. Events since May 2016 illustrate the severity of the crisis in United Methodism.

- The Council of Bishops, after naming the members of the commission, assumed responsibility for recommending legislative and constitutional changes that the General Conference should take from the commission, thus appearing to claim legislative authority that is constitutionally reserved to General Conference.
- The Judicial Council questioned the consecration of a woman who was elected to the episcopacy at a jurisdictional conference because she was (at the time of her election) married to another woman—even though she was eligible for election as an elder in good standing in an annual conference. Thus it appeared to grant itself authority to intervene in judgments about clergy that are constitutionally reserved to annual conferences and authority to intervene in judgments about elections of bishops that are constitutionally reserved to jurisdictional or central conferences.
- The Council of Bishops expressed "dismay" about the outcome of voting by the annual conferences on constitutional amendments that had been approved by the General Conference, questioned the "motivation" that led to the defeat of two amendments, and promised to rely instead on laws in the *Discipline* (which are not equal to what is established constitutionally) and also on Social Principles (which have neither legal nor constitutional authority).
- The Secretary of the General Conference, after the Bishops cited "dismay" at the results of the voting, declared that the text of one constitutional amendment was not the text that had been adopted by the General Conference two years earlier; so, instead of being defeated by the annual conferences, a corrected version of the

amendment will be circulated for a new round of voting by annual conferences.

In summary, the General Conference does not appear to trust its ability to enact legislation that unifies the church; the Council of Bishops does not appear to trust the process for approving constitutional amendments; the Judicial Council does not appear to trust the constitutional authority of annual conferences to make judgments about clergy members or of jurisdictional conferences to make judgments about consecrating bishops; and the annual conferences cannot trust the accuracy of words on which they are voting.

At a time when clearly defined authorities in the body should be prepared to deal with the divisions and the challenges facing the denomination, constitutional Methodism is in crisis in The United Methodist Church.

The Origins of Constitutional Methodism

In May 1808, when 129 itinerant preachers gathered in Baltimore for a General Conference of the Methodist Episcopal Church in America, the meeting that they were about to conduct may not have seemed all that momentous. These General Conferences had almost become customary. They met, as usual, in Baltimore. Francis Asbury, as usual, was in the chair. Parliamentary power, as usual, rested with preachers who came from the three big annual conferences along the central Atlantic coast—members from Virginia, Philadelphia, and Baltimore carried nearly two-thirds of the votes.

The preachers had been holding these general members' meetings quadrennially since 1792. Before then, all of the Methodists known as "traveling preachers" had met annually in such a conference. But success had forced them to make a change. In 1792, they realized that the expanding frontiers of their movement had made annual meetings impractical. So they decided to hold General Conferences every four years for all of the preachers in the connection. After 1796, 1800, and 1804, a conference in 1808 was next.

Asbury, who was 62, had been the most prominent figure in American Methodism since his 30s, even before Methodists had formally declared themselves to be a "church" in 1784. He really embodied the "itinerant general superintendent" for the denomination. In 1808, he was the only bishop engaged in superintending the church. Another would be elected during this General Conference, but for all practical purposes that newest bishop was going to be

assisting Asbury with the itinerant general superintendency—not sharing it with him on an equal basis.[3]

When they gathered in 1808, the preachers expected to take whatever steps were necessary to continue governing the Methodist Episcopal Church. They functioned as the "conference," which had succeeded John Wesley as the authority for Methodism.[4] The "conference" could control the church, and the mid-Atlantic majority could control the conference. Among its 129 members, 32 were from Philadelphia, 31 were from Baltimore, and 19 were from Virginia.[5] However, since a General Conference understood that it had "unlimited powers"[6] in the organization and order of the church, some preachers feared that

> a majority vote might at any time overthrow the Articles of Religion, the General Rules, or the Episcopal government of the Church.[7]

Those fears fostered an opportune environment for things to change.

A Constitutional Approach to Doctrine and Polity

The changes that actually occurred during the 1808 General Conference addressed the body's doctrinal standards and decided a new course for the church's polity.

A parliamentary maneuver mitigated the power of dominant annual conferences. A Constitution was adopted, defining and limiting the power of the General Conference, protecting doctrinal standards, and permanently protecting the episcopacy. A "delegated" or "representative" General Conference replaced one in which all "traveling preachers" were "members." William McKendree, a preacher and presiding elder from the Western Conference—

[3] Russell E. Richey, Kenneth E. Rowe, and Jean Miller Schmidt, *The Methodist Experience in America*, Volume 1: *A History* (Nashville: Abingdon, 2010), 82; Frederick A. Norwood, *The Story of American Methodism* (Nashville: Abingdon, 1974), 142–43. Thomas Coke was busy elsewhere in the world. Richard Whatcoat had died in 1806.

[4] Richard P. Heitzenrater, *Wesley and the People Called Methodists* (Nashville: Abingdon, 1995), 283, 292.

[5] John J. Tigert, *A Constitutional History of American Episcopal Methodism* (Nashville: Publishing House of the M. E. Church, South; Smith and Lamar, Agents, 1904), 297; cf. Horace M. DuBose, *Life of Joshua Soule* (Nashville: Publishing House of the M. E. Church, South; Smith and Lamar, Agents, 1916), 76.

[6] Tigert, *Constitutional History*, 297

[7] Tigert, *Constitutional History*, 298.

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not from one of the big three—was elected to join Asbury in the itinerant general superintendency.

Discussions about the actions taken by the 1808 General Conference remain controversial. In the 1980s, Richard P. Heitzenrater and the late Thomas C. Oden, two of United Methodism's premier scholars of Wesleyan theology and history, engaged in an intense debate about the meaning of the action taken when the 1808 General Conference adopted the First Restrictive Rule, effectively limiting the power of subsequent General Conferences.[8]

Heitzenrater distinguished between "doctrinal standards" and "statements" of Methodist theology, such as Wesley's *Sermons* and *Notes on the New Testament,* and John Fletcher's *Checks Against Antinomianism*. He cited the evidence that a motion to name documents other than the *Articles of Religion* as doctrinal standards was defeated by the 1808 General Conference and that the paragraph in the Minutes containing the defeated motion about including Wesley's *Notes* and *Sermons* and Fletcher's *Checks* has a huge letter X drawn through the page. That mark was based on a motion to strike it from the record.

Oden interpreted the phrase "our present existing and established standards of doctrine" to include Wesley's *Notes* and "Standard" *Sermons* along with the Articles of Religion. He pointed to the citations of the *Notes* and *Sermons* as theological authorities for Methodists from the 1770s and throughout Methodist history. He insisted that actions taken by the 1808 General Conference with reference to "present existing and established standards of doctrine" were based on the 1804 *Discipline,* which was in effect at the time.

Heitzenrater argued (pp. 17–18) that

> The General Conference was *not* willing to go on record defining its standards of doctrine in terms of documents other than the Articles, not even Wesley's *Sermons* and *Notes*. . . . The intent of the 1808 General Conference thus seems to be clear. The majority desired to restrict Methodism's "established standards of doctrine" to the Articles of Religion that Wesley provided in 1784 and to avoid even implying, by association or otherwise, that there were other specific writings that were authoritative *in the same manner*.

[8] See Richard P. Heitzenrater, "At Full Liberty: Doctrinal Standards in Early American Methodism," *Quarterly Review* 5.3 (Fall 1985): 6–27, and Thomas C. Oden, "What Are 'Established Standards of Doctrine'?: A Response to Richard Heitzenrater," *Quarterly Review* 7.1 (Spring 1987): 41–62. Both essays were later reprinted in Thomas A. Langford, ed., *Doctrine and Theology in The United Methodist Church* (Nashville: Kingswood Books, 1991)—Heitzenrater, pp. 109–24; Oden, pp. 125–42.

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Oden insisted (pp. 41–42, 53) that

> John Wesley's *Sermons* and *Notes* have had an uninterrupted consensual history of being received as established standards of doctrine in the United Methodist Church and its predecessors . . . [and] the very purpose of the First Restrictive Rule was to guarantee that these established standards (*Sermons, Notes,* and more recently *Articles*) not be amended.

The purpose of this essay is not to attempt any resolution of that debate. Rather, it is to say that the decision by the General Conference in 1808 to move to a constitutional system was to provide for church doctrine and church order. Neither doctrinal standards nor loci of authority were to be altered at the whim of a legislative majority, a bishop, an annual conference, or any other entities in the body without accountability to a larger structural design. Creating a constitutional system was as much about theology as it was about polity.

When the 1808 General Conference concluded after three very difficult weeks, decision-making authority had been distributed across a constitutionally constrained connection of inseparable entities, with powers that they exercised separately from one another.

Not all of these changes took shape at once or at one General Conference. Yet the actions of 1808 altered things—permanently. A membership meeting conducted by all of the preachers in American Methodism with untrammeled authority to write laws for the whole church had happened for the final time. After 1808, every governing power in the church was constitutionally constrained and accountable to an authority other than itself. Renowned church leader Jesse Lee of Virginia declared that 1808 ended the General Conference as he had known it. He said 1808 was "our fifth and last General Conference."[9]

Constitutional Methodism in Historical Perspective

It is not self-evident that church polity requires a Constitution. "How strange to think of the Body of Christ in the world needing a constitution," wrote Thomas Edward Frank.[10] Nor is it obvious that the Methodist Episcopal Church in 1808 really understood that it had adopted a Constitution or created constitutional Methodism. The 1808 General Conference concluded

[9] Tigert, *Constitutional History*, 297.

[10] Thomas Edward Frank, *Polity, Practice, and the Mission of The United Methodist Church* (Nashville: Abingdon, 2006 revised edition), 115.

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without any decision to publish a document called a Constitution or to designate any portion of its record with that title. However, the concept was present.

What the General Conference actually adopted was a set of principled constraints and restraints on governing units within the church. It defined the "full powers" that were granted to the General Conference for legislative acts (*i.e.,* "rules and regulations") while specifying "limitations and restrictions" on those powers over church doctrine and order. It established the episcopacy and prevented the General Conference from altering it.[11]

In effect, the 1808 General Conference established the principles in Methodist polity that are authoritatively prior to—and superior to—the legislative prerogatives of General Conference and the episcopal prerogatives of itinerant general superintendents. In fact, if not in name, the 1808 General Conference adopted a "Constitution" for the church and thus created constitutional Methodism.

Generations of printed editions of books of *Discipline,* issued by various church bodies that emerged from the numerous schisms and the separations among 19th century Methodists, included these "limitations and restrictions" without declaring or designating them to be their Constitution.

However, the 1892 General Conference of the Methodist Episcopal Church took an action that formally recognized what had happened in 1808 as creating a Constitution. In adopting a report from its Constitutional Commission, the 1892 General Conference of the Methodist Episcopal Church included in its action the following statement:

> The section on the General Conference in the Discipline of 1808, as adopted by the General Conference of 1808, has the nature and force of a Constitution. That section, together with such modifications as have been adopted since that time in accordance with the

[11] See the full text of this "Constitution" in Russell E. Richey, Kenneth E. Rowe, and Jean Miller Schmidt, *The Methodist Experience in America*, Volume 2: *A Sourcebook* (Nashville: Abingdon, 2000), 156–57. See also Tigert, *Constitutional History,* 313–14, and DuBose, *Life of Joshua Soule,* 84–85. The 1808 "Constitution" remains essentially as "The Restrictive Rules" in ¶¶17–22 of the Constitution of The United Methodist Church today. See *The Book of Discipline of The United Methodist Church, 2016* (Nashville: The United Methodist Publishing House, 2016), p. 31.

