

THE ANGLICAN COVENANT: SHARED DISCERNMENT RECOGNIZED BY ALL

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The approved text of the Anglican Covenant is already serving as a lens through which individual Anglican churches are inevitably and accurately being measured in terms of their character as “Communion churches.” Thus, in ways not yet properly noted by all, the text endorsed by the Anglican Consultative Council, the Archbishop of Canterbury and the Joint Standing Committee in May 2009 has already raised and to a large extent provisionally answered the question “who can adopt this Covenant?” It is the purpose of this paper to explain why and how this is so, and to do this in relation particularly to The Episcopal Church, although it should be noted that the Covenant’s defining substance can be applied analogously to other Anglican churches as well.

The substantive sections of the Anglican Covenant, Sections 1-3, are now in final form. They will be sent to the churches of the Communion for adoption within a few months. A fourth section containing procedural provisions will be added to the other three at that time, but it remains subject to further review and “possible revision.” Section 4, however, either as it now stands or as revised, will not change the fundamental substantive commitments given by the covenanting churches. The scope of the fourth section is purely procedural.

This cuts directly against the claim of some “progressive” elements that it would be perfectly possible for The Episcopal Church, as it stands and even with the recent General Convention decisions in mind, to sign the first three sections. Following the recent reflections by the Archbishop of Canterbury on the actions of the General Convention of The Episcopal Church, some in the Communion are urging TEC to sign the Anglican Covenant even while continuing to reject the teaching of the communion on same sex ordinations and blessings and the moratoria that now have been affirmed by all four Instruments of Communion:

The Episcopal Church in Anaheim passed various resolutions which reaffirmed its inclusive polity and brought greater clarity about the way forward TEC may take. In that context, and having passed those resolutions, what is to stop TEC signing the Covenant? We are awaiting a further draft, but unless it contains radical strengthening of any judicial measures, it seems to me that TEC would be able to sign it, as a sign of its mutual commitment and in the context of its present policy of ensuring that it is open to LGBT people both single and in relationships.¹

To be sure, this same contradictory response was anticipated by the actions of General Convention itself. On the one hand, it passed a resolution authorizing the development of liturgical resources for same sex blessings and, pending church-wide approval of a specific liturgy, encouraging bishops to offer a generous pastoral response to same sex couples that was explicitly intended to authorize public liturgies of blessing.² The chairman of the committee presenting this resolution to the House of Bishops explained that “the committee had considered adding a specific provision for liturgies, but believed it best not to enumerate the forms pastoral generosity might take so that ‘liturgies could be included’ without being named.”³ The Convention also declared all orders of ordained ministry open to persons living in same sex relationships, concluding they reflect “holy love which enables those in such relationships to see in each other the image of God” and that people in such relationships have responded to “God’s call” to the ordained ministry “on behalf of God’s One, Holy, Catholic and Apostolic Church.”⁴ The official explanation attached to this resolution states that “These standards thus provide guidance for access to the discernment process for ordination to the episcopate.”

The rejection of Communion teaching on human sexuality is clear. In the words of one member of the House of Bishops:

The battle over homosexuality in the Episcopal Church is over. The vote at the last General Convention was overwhelming. The sacred unions of gay and lesbian people are to be blessed and enfolded into liturgical patterns in the same way that the sacred unions of heterosexual people have been honored for centuries. The ministry of this church is to be open to gay and lesbian people who are qualified and chosen in the process by which this church makes such decisions.⁵

On the other hand, The Episcopal Church professes to continue to consider the Anglican Covenant, resolving to “study and comment” on the approved text of the Covenant (and “any successive drafts”) and requesting a report with “draft legislation concerning this Church’s response to an Anglican Covenant” at the next General Convention.⁶ It should be noted that as originally moved this resolution called on The Episcopal Church to “make a provisional commitment to abide by the terms of the Anglican Covenant,” but the clause calling for a provisional commitment was removed.⁷

That the actions of General Convention constitute instead a provisional rejection of the Anglican Covenant is manifest. This paper will support this conclusion in detail:

- We begin by considering the substantial and well-developed body of Anglican thought utilized in expressing the commitments in the Covenant text. This body of precedent includes the articulation of several foundational concepts used in the Covenant, including “shared discernment,” “accountability,” “autonomy,” and the comprehensive term “Communion with autonomy and accountability.”
- We then examine the specific commitments in the first three sections of the Anglican Covenant and show that they require (i) that there be Communion-wide decisions (“shared discernment”) on issues affecting the unity of the Communion and (ii) that all covenanting churches then recognize the decision reached by the Communion’s shared discernment.
- We will then show that the shared discernment of the Communion on the issue of human sexuality is unequivocal. All four Instruments of Communion have spoken with one voice for over a decade, both in terms of general teaching and through specific recommendations.
- We will conclude with a discussion of the function of Section 4 in the Covenant as a whole. On one level, Section 4 is not necessary, as some seem to think, to introduce meaningful consequences into the Covenant. Profound consequences are already entailed by the first three sections. Rather, a robust Section 4 is necessary in order to provide agreed procedures that all churches can trust. Without effective procedures in Section 4, others will emerge but they will not be ones that have been accepted in advance by all.

In this light, the actions of General Convention repudiating the teaching of the Communion on human sexuality can only be seen as the repudiation of the Covenant itself. The Communion and its shared discernment cannot be separated.

I

SECTION 3 OF THE COVENANT REQUIRES ALL COVENANTING CHURCHES TO RECOGNIZE AND ENDEAVOR TO ACCOMMODATE THE SHARED DISCERNMENT OF THE COMMUNION

A. “Communion of Churches”

The starting point for an analysis of what the Anglican Covenant requires is the affirmation by each covenanting church in paragraph 3.1.2 of “its resolve to live in a Communion of Churches.” All other provisions must be construed in light of this undertaking.

The question of what it means to live in a Communion of Churches has, of course, been a subject of discussion within the Anglican Communion since the first Lambeth Conference, if not before. There is much literature on the topic. The Covenant Design Group was not writing on a blank slate when it drafted the deceptively concise undertaking just quoted.

In particular, there has been much work done on this subject by Anglican bodies and theologians in the last two decades. A turning point was the publication in 1997 of the Virginia Report by the Inter-Anglican Theological and Doctrinal Commission (IATDC), which had been established pursuant to the request of the 1988 Lambeth Conference that the meaning and nature of communion be studied as a matter of urgency.⁸ The Virginia Report was largely devoted to explicating a theological understanding of communion, modeled on the life of the Trinity, but it also began to address the procedural and polity implications that such an understanding of communion had for the Anglican Communion. The IATDC has itself produced additional work on this subject in the last decade and other major contributions to the development of this topic have been made by other bodies, including the Instruments of Communion. By the time the final text of the first three sections of the Anglican Covenant had been approved this year by the Communion Instruments a robust and well-developed understanding existed within Anglicanism of what it means to live in a “Communion of Churches.” This existing body of official work was widely discussed during the drafting of the Anglican Covenant, both by the Covenant Design Group and by those commenting on earlier drafts, and was incorporated into the final text both conceptually and *verbatim*. The commitments made by the covenanting churches cannot be understood apart from this body of Anglican precedent. It constitutes, in other words, not only an Anglican theology but also an Anglican jurisprudence of communion.

That this extensive body of work forms both the theological and jurisprudential foundation for the Anglican Covenant follows from the oft-stated principle that although communion is primarily defined in fundamental theological terms, it also has a recognizable polity that distinguishes churches in communion from those in a loose federation. As stated by the Virginia Report, the “theology implicit in the Church's structures and processes must be one with the explicit theology of its words.”⁹

It is these implicit attributes of communion that the Archbishop of Canterbury referenced in 2006 when he described our “Anglican Identity” as being “neither tightly centralized nor just a loose federation of essentially independent bodies” and noted that the “tacit conventions between us need spelling out.”¹⁰

It is this body of Anglican precedent of tacit or implicit understandings of what it means to live as churches in communion--what is known in the civil law as custom, usage of trade and terms of art--that the Anglican Covenant incorporated into its concise text. When one finds in a commercial contract that “time is of the essence” or in a real estate contract that a covenant is “to run with the land” these terms are clearly understood notwithstanding their apparent vagueness

or metaphorical nature. The same is true when the Anglican Covenant uses terms well-understood in the developed Anglican ecclesiology on communion. Four of these concepts are fundamental: “shared discernment,” “interdependence,” “accountability,” and “autonomy.” The first three of these are inherent in the nature of communion. The last is a distinctive hallmark of *Anglican* communion. They are so closely interrelated as not to be easily separated. But each of the others can be seen to be an aspect of interdependence.

The Anglican Covenant utilizes each of these concepts in spelling out the tacit conventions of Anglican identity. It also makes use of two important derivative concepts, “communion with autonomy and accountability” and “intensity, substance and extent.” We will review the extensive development of these concepts in the Anglican jurisprudence of communion before examining the specific procedures embodied in the text of the Covenant.

B. Interdependence and “Shared Discernment”

A principle agreed in all the Anglican statements on communion is that one aspect of interdependence, and indeed inherent in the concept of communion itself, is the understanding that there are levels of decision-making and that for some issues of great importance discernment can only be made by the communion as a whole.

This is described theologically as discerning the mind of Christ for the church or, more elliptically, “the mind of the Communion” and is characterized in polity terms by “joint organs of discernment and decision.”¹¹ Section 3.2 of the Covenant describes this essential feature of communion as “shared discernment” and specifies the joint organs through which this is determined: “through the Communion’s councils.”

The Virginia Report concluded that the necessity of communion-wide decision making follows from the nature of interdependence and discernment:

There has been an increasing awareness that certain issues arise that affect the unity of the universal Church. Issues of faith, the sacraments, the ordering of the ministry, fundamental changes in relationships with another World Communion and ethical issues have implications for the life of communion. These need a Communion-wide mind if a life of interdependence is to be preserved....

Discerning the mind of Christ for the Church is the task of the whole people of God, with those ordained for a ministry of oversight guiding and leading the community. Authority is relational. Some matters are properly determined at a local or regional level, others which touch the unity in faith need to be determined in the communion of all the churches....

Within the Anglican Communion matters which touch the communion of all the churches need to be discerned and tested within the life of the interdependence of the Provinces, through the meeting of bishops in the Lambeth Conference and through the consultative process of the Anglican Consultative Council and the Primates' Meeting. [1997]¹²

The Windsor Report found that the requirement of shared discernment is inherent in the divine foundation of communion:

The commitments of communion provide objective criteria by which to understand the rights and responsibilities that go with the relationship and which promote and protect the common good of the worldwide community of churches. Many obligations are implicit in the foundation, purposes, forms, subjects and substance of communion, and thus relate to matters of critical common concern to the global Anglican fellowship. For instance, the divine foundation of communion should oblige each church to avoid unilateral action on contentious issues which may result in broken communion. It is an ancient canonical principle that what touches all should be decided by all. The relational nature of communion requires each church to learn more fully what it means to be part of that communion, so that its members may be fulfilled and strengthened in and through their relations with other churches. Communion obliges each church to foster, respect and maintain all those marks of common identity, and all those instruments of unity and communion, which it shares with fellow churches, seeking a common mind in essential matters of common concern: in short, to act interdependently, not independently. [2004]¹³

The Instruments of Communion have emphasized this point repeatedly, including the Primates' Meeting:

Whilst we recognise the juridical autonomy of each province in our Communion, the mutual interdependence of the provinces means that none has authority unilaterally to substitute an alternative teaching as if it were the teaching of the entire Anglican Communion. [London 2003]¹⁴

And the Archbishop of Canterbury:

Whatever the presenting issue, no member Church can make significant decisions unilaterally and still expect this to make no difference to how it is regarded in the fellowship; this would be uncomfortably like saying that every member could redefine the terms of belonging as and when it suited them. Some actions - and sacramental actions in particular - just do have the effect of putting a Church outside or even across the central stream of the life they have shared with other Churches. [2006]¹⁵

We recognise each other in one fellowship when we see one another 'standing under' the word of Scripture. Because of this recognition, we are able to consult and reflect together on the interpretation of Scripture and to learn in that process. Understanding the Bible is

not a private process or something to be undertaken in isolation by one part of the family. Radical change in the way we read cannot be determined by one group or tradition alone. [2007]¹⁶

The doctrine that 'what affects the communion of all should be decided by all' is a venerable principle. On some issues, there emerges a recognition that a particular new development is not of such significance that a high level of global agreement is desirable; in the language used by the Doctrinal Commission of the Communion, there is a recognition that in 'intensity, substance and extent' it is not of fundamental importance. But such a recognition cannot be wished into being by one local church alone. [2009]¹⁷

To summarize: “shared discernment” is the determination by the Communion, through its councils and expressed by the Instruments of Communion, of the mind of Christ for the church on matters touching the unity in faith of the Communion. It entails through the principle of mutual accountability corresponding obligations on the part of the churches of the Communion to recognize this shared discernment.