Hereafter notes citing the *The Book of Discipline* (or in an earlier era, *The Doctrines and Discipline*) will use the abbreviation *Discipline* preceded by the abbreviation for the denomination and followed by the year, e.g., UMC *Discipline* 2016.

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> provisions for amendment in that section, is the present Constitution.[12]

That understanding has prevailed ever since. And most of Methodism has built its structures of governance upon a Constitution.

The General Conference of the Methodist Episcopal Church in 1908 celebrated the one hundredth anniversary of the Constitution during its session in Baltimore.[13] And subsequent editions of various books of *Discipline* in multiple Methodist bodies clearly distinguished the church's Constitution from its legislative enactments.[14] A few examples from the *Disciplines* of ensuing decades illustrate the point.

- Paragraphs 1 through 47 of the *Doctrines and Discipline of the Methodist Episcopal Church*, 1924, are clearly labeled "The Constitution" and they precede the section beginning in ¶48 labeled "Legislation."
- Paragraphs 32 through 43 of *The Doctrines and Discipline of the Methodist Episcopal Church, South*, 1934 (and also 1938) retained the substance of the language that appeared as constituting the established governing systems of the Church.
- The *Doctrines and Discipline of The Methodist Church*, 1939, contains the official record that defined the newly reunited denomination after 95 years of north/south division. It established the constitutional basis on which the church was built and ¶¶1 through 108 in the MC *Discipline* 1939 were labeled "Part I: The Constitution" for The Methodist Church. It reunited the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church. It established two new constitutional entities: a Judicial Council and Jurisdictional Conferences. It approved all the legislative enactments by which the church would function.
- *The Doctrine and Discipline of the African Methodist Episcopal Church*, 1940, in its opening section, published ¶¶3–49A with the designation that it was "Part I: The Constitution."

[12] Tigert, *Constitutional History,* 314.

[13] DuBose, *Life of Joshua Soule,* 87.

[14] See Richey, Rowe, and Schmidt, *The Methodist Experience in America,* 1:171–74, for a discussion of the Methodist Protestant Church and its Constitution. In *The Story of American Methodism*, 182–83, Norwood notes that the Methodist Protestant Church adopted its own Constitution in 1830 with eleven "Elementary Principles" in its Preamble.

- *The Book of Discipline of The United Methodist Church,* which expressed the merger of the Evangelical United Brethren and The Methodist Church in 1968, designated "Part I: The Constitution" in ¶¶1–66.

A Constitutional Crisis That Preceded the Constitution

Many forms of Methodism have emerged since the General Conference in 1808. Its constitutional text has been amended and expanded through the centuries. Historical processes compelled American Methodism to cope with divisions, disruptions, disunion, and some reunification. Through it all, constitutional Methodism has continued. Most of that original form remains in the Constitution of The United Methodist Church today.

The prevailing Methodist pattern placed the events of 1808 as a landmark that transformed the church from a polity built upon a controlling legislature (known as the General Conference) and overseen by a controlling bishop (named Francis Asbury) into a constitutional polity with a legislating General Conference, a superintending episcopacy, and an interlocking network of conferences (*e.g.,* annual, quarterly), each of which had some constitutionally established authority assigned to it.[15] Nevertheless, constitutional Methodism almost did not happen.

On the agenda of the 1808 General Conference was a "memorial" (or "petition," in current jargon) from the 1807 New York Annual Conference. It requested two major changes in the order of the General Conference: first, that it should be changed from its current character as a membership body of all traveling preachers to a "representative or delegated" body; and, second, that it be composed "of an equal representation from the Annual Conferences."[16] The concept of a delegated General Conference was not a new idea, nor was it likely to be dismissed immediately. But the concept of altering General Conference to a body whose annual conferences all had equal voting strength would be anathema to the big annual conferences.

On May 9, 1808, the General Conference turned its attention to the memorial from New York. Bishop Asbury, as the chair, asked, "whether any further regulation in the order of the General Conference" should be considered. By voice vote, the response was affirmative, so the body proceeded to that item of business.

[15] The Methodist Protestants, of course, jettisoned the episcopacy in 1830 but embraced it again in 1939.

[16] DuBose, *Life of Joshua Soule*, 75–76.

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Immediately, Stephen G. Roszel, a member of the Baltimore Annual Conference, moved that a committee be named to draft plans "for regulating the General Conference." His motion was approved. Asbury, as the chair, declared "that the committee be formed of an equal number from each Annual Conference."[17] Two preachers from each of the seven annual conferences formed the committee. This group of fourteen went to work.

Seven days later, on Monday, May 16, the committee submitted its draft report to the General Conference. It proposed a list of eight "constitutional"[18] provisions, among them a delegated General Conference, for which each Annual Conference was to have an equal number of delegates, who would be chosen by ballot in the annual conferences.[19] Debate ensued on several aspects of the draft, not least the equalization of power among the annual conferences. Jesse Lee opposed it, because he felt the "[Annual] Conference rights" were being violated by an equalization of the delegations and by the mandate that balloting—rather than seniority—be used as the method for choosing all the delegates.

On Wednesday, May 18, the General Conference voted on the first proposal in the draft document, namely to reconstitute the General Conference as a body "composed of delegates from the Annual Conferences." It was defeated, 64–57.[20]

The basic concept, namely that the body be constituted as a delegated General Conference, had failed. Its defeat appeared to doom everything in the committee's report. With that action, some members from the losing side began to gather their belongings in preparation for their departure from Baltimore. At least one member on the minority side was observed weeping. Elijah Hedding called it a "crisis," fearing that it might be the end of the church.[21]

Some Deft Parliamentary Maneuvers

But Asbury and William McKendree (who had been elected bishop four days earlier) initiated conversations with some of the preachers and pleaded with them to stay for a little longer. They remained and, on the following Monday, May 23, they turned to a rather mundane item of business—to set

[17] DuBose, *Life of Joshua Soule*, 77.

[18] Otterbein's "Constitution" in 1785 was a set of rules not a system of government. See Richey, Rowe, and Schmidt, *The Methodist Experience in America*, 2:87–90.

[19] Richey, Rowe, and Schmidt, *The Methodist Experience in America*, 1:79–80.

[20] Tigert, *Constitutional History*, 309. Then, as now, not every eligible voter cast a ballot.

[21] Tigert, *Constitutional History,* 310.

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both the time and the place of the next General Conference. Cleverly, Stephen Roszel moved that a decision about the date and site of the next meeting be deferred until a decision had been made about who would constitute the 1812 General Conference. When that was approved decisively, it had the effect— if not the parliamentary form—of being a motion to reconsider the item that had been narrowly defeated on May 18. After Roszel's motion was adopted, a motion to convene the next General Conference in 1812 as a delegated body, with each Annual Conference to be represented by "one member for every five members" was offered and was approved decisively. A remarkably deft move came next when Joshua Soule, the principal author of the report from the committee of fourteen, proposed that

> each Annual Conference shall have the power of sending their proportionate number of members to the General Conference, either by seniority or choice, as they shall think best.[22]

This motion achieved a number of results. It took advantage of the momentum supporting a delegated General Conference. It empowered annual conferences with a constitutional authority to select their General Conference representatives by a method chosen by them, not imposed upon them. And it neutralized the objections of Jesse Lee, who could tolerate the concept of a delegated General Conference but who insisted on the constitutional "rights" of annual conferences. Soule's motion put Lee in a position where he had to remain silent or he would be opposing his own principle.

Soule's motion carried on Monday afternoon, May 23. Then the body decided to convene for its next session in four years on May 1, 1812, in New York. That would be the first time a General Conference sat in any city but Baltimore. It would also be the first time a General Conference was a delegated or representative body of the church. It would be the first time a General Conference would meet under its newly adopted constitutional principles. And it all happened because a number of preachers—including Soule of New England, Roszel of Baltimore, and Bishop Asbury himself—used parliamentary tactics to lead the body to a conclusion. At the close of the debate and the votes, Jesse Lee walked over to Joshua Soule and said, "Brother Soule, you've played me a Yankee trick!"[23]

With the action of the 1808 General Conference, the church had found a way to avoid becoming some autocephalous body with a General Conference

[22] Tigert, *Constitutional History*, 311.
[23] Tigert, *Constitutional History*, 311.

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or an Asburian Episcopacy as its head. It gave constitutional authority to the annual conferences that had been making decisions about admitting preachers and would now be making decisions about choosing General Conference representatives. A connection of inseparable entities with separated powers emerged. Constitutional Methodism had stabilized the church for centuries of service.

A Crisis that Constitutional Methodism Could Not Resolve

The system was tested often. The General Conference had legislative authority. Bishops had authority that could not be limited by legislation. But under a constitutional system, bishops might deem some legislation contrary to the limits of 1808, or a General Conference might deem a bishop's behavior contrary to church law. Schisms occurred. Some, left out of the system, had become restless: laity, with a church governed solely by preachers; and women, with a church governed by clergymen who ordained only men.

One intractable issue—slavery—tested the whole organization. The 1844 fracture, which divided northern and southern Methodists into separate denominations, was clearly a division about slavery. But it also involved a dispute about polity and authority to take disciplinary action. In 1844, the church faced a constitutional issue, whether the General Conference or the Board of Bishops had authority to exercise discipline over a Bishop.

Elected to the episcopacy in 1832, Bishop James O. Andrew had become a single parent when his first wife died in 1840. To care for his family, he entered into contracts with slave owners and paid them to provide the services of slaves for his needs. Then he married a widow who owned slaves, and Bishop Andrew became a slave owner himself.

On May 27, 1844, the General Conference debated various proposals to deal with the situation. One resolved that Bishop Andrew be "affectionately requested to resign." Then a substitute motion resolved "that he desist from the exercise of this office so long as this impediment remains." An unsuccessful resolution proposed that the matter "be referred to the Church" for discussion and that any decision be deferred until the next General Conference. The Methodist Episcopal Church was brought to the point of having to face the topic of slavery as a doctrinal, disciplinary, and constitutional issue.

In the midst of debating these conflicting resolutions, the delegates disputed "the power of the General Conference over the bishops." They argued whether the General Conference had any authority to discipline a bishop or "to

remove a bishop, or to suspend the exercise of his functions."[24] Constitutional Methodist polity was being challenged.

The pressure was more than the body could manage. The arguments about polity issues and about slavery pushed the Methodist Episcopal Church to the brink of schism. The General Conference appointed a committee to ponder the possibilities for a division of the church. After twelve days, the committee submitted a plan with twelve steps for separating the church along geographical boundaries that reflected legalized slavery. The General Conference approved each of the items in the package. Five of the steps were supported by approximately 90 percent of the delegates. The other seven steps were approved unanimously.[25] And the denomination split in two.

In the history of constitutional Methodism, it can be debated whether delegates at the 1844 General Conference neglected to use their constitutional polity as the basis for dealing with these crises or whether their constitutional polity was too weak for the task.

Did constitutional Methodism fail as a means for maintaining church unity? Did it simply fail to resist the social and political forces dividing the nation? Did Methodists overlook the capacity of their constitutional system to apply anti-slavery principles that had been expressed by their founder in England, by Methodists in America as early as a Fluvanna Conference in Virginia in 1778, and by another in 1785?[26] Did Methodists sacrifice their mission and constitutional order to placate cultural and economic patterns in the country?

Two things are clear. The first is that the church failed to meet the test presented by the moral issue of treating human beings as property; hence, it divided. The second is that constitutional Methodism endured the division of 1844; it even survived that schism.

The Persistence and Expansion of Constitutional Methodism

The structures of the two Methodist bodies in the north and the south after 1844 retained the key components of the constitutional system that was adopted in 1808. Both the Methodist Episcopal Church and the Methodist Episcopal Church, South, established constitutional polities with an episcopacy,

[24] Richey, Rowe, and Schmidt, *The Methodist Experience in America*, 2:268–78.

[25] Richey, Rowe, and Schmidt, *The Methodist Experience in America*, 2:279–81.

[26] Russell E. Richey, *The Methodist Conference in America* (Nashville: Kingswood, 1996), 28; and Richey, Rowe, and Schmidt, *The Methodist Experience in America*, 2:84.

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a General Conference, a network of annual conferences, and the constraints that were adopted by the General Conference in 1808.

When reunion came in 1939, a Constitution was an essential component of the structure for the reunified church. Indeed, the constitutional system was expanded. In addition to the General Conference, all the annual conferences, and the episcopacy, the new and reunited Church included in its Constitution two other distinct and separated powers. One established a constitutional system of racial segregation in the United States by creating a new layer within ecclesiastical order called the jurisdictional conferences, where the bishops were to be elected. The other established a standing judiciary, with a "Judicial Council" to decide disputes about the constitutionality or legality of legislative actions by the General Conference, review decisions of law by bishops, and hear appeals from any church trials for which preachers have constitutional guarantees.

The Methodist Episcopal Church, South, had established a Judicial Council in its constitutional system in the 1930s. The Constitution for The Methodist Church, in 1939, included it. The Constitution of The United Methodist Church, from its inception in 1968, also provided for an independent judiciary.

The Judicial Council, like all constitutional bodies, has powers assigned to it that separate it from the others. It has the constitutional authority to "pass upon" decisions of law by bishops, to determine the constitutionality of actions by the General Conference, to "determine the legality of any action" by a board created by the General Conference, to review appeals of clergy after trials, and to make decisions that are "final."[27] It writes its own rules of procedure and elects its own officers. But the General Conference chooses its members.

Testing the Constitutional Connection

As the history of constitutional Methodism continues to unfold, its structures and systems continue to be tested. In the final decades of the twentieth century and the first decades of the twenty-first century, another crisis has threatened to overwhelm and to divide the structures of United Methodism. It involves provisions in the Constitution, various church laws, and disputed questions about human sexuality—homosexuality, in particular. In the years since The United Methodist Church was established in 1968, actions by various constitutional bodies have stretched the ligaments of the connection.

[27] The Constitution of The United Methodist Church, Division Four—The Judiciary, Articles I–V, UMC *Discipline* 2016, ¶¶55–58, pp. 42–43.

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Starting in 1972, the General Conference has exercised its "full legislative power over all matters distinctively connectional"[28] by enacting laws that prohibit any "self-avowed practicing homosexuals" from ordained ministry, certified candidacy, or appointments as clergy.[29] During the same period, Annual Conferences exercised their constitutional authority "on all matters relating to the character and conference relations of its clergy members, and on the ordination of clergy"[30] and claimed constitutional freedom to apply, enforce, or ignore these church laws not as a moral liberty but as a constitutional responsibility. The Bishops, once noted for public solidarity, went public with their differences of opinion.

Political processes have lured advocates.They have also pressed constitutional boundaries.

Jurisdictional Conferences heard nominees for the episcopacy give comments and answer questions about their attitudes toward the church laws concerning homosexuality. The General Conference, in electing the new members of the Judicial Council every four years, produced conservative or progressive majorities in successive quadrennia for the Judiciary. The General Conference in 2016—disrupted by protests, exhorted by liberal delegates to change church laws, and exhorted by conservative delegates to enforce the existing church laws—authorized a group to examine all church laws on homosexuality. Known as the Commission on a Way Forward, the group was created by the General Conference, which directed the Council of Bishops to name the Commission members.

The Council of Bishops did so. And it invoked the authority, under ¶14 of the Constitution, to call a special session of the General Conference to address the topic and the report. In February 2018, the Bishops received a report from the Commission. They reviewed the report, apparently intending to submit some revised and edited version of that report to the called General Conference in February 2019. This process may become another test of constitutional Methodism.

According to news sources, when the Council of Bishops met in February 2018, it took actions that had the effect of diminishing, if not eliminating, one recommendation in the report. Some observers interpreted the actions of the

[28] The Constitution of The United Methodist Church, Division Two—Organization, Article IV, UMC *Discipline* 2016, ¶16, pp. 29–31.

[29] UMC *Discipline* 2016, ¶304.3, p. 226, and *passim.*

[30] The Constitution of The United Methodist Church, Division Two—Organization, Section VI: Annual Conferences, Article II, UMC *Discipline* 2016, ¶33. pp. 35–36.

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Bishops as step toward removing uniform laws against homosexuality. In May 2018, the Bishops affirmed three structural options but appeared to recommend one.

Advocacy groups, pondering the recommendations from the Commission and the revisions offered by the Bishops, are plotting next steps. Theological, ethical, political, cultural, ecclesial, and financial arguments are being advanced.

There are also constitutional considerations. Those matters can potentially test whether the United Methodist Constitution will be an asset or an impediment in resolving the denomination's disputes about homosexuality. The pathway that the Commission's report is taking could ensnarl the Council of Bishops, the General Conference, and the Judicial Council in a constitutional conundrum.

The General Conference authorized the creation of a Commission and asked the Council of Bishops to name the members of the Commission. However, to what body, under the Constitution, is the Commission accountable?

The Council of Bishops and the General Conference are separated constitutional entities in United Methodism. It is possible that the General Conference, the Commission it authorized, and the Council of Bishops have allowed the report to take a pathway that the Constitution does not allow. It is conceivable that the Council of Bishops has claimed authority—which it does not have under the Constitution—to modify the report. It is also possible that the Council of Bishops does not have authority to submit its revision of the Commission's report as a legislative proposal to the General Conference. It is possible that the whole process has transgressed the constitutional separation of powers.

Indeed, it is conceivable that the church has rested its hopes for a resolution of all the perplexing issues regarding church law on homosexuality in a process that violates the Constitution. No legislative decision regarding church laws about homosexuality can intrude into the prerogatives of other constitutional entities.

It is possible that the Church is on the verge of violating its own Constitution—or failing to use it properly—in a step to repair a serious wound in the Church. And constitutional Methodism may not continue into the future if it cannot manage this crisis.

According to the Constitution of The United Methodist Church, only the General Conference can write laws that are "distinctively connectional" for the

church[31] and only the annual conference can vote "on all matters relating to the character and conference relations of its clergy members, and on the ordination of clergy."[32] So, in constitutional United Methodism, the authority of the annual conference to decide who will be ordained or who will be allowed to remain in the ordained ministry cannot be violated by some law that the General Conference adopts. Moreover, only the Judicial Council can determine if a legislative act by the General Conference is "constitutional." But the Judicial Council is without jurisdiction to consider such questions unless a majority the Council of Bishops, 20 percent of the General Conference, or an annual conference, poses a query that lets it do so.

In 2018, Methodist bodies are marking 210 years of constitutional Methodism. The largest and most global of those bodies, namely The United Methodist Church, is marking 50 years as a Christian denomination governed by a Constitution.

Nobody seems ready to predict the future of the denomination either as a unified body or a constitutional one. Nobody seems ready to exude the confidence that United Methodism will find a way to resolve its deep divisions over human sexual identity and homosexuality. Nobody seems convinced that church laws concerning ordination and the exercise of the ministerial office can be reconciled constitutionally. The called General Conference in February 2019 may decide not only whether The United Methodist Church remains intact but also whether constitutional United Methodism has a future.

Two centuries ago, it was a concept that 129 preachers in Baltimore embodied in a mission-driven institution. But is it still stabilizing the church to operate its mission?

Constitutional Methodism in Operational Perspective

While disputes concerning homosexuality demonstrate dramatic divisions that are threatening the institutional unity of the denomination, other troublesome issues lurk in the background of constitutional United Methodism. They raise doubts about the viability of this system of connectional polity to stabilize the church for operating in the future.

[31] The Constitution of The United Methodist Church, Division Two—Organization, Section II:General Conference, Article IV, UMC *Discipline* 2016, ¶16, pp. 29–31.

[32] The Constitution of The United Methodist Church, Division Two—Organization, Section VI: Annual Conferences, Article II, UMC *Discipline* 2016, ¶33, p. 35–36.

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Organizational foundations of the denomination are shaking. Models of ministry are changing. Entrepreneurial pastors, not traveling preachers, are the celebrated leaders of the church. Congregations, not conferences, are standards measured for effectiveness. Local churches, not global connections, are core concerns. There are serious questions about the erosion of constitutional United Methodism.

A Separation of Interconnected Powers

From its inception as a denomination in 1968, The United Methodist Church has had a Constitution with five "Divisions," three of which establish the powers that are to constitute operational units of the Church. Division Two establishes an "Organization" of various conferences. Division Three establishes "Episcopal Supervision." Division Four establishes "The Judiciary," which includes the Judicial Council.[33] Hence, the Judiciary, the "Conferences,"[34] and "Episcopal Supervision"[35] operate the church constitutionally.

While these are separate and constitutionally equal Divisions, they connect and interlock in several ways. For example, Division Four of the Constitution establishes the specific constitutional authority of the Judicial Council in six connectional areas:[36]

1. To determine the constitutionality of actions taken by conferences in the connectional system, when those actions are appealed, either by
   a. a majority of the Council of Bishops or by twenty percent of the delegates in the case of General Conference actions, *or*

[33] The Constitution of The United Methodist Church, Division Four—The Judiciary, Articles I–IV, UMC *Discipline* 1968, ¶¶60–63, pp. 32–33. Paragraph 63 authorizes the General Conference to "establish for the Church a judicial system" that will ensure rights to trial and appeal, for the clergy and the laity. This "judicial system," while understood as part of "The Judiciary," is separate from the Judicial Council in that the "judicial system" will arise by a legislative act of the General Conference that honors constitutional guarantees. The Judicial Council is itself a constitutional entity, however, not a creature of legislative action.

[34] The Constitution of The United Methodist Church, Division Two—Organization, UMC *Discipline* 2016, ¶¶8–44, pp. 27–39

[35] The Constitution of The United Methodist Church, Division Three—Episcopal Supervision, UMC *Discipline* 2016, ¶¶45–54, pp. 39–42.

[36] The Constitution of The United Methodist Church, Division Four—The Judiciary, Article II, UMC *Discipline* 2016, ¶56, pp. 42–43.

b. a majority of the bishops in a jurisdictional conference or central conference or by twenty percent of the delegates in the case of a jurisdictional or central conference;

2. "To hear and determine any appeal from a bishop's decision on a question of law in an annual conference" when one-fifth of that conference has voted to appeal;
3. "To pass upon decisions of law made by bishops in annual conferences";
4. "To hear and determine the legality of any action taken therein by any General Conference board or jurisdictional or central conference board or body, upon appeal by one-third of the members thereof, or upon request of the Council of Bishops or a majority of the bishops of a jurisdictional or central conference";
5. "To have such other duties and powers as may be conferred upon it by the General Conference"; and
6. "To provide its own methods of organization and procedure."