C. Interdependence and Accountability

The Virginia Report defines accountability as the “acceptance of interdependence.”¹⁸ If shared discernment describes that aspect of interdependence that involves coming to a common mind, accountability focuses on the response of the local churches to this “mind of the Communion.”¹⁹

The Report of the Windsor Continuation Group explicitly and concisely defines accountability in terms of shared discernment in a definition incorporated into the Covenant: “joint organs of discernment and decision, which are recognised by all.” This necessity of recognition follows from the divine nature of communion:

To be a communion, as opposed to a federation or association, is fundamentally to acknowledge that the fellowship of Churches is not a human construct; it is the gracious gift of God. Churches are enabled to live in communion because they recognise one another as truly an expression of the One Church of Jesus Christ.... If the recognition of one another as Churches is to be sustained, it implies a level of mutual accountability in the handling of the life of each Church.²⁰

Without accountability there is no communion, and a church that is unaccountable by definition has ordered its life outside the communion of churches.

Accountability has a plain meaning that is probably obvious to all. The Archbishop of Canterbury expressed it succinctly when he said “actions have consequences.”²¹ The IATDC defined accountability as “openness to correction,” noting:

each part of the Church is called to submit an account of its stewardship of the Gospel to other Christians...Furthermore, because of human sin, ignorance and frailty, it is to be anticipated that omissions, mistakes or distortions may occur in any account given of the faith. As a result it becomes vital that the account each part of the Church gives to other Christians of its stewardship of the Gospel contains the possibility of openness to correction. Communion in the Church requires this mutual accountability.²²

There is also a body of precedent that elucidates in concrete examples what Anglicans understand by accountability or openness to correction.

The earliest example comes from the first days of what later came to be known as the Anglican Communion, preceding even the formation of The Episcopal Church in 1789. If we were to date the beginning of the Anglican Communion, a strong case could be made for February 4, 1787, when two bishops were consecrated by the Archbishop of Canterbury for the churches of New York and Pennsylvania without requiring of them the oaths of supremacy and due obedience to the supreme governor and archbishops of the Church of England. It is well known that prior to these consecrations the Church of England had expressed serious reservations over the new American prayer book and requested specific modifications. Nineteen Bishops of the Church of England had written the churches in America that “we cannot but be extremely cautious, lest we should be the instruments of establishing an Ecclesiastical system which will be called a branch of the Church of England, but afterwards may possibly appear to have departed from it essentially, either in doctrine or in discipline.” The American churches substantially complied with the recommendations of the Church of England and similar ones from the Scottish Episcopal Church, going so far to reassure the Church of England on this front as to pass an “Act of General Convention” “declaring their steadfast resolution to maintain the same essential Articles of Faith and discipline with the Church of England.”²³

More recently, the Anglican understanding of accountability has been demonstrated in the controversies arising over the ordination of women to the priesthood and episcopate. In both cases, the churches of the Communion refrained from proceeding until the Instruments of Communion had concluded that this step would not threaten the unity of the Communion as a whole. In the case of the priesthood, after the controversy surrounding an initial ordination in Hong Kong, that province did not proceed further until it had raised the matter at the 1968 Lambeth Conference, consulted with other provinces and received by formal resolution the determination by the Anglican Consultative Council that such ordinations were “acceptable.”²⁴ Later, when The Episcopal Church decided in 1985 to open the episcopate to women the Presiding Bishop consulted with the Primates’ Meeting, which requested further consultation throughout the Communion. This led to a resolution at the 1988 Lambeth Conference calling on each church to respect the decision of other churches on this issue.²⁵ The first woman was not consecrated a bishop until 1989 after the Instruments of Communion had formally determined not to express objection.

A final example, albeit negative, of the Anglican understanding of accountability is found in the issue of human sexuality itself. After The Episcopal Church had consecrated the Bishop of New Hampshire, several dioceses in the United States and Canada had begun offering public liturgies of blessing, and bishops of other provinces had intervened in these churches, the Lambeth Commission convened by the Primates and the Archbishop of Canterbury to review these matters concluded that by acting contrary to the Communion discernment the churches and dioceses involved had breached the principle of interdependence.

We cannot avoid the conclusion that all have acted in ways incompatible with the Communion principle of interdependence, and our fellowship together has suffered immensely as a result of these developments.”

We believe that to proceed unilaterally with the authorisation of public Rites of Blessing for same sex unions at this time goes against the formally expressed opinions of the Instruments of Unity and therefore constitutes action in breach of the legitimate application of the Christian faith as the churches of the Anglican Communion have received it, and of bonds of affection in the life of the Communion, especially the principle of interdependence.²⁶

We see from these examples that the Anglican understanding of accountability is well-developed and has concrete meaning. To summarize: accountability means acceptance of interdependence and the forswearing of independent action on matters affecting the unity of the Communion; the openness to correction by other Christians; and the commitment to recognize the decisions of the Communion’s shared discernment.

D. Interdependence and Autonomy

1. Autonomy: General Principles

At first glance, some might conclude that autonomy and interdependence are opposites, but this is not the case. To the contrary, Anglican thought makes autonomy the opposite not of *interdependence* but of *independence*. Autonomy, like shared discernment and accountability, is rather an aspect of the interdependence that characterizes Anglican communion. This understanding of autonomy has been clearly articulated in Anglican work on the topic and has been explicitly incorporated into the Anglican Covenant.

In international law, autonomy is typically understood precisely this way:

Autonomous areas are regions of a State, usually possessing some ethnic or cultural distinctiveness, which have been granted separate powers of internal administration, to whatever degree, without being detached from the State of which they are a part.²⁷

Thus, the recent United Nations Declaration on the Rights of Indigenous Peoples contrasts the "sovereign and independent States" in which indigenous peoples live with the "autonomy" of the indigenous peoples themselves. "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions." The sovereign States in turn "shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration."²⁸

The authors of an extensive two-volume study of this issue undertaken in cooperation with the United States State Department, "The Theory and Practice of Governmental Autonomy," note that:

In view of the wide variation in the governmental structures surveyed, no single term adequately encompasses the relationship of every entity discussed. The terms "central," "national," "principal," and "sovereign" all describe the superior entity; "autonomous," "local," and "regional" are used to describe the inferior or dependent entity.²⁹

Although this body of law applies to governments and utilizes concepts of statehood and sovereignty not directly applicable to private organizations such as churches, the notion in international law that autonomy signifies a form of dependence not independence is plain.

"Autonomy" literally means self-governing, but Anglican thought has invoked this strand of civil jurisprudence to emphasize that "autonomy" is a concept that is inherently relational. The Windsor Report develops this concept:

As the right to self-government, autonomy is a form of limited authority. Ordinarily, an autonomous body (unlike a sovereign body) is capable only of making decisions for itself in relation to its own affairs at its own level. Autonomy, then, is linked to subsidiarity (see paragraphs 38-39, 83, 94-95).

Understood in this way, each autonomous church has the unfettered right to order and regulate its own local affairs, through its own system of government and law. Each such church is free from direct control by any decision of any ecclesiastical body external to itself in relation to its exclusively internal affairs (unless that external decision is authorised under, or incorporated in, its own law).

However, some affairs treated within and by a church may have a dual character: they may be of internal (domestic) and external (common) concern. Autonomy includes the right of a church to make decisions in those of its affairs which also touch the wider external community of which it forms part, which are also the affairs of others, provided those internal decisions are fully compatible with the interests, standards, unity and good order of the wider community of which the autonomous body forms part. If they are not so compatible, whilst there may be no question about their legal validity, they will

impose strains not only upon that church's wider relationship with other churches, but on that church's inner self-understanding as part of “the One, Holy, Catholic and Apostolic Church” in relation to some of its own members.

In our view, therefore, 'autonomy' thus denotes not unlimited freedom but what we might call freedom-in-relation, so it is subject to limits generated by the commitments of communion. Consequently, the very nature of autonomy itself obliges each church to have regard to the common good of the global Anglican community and the Church universal.³⁰

As already noted, the Windsor Report is expressly invoking well-established principles of international law contrasting autonomy with sovereignty and independence and then applying these principles to the Anglican Communion. Moreover, the understanding of autonomy it articulated was already well developed in Anglican thought, which since the 1960s had emphasized “mutual responsibility” and “interdependence” as keys to Anglican Communion polity. As the Covenant Design Group itself emphasized, these concepts have become so widely accepted that they are considered “principles” of Anglicanism.³¹ For example, as articulated in 1993, the “Ten Principles of Partnership” included the following:

The idea of mutual responsibility and interdependence in the body of Christ for the purpose of fulfilling the great commission is at the heart of New Testament missiology and practice. It has been a constant theme at ACC gatherings over the years (ACC-2 pp.53-54; ACC-4 pp.25-27; ACC-5 pp.30-34; ACC-7 pp.30-33)... In decision making, mutuality means sharing power. For example, major decisions affecting partners (in the South), should not be taken without their participation in the decision whether by their presence when it is made or by prior consultation.³²

By 1997, these concepts were treated as an essential feature of Anglican identity in the Virginia Report. Since then, these principles have been invoked repeatedly by the Instruments of Communion. For example, when the Anglican Consultative Council passed Resolution 34 in 2002 calling on provinces, dioceses and bishops to be mindful of the communion in their decision-making, that resolution was explicitly based on “the constant emphasis on mutual responsibility and interdependence in the resolutions of successive Lambeth Conferences.” Similarly, the Archbishop of Canterbury has repeatedly expressed these principles in his articulation of the mind and teaching of the Anglican Communion.

Significantly, in 2007, the Primates’ Meeting in Dar es Salaam relied on these principles as one of the “foundations” for their specific recommendations to The Episcopal Church. These foundations included the need to:

respect the proper constitutional autonomy of all of the Churches of the Anglican Communion, while upholding the interdependent life and mutual responsibility of the Churches, and the responsibility of each to the Communion as a whole.³³

In making their very specific proposals to The Episcopal Church, the Primates in Dar es Salaam undertook to “apply” these principles in the “difficult situation” facing TEC.

2. The Covenant: Autonomy with Interdependence

To understand the significance of Section 3 of the Anglican Covenant, one must recognize that it adopts this understanding of the relationship of autonomy to interdependence. The practical importance of these concepts, which may seem academic to some, is shown by the following recent precedent. First, as already noted, the Primates meeting in Dar es Salaam made detailed recommendations to The Episcopal Church relying in part on this articulation of autonomy and interdependence.

Next, these specific “recommendations” of the Primates were **immediately rejected** by the House of Bishops of TEC, which concluded that:

First, it violates our church law in that it would call for a delegation of primatial authority not permissible under our Canons and a compromise of our autonomy as a Church not permissible under our Constitution.

Second, it fundamentally changes the character of the Windsor process and the covenant design process in which we thought all the Anglican Churches were participating together. [As we have already seen, this claim that the Windsor process was being altered cannot be reconciled with the Windsor Report and other materials we have discussed in this paper demonstrating that the Dar Communiqué merely spelled out tacit conventions long agreed by Anglicans.]

Third, it violates our founding principles as The Episcopal Church following our own liberation from colonialism and the beginning of a life **independent** of the Church of England. [Emphasis added. This declaration of independence should be considered in the context of the declaration by the convention in 1786, noted above, of the “steadfast resolution to maintain the same essential Articles of Faith and discipline with the Church of England.”]³⁴

But: notwithstanding this rejection by TEC, the final text of Section 3 of the Anglican Covenant includes, virtually *verbatim*, a commitment by each covenanting church to the foundational principle as articulated by the Primates at Dar es Salaam:

(3.2.2) to respect the constitutional autonomy of all of the Churches of the Anglican Communion, while upholding our mutual responsibility and interdependence in the Body of Christ, and the responsibility of each to the Communion as a whole.