As item number five of the list authorizes,[37] the General Conference has conferred a number of other "duties and powers." They define in law: some parameters for the work of the Judicial Council about hearing appeals; some regulations for dealing with bishops' decisions of law; some Judicial Council "jurisdiction" on items arising in designated entities of the Church;[38] and some steps for funding Judicial Council operations.[39]

Within constitutional Methodism, it is therefore important to recognize that the authorizations under which the Judicial Council fulfills its responsibilities derive from a combination of constitutional provisions and legislative enactments.

- On some matters, such as the responsibilities of the Judicial Council for determining the constitutionality of actions taken by various bodies in the Church, an Article in the Constitution and items within

[37] Paragraphs 2601–2612 in UMC *Discipline* 2016, pp. 777–84, contain many of these provisions in church law. Paragraph 813.3 (p. 556) contains the legislation that provides for funding the "expense" of the Judicial Council.

[38] Paragraphs 2609–2610 in UMC *Discipline* 2016, pp. 780–84, codify the matter of Judicial Council "jurisdiction."

[39] Paragraph 2608.1 in UMC *Discipline* 2016, pp. 779–80, contains the legislation concerning expenses—including compensation—for the Judicial Council clerk.

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General Conference legislation may both be applicable and relevant.[40]

- On some matters, the Constitution alone gives authorization.
- On some matters, only legislative acts of the General Conference may relate to a matter that is before the Judicial Council.

"The Discipline" and Other Official Church Documents

At times, these elements are in conflict. In 2012 the General Conference amended ¶2609.6 of the *Discipline* in an effort to limit Judicial Council jurisdiction for reviewing decisions of law by bishops. But Judicial Council Decision 1244 declared the amendment unconstitutional, because it violated a provision in ¶56 of the Constitution, which confers authority on the Judicial Council to review all bishops' decisions of law. An action by the General Conference cannot contravene the Constitution. Should the General Conference wish to alter a constitutional clause, it may initiate a constitutional amendment as a step toward that goal, but it cannot modify the Constitution merely by legislation.[41]

Occasionally, members of the Church (including denominational leaders) point to a provision of law in the *Discipline* as decisive on a matter. But there may be a portion of the Constitution that also bears upon it. The Constitution supersedes legislation—in any conflict between the two, the Constitution prevails over church law. Put simply, a church law may be unconstitutional, but a provision of the Constitution can never be illegal.

Confusion about these nuances is understandable, since the General Conference does more than enact laws. It takes actions that vary significantly in their operational impact on the Church. They include resolutions, social principles, budgets, constitutional amendments, and legislative enactments—in a range so broad that its acts span raising funds, revising hymnals, giving names to agencies, writing rituals, and enacting laws that govern the elections

[40] Paragraph 56.1 of the Constitution in the UMC *Discipline* 2016, p. 42, establishes the authority of the Judicial Council for determining "the constitutionality" of actions by various conferences in the connection. Paragraph 2609 (pp. 780–83) contains provisions of Church law that pertain to this constitutional authorization.

[41] See Judicial Council Decision 1244. The full texts of all Judicial Council Decisions are available in a searchable online database at http://www.umc.org/decisions/search and are not otherwise noted here. Paragraph 16.7 in the Constitution shows the ways that legislative and judicial powers are separated; see UMC *Discipline* 2016, p. 30.

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of bishops.[42] The outcomes of some General Conference actions promptly appear in print and online; others do not.

When a constitutional amendment emerges from the General Conference, it is not valid until two-thirds of the aggregate votes of all the annual conferences affirm it and the Council of Bishops certifies that the super-majority has been achieved.[43] Even then, the amended Constitution will not be printed until the next edition of the *Discipline*.

Some of what emerges from General Conference action gets into wide circulation through individualized, discrete publication. The church's hymnals and books of worship are published in their own volumes as soon as possible after the General Conference has approved them. So are texts of Resolutions, which appear in a single volume, published every four years as *The Book of Resolutions of The United Methodist Church*.

Resolutions, through which the General Conference expresses official positions of the denomination on roughly two hundred topics of public interest and social concern, are the most ephemeral of the categories. Published separately, they have neither force of law nor permanence. They invite disagreement and debate, not obedience.[44] They are official policy only for eight years, after which they must be renewed, or they are discontinued.

Inside "The Discipline": Constitution, Law, Social Principles, and More

The Book of Discipline contains many different things. In it are Social Principles, historical summaries, a theological essay, and lists of the names of every bishop who has ever been elected by the churches that are now included in The United Methodist Church, besides church laws. This practice, in which different types of material are collapsed into one volume, can cause a reader to draw inaccurate inferences that all items in the volume are flattened to the

[42] The Constitution of The United Methodist Church, Division Two—Organization, Section II: General Conference, Article IV, UMC *Discipline* 2016, ¶16.6–16.9, p. 30.

[43] The Constitution of The United Methodist Church, Division V—Amendments, Article I, UMC *Discipline* 2016, ¶59, pp. 43–44. An amendment to the Restrictive Rules, originally approved by the 1808 General Conference in its constitutional decision, requires three-fourths of the aggregate votes of all the annual conferences.

[44] *The Book of Resolutions of The United Methodist Church,* 2016 (Nashville: The United Methodist Publishing House, 2016), 21.

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same importance and impact. But a *Discipline* is not unitary in form or content. It is a collection of elements, and each has a distinct level of significance.

Social Principles express the official positions of the denomination on a variety of issues. They are published in two places: one is in *The Book of Resolutions*; the other is in *The Book of Discipline*. Like Resolutions, Social Principles do not have the force of law. But unlike Resolutions, Social Principles have permanence. A "Social Principle" appears in *The Book of Discipline* after the General Conference has given approval and remains in the *Discipline* until the General Conference revises, replaces, or removes it. But Social Principles have no legal force, since they are "not to be considered church law."[45]

The Book of Worship and *The Hymnal*, revised periodically by the constitutional authority of the General Conference, affirm and teach church doctrine—but not as law. Preaching a doctrine or presiding at a sacrament in a way that is contrary to established teachings of the church may be a chargeable offense against church law and may result in charging someone with violating a church law, culminating in a trial. But celebrating a sacrament by using a liturgy other than one in *The Book of Worship*, or singing music other than what is published officially in a *Hymnal*, does not necessarily violate church law.

Official publication by the Church, even in *The Book of Discipline*, does not mean something is a church law. Only legislation enacted by the General Conference is church law.[46] A simple majority is sufficient to approve new law or to amend existing law. Once adopted, the legislation has both permanence and force. It is permanent until it is revised or rescinded by the General Conference, unless it is declared to be unconstitutional by the Judicial Council. It has force when it is implemented constitutionally.

One Church law says persons seeking a license for pastoral ministry must release

[45] UMC *Discipline* 2016, p. 105. In one instance, however, the Judicial Council determined that a statement in the 1996 Social Principles prohibiting United Methodist clergy from conducting same-sex marriage ceremonies "has the effect of church law." (Judicial Council Decision 833, August 7, 1998). This anomaly was rectified with a change in church law when the 2004 General Conference added "conducting ceremonies" of this type to the list of chargeable offenses in the UMC *Discipline* 2004, ¶2702.1*b*, p. 719.

[46] One exception to that statement could involve a bishop's decision of law. Whatever a bishop decides has the force of law in the specific case until the Judicial Council reviews it, and to the extent that the decision of law by the bishop is affirmed by the Judicial Council it becomes the law of the church (see UMC *Discipline* 2016, ¶2609.6, p. 781).

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> the required psychological reports, criminal background checks, and credit checks, and reports of sexual misconduct and/or child abuse. They shall submit, on a form provided by the conference Board of Ordained Ministry . . . a satisfactory certificate of good health on a prescribed form from a physician approved by that board.[47]

There is no disputing the fact that the General Conference has authority to pass such legislation. The Constitution establishes that the General Conference has

> full legislative power over all matters distinctively connectional, and in the exercise of this power shall have authority . . . [t]o define and fix the power and duties of elders, deacons, supply preachers, local preachers, exhorters, deaconesses, and home missioners.[48]

But church law in ¶315.6 assigns authority for evaluating these materials to the Board of Ordained Ministry of the annual conference, which constitutionally

> is the basic body in the Church and as such shall have reserved to it the right to vote . . . on all matters relating to the character and conference relations of its clergy members, and on the ordination of clergy.[49]

Only the General Conference can enact laws specifying the character traits and ordination standards that are lawful for the clergy. But only annual conferences decide which clergy members or candidates for clergy membership meet the legal standards of character that qualify them for a conference relationship and ordination.

Anyone who consults *The Book of Discipline of The United Methodist Church* could be confused by it. The volume has some items that are not matters of church law, some items that are church law, and some items that constitutionally supersede laws. It uses terms that are identical yet have different

[47] Paragraph 315.6 in UMC *Discipline* 2016, p. 236, is one of several church laws regarding the psychological and physical health of all persons seeking to be licensed or ordained.

[48] See UMC *Discipline* 2016, ¶16 (and, more specifically, ¶16.2), p. 29.

[49] Paragraph 33 in the Constitution establishes this exclusive authority for the annual conference; it also contains stipulations that exclude most lay members of the annual conference from voting on these items, except for explicitly named categories of laity who serve on the annual conference's Board of Ordained Ministry and the Committee on Investigation. See UMC *Discipline* 2016, ¶33, pp. 35–36.

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levels of substantive meaning, depending where they appear. Phrases float from one type of General Conference action to another and appear in differing places in the *Discipline*. When they do, their effect can change.

From 1972 to the present, the Social Principles have been published in *The Book of Discipline* with a statement asserting that the church has officially found "the practice of homosexuality . . . incompatible with Christian teaching." It is an official position but it is not, by its placement in the Social Principles, a matter of church law.

What Matters Is Not Only the Words in "The Discipline" but Where They Appear

In 1980, the words "the practice of homosexuality . . . incompatible with Christian teaching" were quoted in an extended footnote to a specific provision of church law.[50] But the citation did not turn a declaration that practicing homosexuality is "incompatible with Christian teaching" into church law, since the Judicial Council had addressed the legal weight of such a footnote in Decision 480, which says

> Footnotes in the Discipline have the status or effect of law only to the extent that they cite law.[51]

In 1980, the *Discipline* added an item to the list of chargeable offenses, namely "practices declared by The United Methodist Church to be incompatible with Christian teachings." But the "declaration" was a footnote until, in 1996, it became church law:

> Since the practice of homosexuality is incompatible with Christian teaching, self-avowed practicing homosexuals are not to be accepted as candidates, ordained as ministers, or appointed to serve in The United Methodist Church.[52]

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[50] See UMC *Discipline* 1980, ¶404, where the text of footnote 2 begins on p. 182 and concludes on p. 185.

[51] See Judicial Council Decision 480, April 22, 1980.

[52] See UMC *Discipline* 1980, ¶404, pp. 182–85. See also UMC *Discipline* 1996, ¶304.3, p. 172, where a new footnote defines the phrase "self-avowed practicing homosexual" and cites five Judicial Council Decisions. In UMC *Discipline* 2000 (¶304.3, p. 185) the list of cited Judicial Council Decisions grew to six, and it has continued to increase, with eight cited in UMC *Discipline* 2016 (¶304.3, p. 226).

Hence, since 1996 (not 1980), the words have expressed enforceable church law.