The footnotes to this paragraph explicitly reference the Dar Communiqué. In addition, Paragraph 3.2.1 of the Anglican Covenant, which we address further below, includes the commitment by each covenanting church to “endeavor to accommodate [the Instruments’] recommendations.” The adoption in the Covenant of the formulation used in the Dar Communiqué shows quite clearly the relationship in Communion life between autonomy, mutual responsibility and interdependence.

As this overview of the Anglican understanding of autonomy demonstrates, the Anglican Covenant quite purposefully adopts a commitment to autonomy expressed not through a “life independent” as TEC insists, but instead through mutual responsibility and interdependence. **All who read the Anglican Covenant must start with the recognition that it is this robust concept of *interdependence*, not *independence*, to which churches signing the Covenant commit themselves.** This principle of autonomy as interdependence has often been expressed as fundamental to Anglicanism, including especially by the Primates at Dar es Salaam. This is what the Anglican Covenant invites churches to embrace.

To summarize: autonomy is self-governance by the churches of the Communion, not independently, but in an interdependent relationship to other churches that acknowledges their mutual responsibility to each other and to the Communion.

E. “Communion with Autonomy and Accountability”

The culmination of this extensive development of the Anglican understanding of communion has been the recent work of the Windsor Continuation and Covenant Design Groups. Both reviewed the prior literature summarized above and used these concepts to formulate a definition of communion that is both consistent with the prior work and precise in its new articulation.

The operative definition of communion was first proposed by the Windsor Continuation Group, using the by now well-understood concepts of shared discernment, accountability and autonomy:

The principle of autonomy-in-communion described in the *Windsor Report* makes clear that the principle of subsidiarity has always to be borne in mind. If the concern is with communion in a diocese, only diocesan authority is involved; if communion at a provincial level then only provincial decision. But if the matter concerns recognising one another as sharing one communion of faith and life, then **some joint organs of discernment and decision, which are recognised by all**, are required. It is this necessity which led the WCG to articulate the move to “communion with autonomy and accountability” as being a better articulation of the ecclesiology which is necessary to sustain Communion. [2009; emphasis added.]³⁵

This proposal that communion be understood as “communion with autonomy and accountability” was subsequently endorsed by the Primates’ Meeting, and the recommendations of the WCG were affirmed by the Anglican Consultative Council.³⁶ This understanding was incorporated into paragraph 3.1.2 of the Anglican Covenant through the use of this explicit term to express the communion to which the covenanting churches were committing. **With the incorporation of this defined term, the commitment of the covenanting churches to the**

Anglican understanding of shared discernment, accountability and autonomy is clear. All churches agree by accepting “communion with autonomy and accountability” to “joint organs of discernment and decision which are recognized by all.”

F. Shared Discernment, Subsidiarity and the Standard of “Intensity, Substance and Extent”

Although this definition of communion requires all churches to recognize the decisions jointly discerned, not all or even most decisions are to be made at the communion-wide level. The principle of subsidiarity, “the principle that matters should be decided as close to the local level as possible,” is a hallmark of Anglicanism. But if most decisions are to be made at the local level while some are made at the communion level, some standard must be identified for determining *when* shared discernment is required. As the Archbishop of Canterbury has emphasized, this is not a determination that can be made by the local church.³⁷

Six years after the IATDC submitted the Virginia Report emphasizing the requirement for shared discernment in matters touching the communion of all the churches it became clear that The Episcopal Church was determined to reject the Communion’s shared discernment on human sexuality by consecrating the Bishop of New Hampshire. Shortly before the emergency meeting of the Primates in 2003, the IATDC prepared a briefing paper for the meeting that addressed this question of when shared discernment was necessary:

A problem arises over innovations about which there are different views in the Church concerning the relative weight or significance to be accorded to a matter. Such are the matters in question. How ought the Church to proceed in such situations? A principle here might be that if the dispute is: intense (eg. generates high degree of sustained and unresolved debate that threatens the unity of the Anglican Communion; or that requires urgent attention) extensive (eg. not confined to one section or region of the Church; has significant implications for mission and ecumenical relations; has a wider social impact) and substantial (concerning an actual issue, and not for example, simply being generated by the media) then the matter cannot remain simply for the local Church (e.g. the diocese) to handle.

A word of caution here. It is not envisaged that the first 'port of call' for disputed matters in the Communion would necessarily be the Primates. Rather, historically Anglicans have dealt with their conflicts in consonance with the principle of subsidiarity. Indeed, Anglicanism has a natural inbuilt reticence to 'stealing' from lower levels the decision making responsibilities that are properly theirs. So it is not the case that strong action from above in a particular case would become the Anglican norm for settling disputes. But if a matter arises of crucial importance to faith and life, or if a matter generates such dispute that it threatens the bonds of the Anglican Communion, the Communion as a whole, through its highest levels of authority, has a responsibility to be properly involved in the handling of the dispute. A process which involves mutual accountability and receives wisdom from the whole of the Communion commends itself in such circumstances.³⁸

We find here the first articulation of the standard for determining when matters require the discernment of the entire Communion: the standard of “intensity, substance and extent.” What matters in our analysis at this point is not the application of this standard to particular questions, but what the standard itself signifies: “the Communion as a whole, through its highest levels of authority, has a responsibility to be properly involved in the handling of the dispute.”

These concepts were the basis on which the Primates then addressed the crisis they faced:

If his consecration proceeds, we recognise that we have reached a crucial and critical point in the life of the Anglican Communion and we have had to conclude that the future of the Communion itself will be put in jeopardy.... This will tear the fabric of our Communion at its deepest level, and may lead to further division on this and further issues as provinces have to decide in consequence whether they can remain in communion with provinces that choose not to break communion with the Episcopal Church (USA).³⁹

In 2008, the IATDC elaborated further, albeit regrettably briefly, the standard for determining when communion-wide discernment is required in its Kuala Lumpur statement:

To clarify *when* some communion-wide decision is to be made, we have introduced the criteria of *intensity, substance* and *extent*: the more these characteristics feature in a controversy, the wider the scope for a ministry of mutual admonition. As to *where* that decision should be made, it is held that the current dispute deserves consideration at the level of a relationship between Provinces, at present embodied in the Primates’ Meeting. The Primates have been reluctant to accept the ‘enhanced’ role that successive Lambeth Conferences have urged upon them, but in October 2003 they indicated that they were looking for an appropriate mechanism to fulfil that sort of role. Some way may need to be found by which all the instruments of communion, acting together, can make binding judgements to undergird and secure the unity of the churches and enrich their communion of service and love. (Footnote omitted.)⁴⁰

Again, leaving aside the question of which Communion Instrument should decide such matters, the important point to recognize is that the standard of “intensity, substance and extent” signals a requirement for “communion-wide decision” and perhaps “binding judgments” to secure the unity of the Communion.

In January 2009, the Archbishops of Canterbury and York released comments on the earlier St. Andrew’s Draft of the Covenant prepared for the English House of Bishops. Among the comments was the request that greater definition be given to terms in the Covenant and the recommendation in particular that such definition be given by reference to the Kuala Lumpur statement:

In the St Andrew’s draft the precise meanings of the terms such as ‘common mind’ and ‘essential concern’ that are used in this commitment are left undefined and, as the CDG itself recognises in its *Lambeth Commentary*, it is important that [they] are given a clear definition if they are to give practical shape to the life of the Communion. In defining the

meaning of these terms it would be helpful if reference was made to the extensive discussion of the meaning of life in communion contained in the IATDC's Kuala Lumpur Report *Communion, Conflict and Hope* and if reference was also made to the key issue of the triangulation of authority, adiaphora and subsidiarity as discussed in Section B of the *Windsor Report*. (Footnotes omitted.)⁴¹

In February 2009, when the General Synod of the Church of England considered and noted this report, the Bishop of Durham, N.T. Wright, gave greater detail on the references contained in the concise comment of the English bishops:

In the middle of that in paragraph 40 on page 9 we find a rather dense reference to material in the Kuala Lumpur report 'Communion, Conflict and Hope'.... And here the Kuala Lumpur report puts its finger briefly and densely on the key point. Kuala Lumpur, paragraph 104--"many matters can and should be decided locally" it says—but, quote, "to clarify when some Communion-wide decision is to be made we have introduced the criteria of 'Intensity', 'Substance' and 'Extent'. The more these characteristics feature in a controversy, the wider the scope for a ministry of mutual admonition".... Where a matter presses these three buttons a strong initial case is made that the issue cannot be decided locally with everybody else simply told to accept difference. That might be the eventual decision, but if the matter possesses Intensity, Substance and Extent you can't and shouldn't assume it. To do so would be a cavalier flouting of the very nature of Communion.⁴²

And of course most recently the Archbishop of Canterbury has again, explicitly, identified the standard of "intensity, substance and extent" as the test for whether an issue requires that it "be decided by all." He noted that not all issues meet this test, but that "such a recognition cannot be wished into being by one local church alone."⁴³

It is only in this context that we can understand the full meaning of Section 3.2.5 of the final text of the Anglican Covenant, by which each covenanting church commits:

to act with diligence, care and caution in respect of any action which may provoke controversy, which by its **intensity, substance or extent** could threaten the unity of the Communion and the effectiveness or credibility of its mission. (Emphasis added.)

We will turn in the next section to the specifics of the commitments made by the covenanting churches in this paragraph, but note for the present that they are committing very purposefully to the principle of communion-wide discernment and decision-making and to the explicit formula developed over the last two decades by Anglican bodies for recognizing when such communion decisions are required. Although the wording of Section 3 is concise, its content is robust and its meaning is clear.

Finally, we conclude this discussion of the constituent concepts of communion by noting an important corollary of the principle of interdependence and the definition of communion as "communion with autonomy and accountability." It is a corollary that recognizes rejection is always a possible outcome of the process triggered by the standard for shared discernment

incorporated into the Covenant in paragraph 3.2.5. It is one spelled out in the Windsor Report sections to which the Archbishops of Canterbury and York referred in their comments on the draft covenant. Communion is “the fundamental limit to autonomy.”⁴⁴ When shared discernment in the communion is required but a local church nonetheless decides to act independently of the communion, the local church has perforce taken itself outside the communion. It has broken communion. **The break in communion is not a punitive response by the communion or other churches, but the inherent consequence of such independent action in a communion of churches.** This is the thrust of the Windsor Report’s metaphor of “walking apart.” The church choosing to act independently is not “pushed aside” by the others; it places itself apart by its purposeful act of independence. It is no longer a church-in-communion; it is an independent church with all that entails.

G. The Specific Commitments of Section 3

Section 3 of the Anglican Covenant provides a comprehensive framework for decision-making in the Anglican Communion. It starts with a general commitment to joint discernment, then identifies the organs of decision and finally concludes with concrete obligations assumed by the covenanting churches. Having surveyed the developed body of Anglican precedents on which the Anglican Covenant and its specific language and meaning are based, we are now in a position to summarize the concise articulation of these commitments in Section 3.

First, in paragraph 3.1.4 each covenanting church resolves to live in a communion of churches and in particular in a communion defined as “communion with autonomy and accountability.” That is a defined concept in the Anglican understanding of communion meaning, *inter alia*, that there are “joint organs of discernment and decision which are recognized by all.”⁴⁵

Paragraph 3.1.4 specifies those organs of decision: the Instruments of Communion. “Each Instrument may initiate and commend a process of discernment and a direction for the Communion and its Churches.”

The specific commitments in Section 3.2 provide the procedures by which these general principles are implemented. We will consider them in the order they would come into play when a controversy arises. First, paragraph 3.2.5 specifies the well-known standard, first articulated in these terms in 2003 and often repeated since, of *when* communion-wide decision-making is required. This is when an action “by its intensity, substance or extent could threaten the unity of the Communion and the effectiveness or credibility of its mission.” The significance of this formulation in Anglican thought is unmistakable. When this standard applies, joint decision is required. Each covenanting church agrees to use this standard as a recognized marker. When this standard is invoked, they are to proceed with “diligence, care and caution” through the communion processes for *shared discernment*.