But another phrase from the Social Principles entered the *Discipline* at a different place. In 1972, when the church found "the practice of homosexuality . . . incompatible with Christian teaching," it also declared in the Social Principles that

> Homosexuals no less than heterosexuals are persons of sacred worth, who need the ministry and guidance of the church in their struggles for human fulfillment, as well as the spiritual and emotional care of a fellowship which enables reconciling relationships with God, with others, and with self.[53]

Subsequent editions of the *Discipline* show that sentence was revised a number of times. But the phrase "sacred worth" remained as an expression of official church policy, whether individuals identified themselves as heterosexual or homosexual persons. The current *Discipline* no longer refers in a binary way to human beings as heterosexual or homosexual. Yet it still officially declares in the Social Principles that "all persons are individuals of sacred worth."[54] However, the phrase "sacred worth" now appears elsewhere in the *Discipline*.

At the General Conference in 2000, the delegates gave overwhelming approval to a constitutional amendment that was subsequently approved by two-thirds majorities of the aggregate annual conference votes as certified by the Council of Bishops. Hence, the Constitution now "acknowledges that all persons are of sacred worth."[55] Meanwhile, a church law describes ordained ministry and clergy membership in an annual conference as "a sacred trust"[56] from which certain persons are excluded by their sexual identity and practice. It appears that the Constitution and church law are in conflict. The Constitution says all persons have "sacred worth." The law says only some can hear a sacred vocation or be granted a "sacred trust," and the legally decisive factor is not charism but sexuality.

[53] UMC *Discipline* 1972, ¶72(C) "Human Sexuality," p. 86.

[54] UMC *Discipline* 2016, ¶161(G) "Human Sexuality," p. 113.

[55] The Constitution of The United Methodist Church, Division One—General, Article IV, UMC *Discipline* 2016, ¶4, p. 26. See also the discussion in William B. Lawrence, *A Methodist Requiem: Words of Hope and Resurrection for the Church* (Nashville: Foundery Books, 2017), pp. 70ff.

[56] UMC *Discipline* 2016, ¶362.1, p. 314.

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Apart from whatever moral or theological views may be used to examine human sexual identity and practice, there appears to be a constitutional issue. The Constitution supersedes church law. Since the Constitution says all persons have "sacred worth," then church law may not constitutionally be permitted to designate some category of persons as lacking enough "sacred worth" to be unworthy of a "sacred trust."

It is precisely this kind of difficulty that tests the capacity of constitutional United Methodism to operate in a manner that stabilizes the church for mission. If a church law and a church social policy are in conflict, the law clearly prevails. But if the Constitution and a church law are in conflict, the Constitution clearly prevails. Constitutionally, all persons have sacred worth. So it seems untenable for a law to declare that some persons, by reason of their sexuality, are not worthy of a sacred trust or do not have sacred worth.

Constitutionally, all persons have sacred worth. Constitutionally only annual conferences decide which persons are worthy of being granted the sacred trust of clergy membership in an annual conference and ordination to the ministry of deacon or elder.

Constitutional Authority and Accountability

Different types of authority are granted to annual conferences and to the General Conference by the Constitution. The powers that each has been given constitutionally are separate. And all church entities are accountable to the Constitution.

To carry the separation of powers one step further, the Constitution says a bishop "shall appoint" the ministers whom the annual conference votes into clergy membership of the annual conference. This authority to "appoint" resides exclusively with the bishop, "after consultation with the district superintendents." But a bishop does not determine the character, conference relations, licensing, or ordination of clergy members. That authority resides solely with the annual conference, specifically with those members of the annual conference who are constitutionally authorized to vote on these matters. The bishop does not have constitutional authority to decide who is eligible for appointment, even though the bishop has constitutional authority to decide where the clergy will be appointed.[57]

The principle regarding separation of constitutional powers faced an important test early in the history of The United Methodist Church. On May 1,

[57] Paragraph 54 in the Constitution establishes that the separate power of appointment belongs with the bishop in an Episcopal Area. See UMC *Discipline* 2016, ¶54, p. 42.

1968, the General Conference voted to have a special session of the General Conference in 1970. But in November 1968, the Council of Bishops determined that such a special session was not necessary and asked the Judicial Council if there were a way to cancel or postpone the special session of the General Conference. The Judicial Council ruled that the General Conference decided to hold a special session, thus only the General Conference could cancel or postpone the session that it had mandated for itself. Neither the Council of Bishops nor the Judicial Council could invade or intrude into the constitutional authority granted to the General Conference.[58] This separation of powers applies to all constitutional elements in the Church.

Only the General Conference elects members of the Judicial Council; but only the Judicial Council decides how it will be organized for its work and how it will proceed to conduct its work.[59] Only bishops make decisions of law.[60] However, the Judicial Council reviews all decisions of law that bishops make, and it must "affirm, modify, or reverse" them.[61] The Judicial Council can "hear and determine" whether some action by a General Conference board or by an agency of a jurisdictional conference or central conference is legal; but the Judicial Council can only "hear and determine the legality" of such action if one-third of that board requests it or if designated bodies among the bishops request it.[62] Bishops cannot shield their decisions of law from Judicial Council review. The Judicial Council cannot intrude into the actions of General Conference boards or agencies without being constitutionally asked to do so.

[58] Judicial Council Decision 307, January 29, 1969.

[59] Paragraph 55 of the Constitution assigns to the General Conference the responsibility for choosing the size of the Judicial Council, the methods for electing members of the Judicial Council, the qualifications for election, and the length of the members' terms. See UMC *Discipline* 2016, ¶55, p. 42.

[60] Paragraph 2718.1 of UMC *Discipline* 2016, p. 816, in describing an "order of appeals on questions of law," assumes that district superintendents who are presiding in charge conferences or district conferences may make decisions of law in those bodies. However, an appeal of a decision of law by a district superintendent would be made to the bishop. The authority for district superintendents to make decisions of law in those specified settings is a legislative assumption, not a provision of the Constitution. The Judicial Council has no constitutional or legislative authority to review decisions of law by district superintendents; the bishop reviews them. The Judicial Council does not hear appeals from district conferences or charge conferences regarding district superintendents' decisions of laws in those bodies; any appeal would go to the bishop.

[61] Paragraphs 51 and 56.3 of the Constitution govern this; see UMC *Discipline* 2016, pp. 41–42.

[62] Paragraph 56.4 of the Constitution governs this; see UMC *Discipline* 2016, pp. 42–43.

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Case Study I: Operational Boundaries Between Constitutional Bodies

Nevertheless, there are numerous examples of situations wherein constitutional bodies crossed those boundaries and (intentionally or not) intruded into the territory of some other authority established by the Constitution. One example resulted in Judicial Council Decision 1341. It tested the legislative and liturgical prerogatives of the General Conference, the authority of annual conferences for determining the character and the conference relationships of their clergy members, the authority of the jurisdictional and central conferences to elect and consecrate bishops, and the authority of church law that empowers the Judicial Council to respond to requests for declaratory decisions. Only an annual conference can decide who its clergy members are. Only the General Conference can enact laws that regulate the elections and consecrations of bishops. Only the Judicial Council can deliver declaratory decisions on matters that General Conference has by law determined are within the jurisdiction of the Judicial Council to do so.

Judicial Council Decision 1341, like all decisions of the Judicial Council, is final. It settled a case that began with the election of a bishop during the Western Jurisdictional Conference on July 15, 2016. Karen Oliveto, who was a United Methodist elder and a full clergy member of the California-Nevada Annual Conference, received a sufficient super-majority of votes and was introduced as a bishop. News of her election, which circulated quickly, provoked a delegate at the South Central Jurisdictional Conference to move a request—which the South Central Jurisdictional Conference approved—for a declaratory decision on five sets of questions that pertain to the election and consecration

> of a person who claims to be a "self-avowed practicing homosexual" or is a spouse in a same-sex marriage or civil union.[63]

In the United States, only jurisdictional conferences elect bishops.[64] In all of The United Methodist Church, only ordained elders who are full clergy

[63] The text of Judicial Council Decision 1341 quotes the petition in full.

[64] Outside of the United States, Central Conferences elect the bishops of The United Methodist Church.

members of annual conferences are eligible for election to the episcopacy.[65] Thus, while the jurisdictional conferences choose the bishops, the annual conferences determine who is in the pool of the persons potentially eligible for nomination and election to the episcopacy.

The questions in the petition asked whether a public record of a marriage to a person of the same sex disqualifies someone "from nomination, election, consecration and/or assignment as a bishop," whether such a person might be charged with an offense against church law, whether any bishops who participate in the consecration of such a person could be charged with violating church law, and whether such an election is null and void.

In Decision 1341, the Judicial Council narrowed its jurisdiction over the questions in the petition to one item, "the consecration of an openly homosexual bishop," declining to address the other specifics in the request. It applied ¶304.3 in the *Discipline*—which cites candidates for the ordained ministry, the act of ordination itself, and appointments to serve in ministry, only—to the consecration of a bishop. It also applied ¶310.2*d*—which cites candidates for certification, for licensing as a pastor, and for ordination as deacon or elder—to bishops. It also cites ¶2702.1, where a list of chargeable offenses is preceded by explicitly named categories of clergy (including "a bishop") and laity (*viz.*, a "diaconal minister") who may be tried when charged with one or more of the offenses listed.[66]

The sheer size of Judicial Council Decision 1341 is formidable. The texts of the controlling majority decision, three concurring and dissenting opinions, and an appendix to one of the concurring and dissenting opinions, are quite lengthy. They contain internal, technical, legal discussions and debates about the degree to which the Judicial Council has jurisdiction over some or all of the questions submitted by the petitioner.[67]

In the end, the final determination by the Judicial Council in Decision 1341 was that Karen Oliveto remains a bishop—unless she resigns or is removed from

[65] See UMC *Discipline* 2012, ¶402, p. 315. The 2012 *Discipline* was in force at the time these matters were occurring.

[66] Procedures for complaints, charges, investigations, trials, and appeals vary with the category of the accused. See UMC *Discipline* 2016, ¶¶2702–2718, pp. 788–818. In UMC *Discipline* 2016, ¶408.4, p. 332, "A bishop may voluntarily resign from the episcopacy at any time," remaining an elder in the annual conference from which one was elected.

[67] Upon election, bishops serve the whole church. So the South Central Jurisdiction had standing to ask for a declaratory decision even though Bishop Oliveto was elected elsewhere.

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office by an action under church law that can subject her status to review. Thus, Decision 1341 by the Judicial Council did not void or nullify the election of Bishop Oliveto, nor did it assert any Judicial Council authority to invalidate her consecration.

However, in finding a way to reach the conclusions expressed in Decision 1341, the Judicial Council crossed boundaries and trespassed over the separations of powers that are the core of the Constitution. Intentionally or not, the Judicial Council usurped the legislative prerogatives of the General Conference in at least two particulars and usurped a non-legislative authority of the General Conference in at least one particular. Because of these transgressions, constitutional United Methodism is operationally put at risk.

First, the Judicial Council usurped the constitutional responsibility of the General Conference for legislation when it used a law of the church for purposes that the law does not explicitly mention. The General Conference has enacted a church law that prohibits "self avowed practicing homosexuals" from being "certified as candidates, ordained as ministers, or appointed to serve in The United Methodist Church."[68] That law is explicit and clear in what it says and in what it does not say.

Paragraph 304.3 is a law that governs individuals who seek certified candidacy, ordination, or appointment. However, it does not mention "bishops"[69] and no authority other than the General Conference has the capacity to name the categories of persons to whom this law applies.

Further, it is a law that must be read as subordinate to the constitutional authority of an annual conference, which solely determines the character and conference relations of its clergy members, including their ordination. Bishops are elders in full connection with annual conferences at the time of their election to the episcopacy. To be a bishop is to be an elder who is elected to an office and to membership in the Council of Bishops, not to ordination. Only the annual conference in which an elder holds clergy membership can judge the character, the conference relations, and the ordination of that person.