“Diligence” and “care” are standards of conduct often found in the civil law. Although their application depends on the particular circumstances in which they are applied—the duty of care is different for a corporate director than it is for a doctor or architect—these terms are always defined objectively. A duty to act with diligence or care means a duty to act with the diligence or care that a reasonable person would use in the circumstances. These are not subjective standards.

And the standard of diligence and care objectively expected of Anglican churches in these circumstances was defined as long ago as the first Eames Commission on women and the episcopate: communion consultation is required prior to action and gracious restraint required during the communion discernment.⁴⁶ The Covenant Design Group made this standard clear in its commentary on the final text of Section 3: this paragraph “is meant to provide a standard or test by which a Church could anticipate when it ought to act with caution, or avoid taking any action, in “gracious restraint” (cf Primates, Alexandria, 2009).”⁴⁷ It should be noted that “restraint” was the term used by The Episcopal Church to effect a moratorium on the consecration of bishops living in a same gender union.

The other paragraphs in Section 3.2 specify the procedures to follow when the requirement for communion-wide decision is met. Paragraph 3.2.4 indicates the first step: “to seek a shared mind with other Churches, *through the Communion's councils*, about matters of common concern, in a way consistent with the Scriptures, the common standards of faith, and the canon laws of our churches. Each Church will undertake wide consultation with the other Churches of the Anglican Communion and with the Instruments and Commissions of the Communion.” (Emphasis added.) As already articulated in the definitions of “communion with autonomy and accountability” and the Instruments of Communion, the “shared mind” is the mind expressed through the Communion’s councils.

Paragraph 3.2.3 specifies the qualities that are to characterize the process of considering “controversial or new” issues and reiterates that “All such matters therefore need to be tested by shared discernment in the life of the Church.”

As the Archbishop of Canterbury and others have noted, these procedures are not new. They have long been the “unspoken” or “tacit conventions” of the Communion.⁴⁸ In particular, they are sufficiently understood to be part of the meaning of “interdependence” that the Lambeth Commission could conclude in the Windsor Report that The Episcopal Church and the Diocese of New Westminster were in “breach” of the principle of interdependence.⁴⁹ These principles have been applied often enough to new or controversial actions in the Anglican Communion that a body of precedent exists to indicate what is expected of churches engaging in this process of common discernment.

In broad terms, there are three possible outcomes to the process of discernment. First, the new action could be embraced by the Communion. This undoubtedly has been the most common result over the life of the Communion. Second, the new action could be recognized by the Instruments of Communion as one appropriate for implementation in some churches and as properly subject to a process of reception in the Communion as a whole. As we have emphasized already, this is a determination made by the Communion councils, not the local church. Finally, the Communion might conclude, as it has in the case of the consecration of the Bishop of New Hampshire and the use of public liturgies blessing same sex unions, that such action cannot be undertaken by local churches acting in accord with the principle of interdependence and is one for which a process of reception is not appropriate.⁵⁰

Section 3 of the Anglican Covenant makes provision for all three of these outcomes. As noted earlier, it recognizes in 3.1.4 the authority of the Instruments to commend “a direction for the

Communion and its Churches.” Paragraph 3.2.1 then specifies the commitment of each church in response: “to endeavour to accommodate their recommendations.” Whatever the result of the joint discernment by the Communion councils, the churches commit to “endeavor” to comply.

Like the terms “diligence” and “care”, the term “endeavor” is an oft-used term in civil law agreements. It appears in a variety of synonymous formulations, such as “best efforts,” “best endeavors,” “reasonable efforts,” “good faith efforts,” “diligent efforts,” and “every effort,” but studies have shown that courts draw no meaningful distinctions between these different formulations. What they all indicate is that there is an undertaking to make an effort that is measured against an objective standard. It is not consistent with such an undertaking to decide not to comply because one disagrees with the objective or to do nothing because it is too costly or to seek actively to undermine the objective. There is no guarantee of success, but there is a commitment to a good faith effort *to accommodate* that is measurable against an objective standard.

At this point, we return once again to the commitment to “communion with autonomy and accountability.” The substantive undertaking by covenanting churches is to “endeavor to accommodate”; there is no undertaking required of Anglican churches simply “to comply” with the Instruments’ recommendations because to impose such a requirement would be to ignore the very real autonomy of each covenanting church. In the words of the Windsor Report, each local church has “the unfettered right to order and regulate its own local affairs.”⁵¹ But within the Communion, autonomy is balanced by accountability. As the Archbishop of Canterbury has emphasized, some actions

have the effect of putting a Church outside or even across the central stream of the life they have shared with other Churches. It isn't a question of throwing people into outer darkness, but of recognising that actions have consequences - and that actions believed in good faith to be 'prophetic' in their radicalism are likely to have costly consequences.⁵²

To “endeavor to accommodate” the recommendations of the Communion Instruments is to make a decision and take reasonable actions to follow the recommendations. To make a purposeful decision instead not to accommodate the recommendation is not only a breach of the Covenant, it is placing one’s self “outside” the Communion of churches.

II

LAMBETH 1.10 AND THE COMMUNION MORATORIA ARE COMMUNION DISCERNMENTS THAT HAVE BEEN COMMENDED TO ALL THE CHURCHES

The controversy over human sexuality that provoked the current crisis in the Communion and occasioned the development of the Anglican Covenant is well known. It has been addressed repeatedly by the Instruments of Communion as well as other commissions and bodies. The status of these decisions by the Communion Instruments is straightforward under the Covenant

framework summarized above, but because some have claimed that these matters are not comprehended by the Covenant's provisions we will show how these principles apply to this important issue.

A. The Sexuality Issue Requires Communion-Wide Discernment Under the "Intensity, Substance and Extent" Standard

The "intensity, substance and extent" standard used in the Covenant to signal the necessity for discernment by the Communion as a whole was first articulated in a briefing paper prepared for the emergency meeting of the Primates in 2003. With this standard in mind, the Primates' Meeting became the first Instrument to assess the seriousness of this issue when it concluded in a well-known passage we have already noted:

If his [the Bishop of New Hampshire's] consecration proceeds, we recognise that we have reached a crucial and critical point in the life of the Anglican Communion and we have had to conclude that the future of the Communion itself will be put in jeopardy....This will tear the fabric of our Communion at its deepest level, and may lead to further division on this and further issues as provinces have to decide in consequence whether they can remain in communion with provinces that choose not to break communion with the Episcopal Church (USA).⁵³

It would be difficult to articulate a greater impact than "the future of the Communion itself will be put in jeopardy."