The Judicial Council intruded into the authority of the General Conference when it took ¶304.3 of the *Discipline* and, in effect, rewrote it to apply to bishops. The Judicial Council also intruded into the authority of the annual conference for determining whether an individual shall be a United Methodist elder and full clergy member, when it implied that some other authority could

[68] UMC *Discipline* 2012, ¶304.3, p. 220.

[69] Bishops are "consecrated" not "ordained," and they are "assigned" not "appointed."

determine the legitimacy of an individual's status as elder and full clergy member, before election to the episcopacy and consecration.

Second, the Judicial Council usurped the constitutional responsibility of the General Conference for legislation when it defined a provision of church law in a way that is explicitly different from a legislative definition given by the General Conference. When the General Conference enacts a law that contains a term of its own creation, the General Conference has to define the word or phrase in order for the church to know how it should be applied. On occasion, the definition appears in a footnote to the law.

In a footnote to ¶304.3 in the *Discipline*, for example, the General Conference defined "self-avowed practicing homosexual."

> "*Self-avowed practicing homosexual*" is understood to mean that a person openly acknowledges to a bishop, district superintendent, district committee of ordained ministry, Board of Ordained Ministry, or clergy session that the person is a practicing homosexual.[70]

However, in Decision 1341, the Judicial Council rewrote the legislative definition to include the "public record" that exists in a marriage license and to infer

> that a married clergy person's status in a committed same-sex relationship is sufficient to create the rebuttable presumption that the couple is engaged in physical sex . . . [a] presumption that can be defeated by proffering rebuttal evidence to the trier of fact in an administrative or judicial process.[71]

This is an intrusion by the Judicial Council into the constitutional authority of the General Conference. Actually, it involves a double error. It expands the definition of a phrase in church law—self-avowed practicing homosexual—to include a detail that is not explicitly mentioned in the definition or in the law: namely, a marriage license. And it requires any person who is charged with violating the new definition of the law to rebut the charge by proving her or his innocence of the violation. So Judicial Council Decision 1341 usurps the legislative authority of the General Conference with a revision of church law when it deprives an alleged violator of the presumption of her/his innocence.[72]

Besides these two particulars in which the Judicial Council usurped the General Conference's constitutional authority over legislation, Decision 1341

[70] See UMC *Discipline* 2012, ¶304.3, footnote 1, p. 220.
[71] See Judicial Council Decision 1341, "Analysis and Rationale," Section III*b*.
[72] See UMC *Discipline* 2012, ¶2701, p. 772–76.

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also intruded into at least one non-legislative authority that is constitutionally established as assigned to the General Conference.

Decision 1341 describes the Judicial Council's understanding of its jurisdiction to review the petition from the South Central Jurisdictional Conference in narrow terms. In the opening sentence of its Digest, the ruling says,

> The Judicial Council has jurisdiction to review the Petition for Declaratory Decision of the South Central Jurisdictional Conference only with respect to the consecration of an openly homosexual bishop. To the extent that it pertains to the process of nomination, election, and assignment, the Petition is improper.

With this assertion, the Judicial Council identifies the responsibilities it carries in its limited constitutional authority. Yet it also steps beyond the constraints that limit its authority to determining the "constitutionality" or the "legality" of an act of the General Conference and passing upon bishops' decisions of law. The South Central Jurisdictional Conference asked for a declaratory decision, questioning the "legality" of certain actions. But the Judicial Council dismissed those matters and decided that it only had jurisdiction to address the liturgy of "consecration." In doing so, the Judicial Council treated an act of the General Conference that is not an item of legislation as if it were church law.

The service of consecration for bishops is a liturgy that has been "approved by the General Conference"[73] and is published in *The United Methodist Book of Worship*. It is an official order of worship, which the General Conference has the exclusive authority to provide for the church, according to the Constitution.[74] While church law mandates using the liturgy approved by General Conference, this is a liturgical—not legislative—matter.

Approval by the General Conference does not turn orders of worship or liturgies into laws. It just ensures that the liturgies do not violate restrictions on church doctrine, specified in the Restrictive Rules. But liturgies are not legislation.

In the past, the Judicial Council has distinguished acts of the General Conference that are matters of law from acts of the General Conference that have

[73] "Introduction to the Consecration of Bishops," *The United Methodist Book of Worship* (Nashville: United Methodist Publishing House, 1992) p. 699. UMC *Discipline* 2016, ¶415.6, p. 341, mandates use of the approved liturgy.

[74] The Constitution of The United Methodist Church, Division Two—Organization, Section II: General Conference, Article IV, UMC *Discipline* 2016, ¶16.6, p. 30.

other purposes. It has cited these distinctions as a way to demonstrate the constitutional constraints on its responsibilities. In Decision 59 (May 6, 1948) and in Decision 243 (November 9, 1966), the Judicial Council of The Methodist Church insisted that its authority was limited to matters of constitutionality and law. It eschewed any authority in matters of doctrine.

The Judicial Council of The Methodist Church received a request from the 1966 "adjourned session" of the General Conference that posed questions concerning a plan to have the Articles of Religion of The Methodist Church and the Confession of Faith of the Evangelical United Brethren included in their merger plan. The concern was whether this would require a three-fourths majority of the aggregate votes from Methodism's Annual Conferences as a change in the First Restrictive Rule. The General Conference asked if this would "establish any new standards or rules of doctrine." The Judicial Council answered that question by deferring to the General Conference.

> We believe the answer to this question to be a matter of theological interpretation rather than of judicial decision. The Judicial Council has previously stated that it has no jurisdiction in such matters nor will it undertake to resolve theological questions such as would be involved in deciding whether the inclusion of the Confession of Faith of the Evangelical United Brethren Church with the Articles of Religion of The Methodist Church in the Plan of Union would "establish any new standards or rules of doctrine contrary to our present existing and established standards of doctrine." Reference is made to Judicial Council Decision No. 59 where in its decision the Council stated, "The Judicial Council was not set up as an interpreter of doctrine but as an interpreter of law from the strictly legal standpoint." The Judicial Council therefore does not undertake to respond to the [General Conference's] second question and judges the General Conference to be the only body competent to make such an interpretation.[75]

Not all actions by the General Conference are matters of law. Some, as in the case of doctrinal statements, are matters of theology. Some, as in the case of consecrations of bishops, are liturgies. Judicial Council Decisions 59 and 243 said the General Conference has constitutional responsibility for such matters. Decision 1341 crossed this boundary and intruded into non-legislative territory that has been assigned constitutionally to the General Conference. In a

[75] See Judicial Council Decision 243.

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dissent to Judicial Council Decision 1032, two of its members warned their colleagues about the seeds of mischief they plant when the Council

> abandons the traditional and limited role of the Judicial Council as interpreter of church law and assumes a new mantle as creator of church law.[76]

Decision 1341 stepped outside of this "traditional and limited role," in a possible effort to correct what the majority may have considered to be an unwise action by some other constitutional entity of the church. Operationally, however, the Constitution fails to function if its constraints, separations, and limits are not honored by its established units.

Case Study II: Operational Authority of Constitutional and Non-Constitutional Bodies

The Constitution says the Judicial Council will "provide its own methods of organization and procedure."[77] Hence no other constitutional entity has authority to direct, limit, systematize, or structure the ways that it chooses to fulfill the constitutional responsibilities that are assigned to it. The Constitution confers organizational authority on the Judicial Council, so no subordinate body of another constitutional entity (such as an agency created by an act of the General Conference) can intrude upon the prerogatives of the Judicial Council for managing its "organization and procedure."

Of course, in order for the Judicial Council to fulfill its constitutional obligations, the costs of its doing so have to be covered. Persons who are elected to membership on the Judicial Council receive no compensation; they volunteer their time and expertise for the constitutional work of the Judicial Council.[78] But expenses that the Judicial Council incurs in fulfilling its obligations are the responsibility of the Church. The costs include, but are not limited to, travel to the locations of meetings, lodging and meals during the meetings, paper and

[76] See Judicial Council Decision 1032, October 28, 2005, in a Dissent dated November 8, 2005 and signed by Jon R. Gray and Susan T. Henry-Crowe.

[77] The Constitution of The United Methodist Church, Division Four—The Judiciary, Article IV, UMC *Discipline* 2016, ¶58, p. 43.

[78] The only constitutional constituency that is salaried by the church is the active membership of the Council of Bishops. The clergy members of annual conferences participate in gatherings of the conference as part of the connectional ministries for which they are compensated at no less than the minimum salary for the clergy status (full-time, approved for less-than-full-time, etc.) that they hold in the conference.

toner for printing documents, translation services for members of the Judicial Council or appellants who appear before it, transmission of documents, secure disposal of confidential items, technical assistance, and possibly even security services when the Judicial Council is conducting business on highly controversial topics.

In addition, the General Conference has decided that the Judicial Council "shall employ a part-time clerk to assist the council in all matters designated by the council," thus adding an additional expense that must be covered by the denomination.[79] The specific language within this provision of the *Discipline* contains a legislative enactment by the General Conference—mandating the employment of a Judicial Council clerk—that honors the constitutional prerogative of the Judicial Council to determine its organization and procedures. While the General Conference mandates the employment of a part-time clerk, it avoids telling the Judicial Council how to assign tasks to the clerk.

In another legislative act, however, the General Conference has described funding mechanisms for the work of the Judicial Council with less precision. Paragraph 813 of the 2016 *Discipline* discusses a budgetary account known as "the General Administration Fund," from which certain financial obligations of the Church are to be paid, including the expenses of the Judicial Council. To quote the legislative provision in full,

> [813].3 The expenses of the Judicial Council shall be paid from the General Administration Fund, within a budget submitted annually by the Judicial Council to the General Council on Finance and Administration for its approval and subject to the requirement of ¶813.4.[80]

Operationally, the General Council on Finance and Administration (GCFA) has practical responsibilities that involve communication with the Judicial Council in the manner specified by this provision in church law. Constitutionally, the General Council on Finance and Administration must accomplish what the church law requires without an intrusion into authorizations given to the Judicial Council by the Constitution.

That distinction between what is constitutional and what is legislative has become problematic. GCFA recently demanded that the Judicial Council

[79] UMC *Discipline* 2016, ¶2608.1, pp. 779–80.

[80] UMC *Discipline* 2016, ¶813.3, p. 566. Paragraph 813.4, to which this statement refers, cites normal accounting procedures, such as requiring receipts for expenditures and subsequent auditing of accounts.

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structure its "methods of organization and procedure" to fit within financial limits that the General Conference and GCFA have set. In short, GCFA insists that it has legislative responsibility for controlling what the Judicial Council spends. But the Judicial Council spends what is necessary to fulfill its constitutional responsibilities.

The Constitution—not the General Conference legislation—is the authority for the Judicial Council to set "its own methods of organization and procedure." The GCFA demand for spending limits crosses the constitutional separation of powers, demonstrates the distinction between constitutional authority and legislative authority, and exposes the limitations that legislative acts have in attempting to impact the constitutional operations of the Church. (To use a secular example, a committee of Congress could not in 1954 tell the Supreme Court that it would cost too much to hear *Brown* v. *Board of Education*.)

Any analysis of the relationship in The United Methodist Church between the Judicial Council and the General Council on Finance and Administration must recognize two principles in United Methodist polity: (*a*) the distinction between constitutional and legislative authority; and (*b*) the separation of powers in the Constitution. Church law stipulates the procedures for funding the work of the Judicial Council. The legislation in the *Discipline* says that the budget category known as the General Administration Fund

> shall provide for the expenses of the sessions of the General Conference, the Judicial Council, special commissions and committees constituted by the General Conference, and other administrative agencies and activities recommended for inclusion in the general administration budget by the General Council on Finance and Administration and approved by the General Conference.[81]

This provision in the law of the Church subtly shows constitutional Methodism from an operational perspective. The word "shall" in the paragraph leaves no doubt that this provision in the Church law is mandatory. It means that the General Administrative Fund must cover the expenses for the groups listed. In addition, this law refers to funding "the expenses of the sessions of the General Conference" and "the Judicial Council," and they are both constitutional bodies. But the law names, includes, and discusses funding for other bodies that are created by the General Conference. Thus, the *Discipline* lumps together two constitutional bodies with entities created by the General Conference.

[81] UMC *Discipline* 2016, ¶813.1, pp. 565–66, contains this legislation.

While the General Conference can write laws that define the scope of the work for any standing[82] or temporary[83] body of its own creation, the General Conference cannot by its own majority action obviate an authority established in the Constitution. Nor can it use budgetary power to define the scope of work when that scope is actually established in the Constitution. In operational terms, this means that GCFA can require receipts "for the expenses of the sessions of . . . the Judicial Council." But GCFA cannot put controls on the "expenses of the sessions of the Judicial Council," since most Judicial Council expenses are mandated by the authority of the Constitution.

Agencies, standing committees, temporary commissions, and other units created by the General Conference can write and implement regulations that are consistent with their legislative mandates from the General Conference. But they cannot transgress the separation of powers in the Constitution or intrude into another constitutional authority.

The scope of the work to be conducted by the Judicial Council is established by the Constitution. The Judicial Council, for example, must "hear" and must "determine any appeal from a bishop's decision on a question of law" if one-fifth of the annual conference votes to appeal such a decision.[84] And the Judicial Council must "pass upon decisions of law made by bishops in annual conferences."[85] In one year, there may be three such decisions of law to review. In another year, there may be thirty. The actual "expenses of the sessions of . . . the Judicial Council" will result from whatever costs the Judicial Council may incur in fulfilling its constitutional obligations.

Paragraph 813.1 in the *Discipline* comingles constitutionally mandated and legislatively created entities. It refers to expenses that are "recommended for inclusion" in the General Administration Fund budget by GCFA and are "approved" by the General Conference. There is no doubt that the General Conference can enact a law of the Church to establish procedures for what is

[82] All of the general boards and agencies of the denomination (including the Connectional Table) are, in effect, standing committees that have been formed by legislative action of the General Conference. They can be altered or eliminated by legislative action of the General Conference.

[83] A current example of a temporary body is the Commission on a Way Forward, whose members were named by the Council of Bishops but was authorized—and is funded—through the legislative authority of the General Conference.

[84] Paragraph 56.2 of the Constitution confers this responsibility and authority; see UMC *Discipline* 2016, p. 42.

[85] Paragraph 56.3 of the Constitution confers this responsibility and authority; see UMC *Discipline* 2016, p. 42.

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"recommended" by GCFA and what is "approved" by the General Conference. But GCFA and the General Conference cannot use such a law of the Church to constrain another constitutional body in fulfilling its separate powers as the Constitution establishes them. A Church law requiring GCFA to recommend the budget "for the expenses of the sessions" of the Judicial Council and requiring that the General Conference approve the budget cannot claim authority that supersedes the Constitution.

Paragraph 813.1 does not define the "expenses of the sessions" of the Judicial Council. But any reasonable analysis of the work of the Judicial Council will demonstrate that all of its "expenses" are related to its "sessions." The Judicial Council does not cover legal expenses incurred by an appellant,[86] for example.

The members of the Judicial Council, who serve without compensation, use their own personal computers and communication devices for Judicial Council work.[87] They conduct research into Docket Items in their homes, at their local churches, or at libraries to which they have access. To facilitate the budgetary responsibilities of GCFA in church law, the Judicial Council submits annually to GCFA a budget of its anticipated expenses for the coming year as a spending plan. GCFA does not have, nor does it legislatively have reason to claim, authority to do anything other than grant "approval" to this annual Judicial Council budget in order that the "payments" for the "expenses" of the Judicial Council can be made from the General Administration Fund.[88]

This spending plan is based on a plausible number of cases that the Judicial Council will face during the ensuing year and the expenses for the cities in which the sessions of the Judicial Council will convene. But it cannot function as a budget cap, nor can it be used as a limit on the amount of work that the Judicial Council may be required to do in a year. Only the Judicial Council can determine whether a special session may be called or whether a regularly

[86] See UMC *Discipline* 2016, ¶2609.12, p. 783. The General Conference enacted it on May 17, 2016. (Cf. Judicial Council Decision Number 1230, November 9, 2012.)

[87] On one occasion in a recent quadrennium, the Judicial Council decided that a necessary expense for the conduct of its sessions was to provide the Secretary of the Judicial Council with a printer for producing documents that were essential to the work of the Council.

[88] One can imagine a scenario in which GCFA may withhold its approval until it secures clarification about some expense. But GCFA cannot exceed its legislative authority or violate the Constitution.

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scheduled session may be cancelled. The Judicial Council makes those determinations in accordance with its Rules of Practice and Procedure.[89]

Paragraph 813.3 in the *Discipline* names the fund from which the "expenses" of the Judicial Council "shall" be disbursed and designates the mechanism for payments from the fund.

> The expenses of the Judicial Council shall be paid from the General Administration Fund, within a budget submitted annually by the Judicial Council to the General Council on Finance and Administration for its approval and subject to the requirement of ¶813.4.[90]

This provision of Church law, which has occasionally been cited by GCFA as the basis for its authority to control spending by the Judicial Council, does not refer to the quadrennial budget, which GCFA submits to the General Conference. Nor does it state or imply that the Judicial Council is required by Church law to conform to the quadrennial budgeting process, which applies to boards, agencies, committees, and commissions that are created by and accountable to the General Conference. Rather, this legislation only mentions that the Judicial Council will submit its budget "annually" and identifies the "Fund" from which the "expenses of the Judicial Council shall be paid."

Further, the legislation in ¶813 has precisely and only two expectations for the Judicial Council: (a) it shall submit annually "to the General Council on Finance and Administration for its approval" a budget for the Council's "expenses"; and (b) the "payments" from this Fund for the "expenses" of the Judicial Council shall be subject to all the customary "financial, accounting, and auditing requirements of ¶806."[91] GCFA cannot, by denying "its approval" of the Judicial Council budget, act unconstitutionally.

There are no further references to the Judicial Council in ¶806, ¶810, or ¶813, where the *Discipline* addresses the budgetary requirements of agencies and boards that are accountable to the General Conference.

It appears, therefore, that the legislation adopted by the General Conference and published in the 2016 *Discipline* is extremely limited in attempting to

[89] The Constitution establishes that the Judicial Council has authority to provide its own rules of practice and procedure. See UMC *Discipline* 2016, ¶56.6, p. 43.

[90] Paragraph 813.3 in UMC *Discipline* 2016, p. 566, stipulates this provision.

[91] See UMC *Discipline* 2016, ¶813.3 and ¶813.4, p. 566. One could argue that the GCFA has a choice between approving and not approving the annual spending plan submitted by the Judicial Council. In choosing not to approve it, GCFA could request more information, perhaps. But GCFA cannot financially limit the Council's work.

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micromanage the Judicial Council. One can readily infer from this that the General Conference is quite reticent in financial matters about intruding into the prerogatives of the Judicial Council.

Additionally, any agency that is created by the General Conference could have a situation that brings it before the Judicial Council for some decision. In five Docket Items that were addressed by Judicial Council Decisions between 2013 and 2018, GCFA was an appellant, respondent, or interested party.[92] There historically have been—and there potentially are—circumstances in which the Judicial Council and the General Council on Finance and Administration may have had conflicts of interests and obligations. As long as Division Four of the Constitution retains Article II in its current form, if one-third of the members of the board of GCFA were to appeal any action by GCFA to the Judicial Council, or if a majority of the Council of Bishops were to "request" a Judicial Council review of the action by GCFA, it would be constitutionally mandatory for the Judicial Council to "hear and determine the legality" of that action.[93] Therefore, the Constitution could, in effect, require the Judicial Council to determine whether some act by GCFA was an illegal intrusion into the constitutional authority granted to the Judicial Council.

In the five decades since the denomination was formed, church law has been consistent in legislation that "The General Administration Fund" of the Church "shall provide for the expenses of the sessions of the . . . Judicial Council."[94] The word "shall" means "must" in church law, so GCFA must cover expenses of the Judicial Council.

For operations of the Judicial Council, one major expense is travel by members to meetings. The expenses for transportation, lodging, and meals vary widely depending not only on the places within global United Methodism where the Judicial Council chooses to meet but also on the places in global United Methodism where members of the Judicial Council, who have been elected by the General Conference, reside. Currently, five of the Judicial Council members reside in the United States, while four reside elsewhere in the global church—one each from Norway, the Philippines, Mozambique,

[92] See Judicial Council Decisions 1238, 1275, 1281, 1298, and 1353.

[93] Paragraph 56.4 is the portion of Article II in the Constitution that establishes this responsibility. See UMC *Discipline* 2016, ¶56.4, pp. 42–43.

[94] Paragraph 879 in UMC *Discipline* 1968, pp. 238–39; ¶813.1 in UMC *Discipline* 2016, pp. 656–66; and all of the comparable legislation during these five decades have identical phrasing for this financial responsibility.

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and Liberia. All travel and other expenses to meet the needs of members who have been elected by the General Conference must be covered.

If any members require translation services, that will impact "expenses" for the "sessions" of the Judicial Council. If the Judicial Council schedules Oral Hearings that require simultaneous translation services for members or appellants, that will generate expenses—which must, constitutionally, be covered.

Some expenses of the Judicial Council cannot be predicted. Any Oral Hearings that involve extremely controversial matters will require sufficiently large spaces to accommodate the persons who wish to attend and may require the services of security personnel. Such details affect costs, which GCFA must cover.

The Constitutional Crisis of Operational Failures

Debates over budgetary and financial procedures offer none of the human drama or eschatological trauma that we see in the suffering of slavery, which led to the division of American Methodism in 1844. Nor do disputes over funding denominational expenses have the emotional, existential, or erotic dimensions of the debates over homosexuality that now threaten The United Methodist Church.[95]

Yet all of these things challenge and test the capacity of a connectional polity to operate within a Constitution. Any constitutional system only works as long as the constituents of an institution trust it to be the basis on which its operations can flourish.

The Constitution of The United Methodist Church is on the brink of crisis in its 50th year because there are doubts whether it can be trusted to manage money, power, or human sexuality. If the Constitution cannot effectively stabilize the church for mission and service in basic budget matters, and if constitutional Methodism does not provide a comprehensive system for implementing the biblical, theological, moral, and missional commitments of the Church, then it cannot stabilize the Church for service.

Constitutional Methodism at a Critical Juncture

In an effort to preserve the institutional unity of The United Methodist Church, the 2016 General Conference affirmed a proposal from the Council of

[95] An exception, of course, would be debates over spending any denominational dollars to fund activities that could be construed as efforts "to promote the acceptance of homosexuality." See UMC *Discipline* 2016, ¶613.19, pp. 429–30, and ¶806.9, p. 553.

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Bishops that the General Conference "defer" any action on matters associated with human sexuality

> and refer this entire subject to a special commission, named by the Council of Bishops, to develop a complete examination and possible revision of every paragraph in our Book of Discipline regarding human sexuality.[96]

Apart from stipulating that the members of such a commission would be named by the Council of Bishops from the diverse constituencies of the denomination, there was much in the proposal that was vague, ambiguous, and uncertain. The proposal expressed an intention by the Bishops to "maintain an ongoing dialogue with this commission." It signaled that a special session of the General Conference might be called before 2020 if the commission members were to "complete their work in time" for a called session.

On a motion from a delegate to "accept the report from the Council of Bishops," the General Conference narrowly gave its approval by a vote of 428-405. In accordance with that action, the Council of Bishops named the members of the commission.

Then, some signs of confusion—perhaps sown by the seeds of ambiguity—began to emerge. The Council of Bishops named a commission of thirty-two members, eight of whom are bishops. Moreover, three of the eight were designated as co-moderators or conveners of the commission. This allowed observers to infer that the Episcopacy would engage in a more direct role than "an ongoing dialogue" might suggest. Public comments about the process for the commission's work sketched a path whereby a report from the commission would go to the Council of Bishops, where it may be revised, suggesting that the General Conference might be asked to deal with the revision prepared by the Council of Bishops rather than the report of the commission.

And the confusion deepened. Without waiting for evidence about the amount of time that the commission would need to complete work, the Council of Bishops called a session of the General Conference for February 2019 in St. Louis. Commission members left hints that they were exploring changes in structural relationships within connectional United Methodism, instead of focusing on "possible revision of every paragraph in our *Book of Discipline* regarding human sexuality" as stated in the proposal that the General Conference had approved. Clarity about the meaning of the phrase "every paragraph in our

[96] *The Daily Christian Advocate*, May 18, 2016, pp. 2488.

Book of Discipline" did not improve, thereby leading to speculation about paragraphs in the Social Principles, paragraphs in legislation, and paragraphs in the Constitution—all of which appear "in our *Book of Discipline*."

Perhaps most significant, however, is the constitutional confusion that seems to be inherent in this. It appears that the Episcopacy—Division Three in the Constitution—has chosen to operate as a Legislative Committee of the General Conference—Division Two, Section II in the Constitution. At the very least, the Council of Bishops has functioned as if it were requested by the General Conference to submit proposals for legislation and/or constitutional restructuring, when the only explicit element in the enactment of May 2016 was to have the Council of Bishops name the members of the commission.

Also, the Constitution contains a clause that establishes the method for selecting presiding officers at the General Conference.[97] The Council of Bishops "shall select from their own number the presiding officer of the opening session," and a committee of the General Conference then selects presiding officers for subsequent sessions. At regularly scheduled General Conferences, many items are on the agenda and many sessions are scheduled. Hence, it is possible for the committee to choose objective presiding officers.

However, unless the General Conference in February 2019, by a two-thirds vote, agrees to add other business to the called session,[98] the only matter on the agenda may be one coming from the Council of Bishops. Given open disagreements among the Bishops on the merits of retaining or rescinding current church laws about human sexuality, it may be difficult to find an effective presiding officer who has not already declared some point of view on the agenda item. It will obviously be a challenge for any member of the Council of Bishops to preside if the only matter before the General Conference involves parliamentary debate on a proposal that has come from the constitutional body—namely, The Episcopacy—wherein the presiding officer's church membership exists.

Amid all of this, the Council of Bishops exercised their authority under church law to petition the Judicial Council for a declaratory decision.[99] The Bishops sought a ruling about the meaning, application, and effect of ¶14 in the

[97] The Constitution of The United Methodist Church, Division Two—Organization, Section II: General Conference, Article IV, UMC *Discipline* 2016, ¶16.11, p. 30.

[98] The Constitution of The United Methodist Church, Division Two—Organization, Section II: General Conference, Article II, UMC *Discipline* 2016, ¶14, pp. 28–29.

[99] Paragraph 2610.2*b* names the Council of Bishops as one of the bodies with authority to seek a declaratory decision from the Judicial Council; see UMC *Discipline* 2016, p. 783.

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Constitution and the legislation in ¶507 of the *Discipline* concerning petitions that may be submitted to a General Conference. Such a declaratory decision could presumably clarify the content of any petitions that United Methodists might submit to the General Conference prior to its special session in February 2019 and the petitions that the called session might constitutionally consider. It could have brought clarity. But did it?

On May 25, 2018, the Judicial Council released Decision 1360 in response to the request from the Council of Bishops. In the ruling, the Judicial Council cited ¶14 of the Constitution and affirmed that it is "the obligation of the General Conference" to decide by its constitutional authority which petitions from United Methodists are "in harmony" with the call for a special session that the Council of Bishops issued. Any other petitions, which the General Conference may find not to be "in harmony" with the terms of the call to the special session, can be considered only if the General Conference in called session votes by a two-thirds majority to do so. Decision 1360 did not offer any definition of the constitutional phrase "in harmony" but implied that General Conference will be crafting such a definition as it determines which petitions to the called session are, or are not, "in harmony" with the terms of the call. So the Judicial Council did not provide immediate clarity about the meaning of the key constitutional phrase.

Another matter that Judicial Council Decision 1360 did not clearly resolve is a question about the pathway that the work of the Commission on a Way Forward is taking to the General Conference and about the exact meaning of the call issued by the Bishops. When the Council of Bishops called the February 2019 special session, the statement of call issued by the Bishops on April 24, 2017, said:

> The purpose of this special session of the General Conference shall be limited to receiving and acting upon a report from the Council of Bishops based on the recommendations of the Commission on a Way Forward.

Thus, the Council of Bishops unquestionably asserted an understanding that the pathway for the report of the commission goes through the Council of Bishops. That assertion by the Council of Bishops relies upon an understanding of the commission that is still in dispute.

The main text of Judicial Council Decision 1360 does not discuss whether that understanding is accurate. Instead, Decision 1360 addresses that issue only in a footnote, and the text of the footnote includes the following:

> The special called General Conference is to consider "their work," i.e., whatever the Commission desires to put before General Conference in terms of its "complete examination."
>
> However, in passing, we note that the question here is whether a special commission created by the General Conference can report to a body other than the General Conference. Specifically, is the Commission on a Way Forward amenable to the General Conference or the Council of Bishops, and can it present its findings and report to the General Conference through the Council? See JCD 424.
>
> There is nothing in the proceedings of the 2016 General Conference suggesting that the Commission on a Way Forward was supposed to submit its recommendations to the Council of Bishops. Similarly, there is no evidence in the legislative debate prior to the vote on the motion indicating that the Council of Bishops would develop specific legislative proposals based on the recommendations of the Commission and present them to the called special session of the General Conference.

Within the quoted footnote is a reference to Judicial Council Decision 424, which was released on April 22, 1977. In that Decision, the dispute was whether a report from a study commission established by the General Conference should be submitted to an agency of the General Conference (in that specific case, it was the General Council on Ministries) or to the General Conference itself. In Decision 424, the Judicial Council ruled that the report was to be submitted to the General Conference even if the Council of Bishops named the members of the study committee. So Judicial Council Decision 424 appears to offer precedent for a ruling that the report of the Commission on a Way Forward should go directly to the General Conference, not to the Council of Bishops.

However, by placing these comments in a footnote, the Judicial Council has only added to the ambiguity of the situation. Decision 1360 calls attention to the conundrum about the pathway for the work of the commission without resolving it. The footnote seems to convey skepticism about the Bishops' understanding, stated in the call of the special General Conference session, that the pathway for the report of the commission is through the Council of Bishops. But the Decision does not settle the matter. Moreover, the Judicial Council does not say in Decision 1360 whether its footnote is part of the Decision, nor does it clarify whether Decision 424 is an authoritative precedent.

When the General Conference meets in February 2019 and has to decide what petitions are or are not "in harmony" with the terms that called the special session, the General Conference may also have to decide whether the terms

were consistent with the action that authorized the creation of the commission in May 2016. In short, the General Conference may be faced with the impossible task of determining whether a petition is "in harmony" with a call that is itself incongruent with the creation of the commission.

In the midst of marking the 210th anniversary of constitutional Methodism and the 50th anniversary of its existence as a denomination, The United Methodist Church is at a critical point in the history and the connectional polity of people called Methodists. Not only is the denomination on the verge of choosing whether it remains institutionally united; it is also on the verge of deciding whether a connectional church that is built with a constitutional polity is viable for ecclesiastical life any more.

On other occasions in history, when the constitutional system was pushed to the brink by burning issues, the Constitution endured even if the denomination divided. Now the Constitution is facing an enormous challenge, and the challenge is coming at least in part from the leaders and practitioners of the connectional polity as established by the Constitution. No one knows if these leaders will sacrifice this constitutional polity in pursuit of some other cause.

The next General Conference could indeed be momentous.

About the Authors

William B. Lawrence has been an ordained minister in The United Methodist Church since 1969. Roughly half of his ministry has been in pastoral appointments, and the other half has been in academic appointments. He has been a member of four annual conferences, serving on the Annual Conference Board of Ordained Ministry in three of them (including one quadrennium as chair of the Board) and serving on the Conference Committee on Episcopacy in two of the conferences (including one quadrennium as the chair). He has been a local church pastor in New York, Pennsylvania, and Washington, D. C. He has also been a district superintendent. His academic appointments have been at Duke Divinity School, Candler School of Theology at Emory University, and Perkins School of Theology at Southern Methodist University. From 2002 to 2016, he was Dean of Perkins. He was a delegate to two General Conferences. In 2008, he was elected to the Judicial Council for a term of eight years, four of

which he served as its President. His most recent book is *A Methodist Requiem: Words of Hope and Resurrection for the Church* (Foundery Books, 2017). In 1968, he received a Bachelor of Arts degree, *with distinction*, from Duke University, where he was elected to Phi Beta Kappa. In 1971, he received a Master of Divinity degree from Union Theological Seminary in New York. In 1977, he received the Ph.D. in homiletics and historical theology from Drew University, *with distinction*. He has received an honorary doctorate from LaGrange College in Georgia. In May 2018, he was named Professor Emeritus of American Church History at Southern Methodist University. He is also a Research Fellow with the Center for Studies in the Wesleyan Tradition at Duke Divinity School.

Sally Curtis AsKew is a lifelong United Methodist. She grew up in Georgia participating in Methodist Youth Fellowship and attended LaGrange College. Her law degree is from the University of Georgia Law School, and her library and information science degree is from Clark Atlanta University. She received a honorary doctorate from LaGrange College in 2006. From 1972 to 1976 she was associate director of Hinton Rural Life Center, an agency of the Southeastern Jurisdiction. She was a director of the Women's Division and the General Board of Global Ministries from 1976 to 1984. She served in the area of finance in both groups and was a member of the Interfaith Center on Corporate Responsibility. In 1988 she was elected to the Judicial Council of The United Methodist Church where she served two terms. From 1996 to 2004 she was secretary and aided in the first effort to put the Judicial Council Decisions in digital form which resulted in the complete decisions being available today. From 2008 to 2016 she served as clerk of the Council, the first person employed by the Council. After much research on the subject, she wrote "A Brief History of The Judicial Council of The United Methodist Church," *Methodist History* 49.2 (January 2011):86–98. Although retired, she retains a lively interest in The United Methodist Church and its future which led to her collaboration with William B. Lawrence on this essay.

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