The next year the Windsor Report concluded that The Episcopal Church and the diocese of New Westminster had breached the principle of interdependence, thereby confirming that the standard requiring Communion decision had been triggered. Over half of the Communion's provinces declared broken or impaired communion with The Episcopal Church. Repeated statements by the Instruments of Communion have concluded that the breach has not been healed. Most recently, the Archbishop of Canterbury concluded after the meeting of General Convention in July 2009 that "a realistic assessment of what Convention has resolved does not suggest that it will repair the broken bridges into the life of other Anglican provinces; very serious anxieties have already been expressed."⁵⁴

Moreover, the controversy over this issue is not just a matter of intensity and substance; it also satisfies the "extent" prong of the test. As the Archbishop has noted:

the same problems and the same principles apply within local Churches as between Churches. The divisions don't run just between national bodies at a distance, they are at work in each locality, and pose the same question: are we prepared to work at a common life which doesn't just reflect the interests and beliefs of one group but tries to find something that could be in everyone's interest – recognising that this involves different sorts of costs for everyone involved?⁵⁵

B. The Communion Instruments Have Commended a “Direction for the Communion and Its Churches” and Issued Unequivocal “Recommendations”

It is difficult to conceive how the teaching of the Communion could be articulated more clearly or forcefully. All four Instruments have *repeatedly* endorsed the general direction or teaching and all have also endorsed the specific recommendations to the churches. There can be no question that the mind of the Communion has been expressed through the sustained unanimity of the Instruments of Communion.

The teaching of the communion is, of course, expressed in 1998 Lambeth Resolution 1.10. That teaching was subsequently affirmed as the mind of the Communion by the Primates in 2003, 2005, 2007 and in Alexandria earlier this year. To take only one example, in 2007 the Primates noted:

The 1998 Lambeth Resolution 1.10 is the standard of teaching which is presupposed in the Windsor Report and from which the primates have worked. This restates the traditional teaching of the Christian Church that “in view of the teaching of Scripture, [the Conference] upholds faithfulness in marriage between a man and a woman in lifelong union, and believes that abstinence is right for those who are not called to marriage”, and applies this to several areas which are discussed further below. The Primates have reaffirmed this teaching in all their recent meetings, and indicated how a change in the formal teaching of any one Province would indicate a departure from the standard upheld by the Communion as a whole. (Footnote omitted.)⁵⁶

The Anglican Consultative Council has endorsed Lambeth Resolution 1.10 by its own Resolution 10 at ACC-13. The Archbishop of Canterbury has repeatedly stated that this remains the teaching of the Anglican Communion. In 2007, the Archbishop emphasized:

While argument continues about exactly how much force is possessed by a Resolution of the Lambeth Conference such as the 1998 Lambeth Conference Resolution on sexuality, it is true, as I have repeatedly said, that the 1998 Resolution is the only point of reference clearly agreed by the overwhelming majority of the Communion. This is the point where our common reading of Scripture stands, along with the common reading of the majority within the Christian churches worldwide and through the centuries.⁵⁷

In articulating the mind of the bishops at the 2008 Lambeth Conference, the Archbishop acknowledged that Resolution 1.10 “remains where our Communion as a global community stands.”⁵⁸ This past July, the Archbishop noted that any change to this teaching

would have to be based on the most painstaking biblical exegesis and on a wide acceptance of the results within the Communion, with due account taken of the teachings of ecumenical partners also. A major change naturally needs a strong level of consensus and solid theological grounding.⁵⁹

Indeed, it should be noted that the Report of the Joint Standing Committee, to which the Presiding Bishop of The Episcopal Church expressly assented, reached the same conclusion in October 2007:

We note that the 1998 Lambeth Conference articulated in Resolution 1.10 the widely accepted teaching for the Communion. Lambeth Conference Resolutions do not have “magisterial” force in the Anglican Communion; that is, they are not *per se* binding on the faithful of the Churches of the Anglican Communion. Nevertheless, **Resolution 1.10 expresses the understanding on Christian marriage and sexual relationships actually taught and held by the vast majority of Anglican churches and bishops across the globe – indeed, by the vast majority of Christian denominations and their leadership**...The life of the Anglican Communion has been much damaged in recent years following the tensions raised by the consecration in The Episcopal Church of a bishop living in a committed same-sex relationship and the authorization in some dioceses of Rites of Blessing for same-sex unions. With the response of the House of Bishops of the Episcopal Church in September 2007, the Communion should move towards closure on these matters, at least for the time being. **The Communion seems to be converging** around a position which says that while it is inappropriate to proceed to public Rites of Blessing of same-sex unions and to the consecration of bishops who are living in sexual relationships outside of Christian marriage, we need to take seriously our ministry to gay and lesbian people inside the Church and the ending of discrimination, persecution and violence against them. **Here, The Episcopal Church and the Instruments of Communion speak with one voice.** (Footnote omitted, emphasis added.)⁶⁰

The same unanimity among the Instruments of Communion is found concerning the specific recommendations made to implement this teaching in the Communion, the moratoria first proposed in the Windsor Report in 2004. Most recently, the Anglican Consultative Council called for the implementation of these moratoria in the Communion by a resolution that:

affirms the request of the Windsor Report (2004), adopted at the Primates’ Meetings (2005, 2007 and 2009), and supported at the Lambeth Conference (2008) for the implementation of the agreed moratoria on the Consecration of Bishops living in a same gender union, authorization of public Rites of Blessing for Same Sex unions and continued interventions in other Provinces.⁶¹

All the Instruments have made identical and very specific recommendations to the churches of the Communion repeatedly over the last five years. It is difficult to conceive of how direction could be commended more clearly by the Instruments under paragraph 3.1.4 of the Anglican Covenant.

III

THE IMPORTANCE OF SECTION 4

We have so far limited our analysis of the Anglican Covenant to the first three sections, which have been given final approval. A fourth section, containing procedural provisions, including ones for resolving disputes, has been deferred by the Anglican Consultative Council for further review and “possible revision.”⁶² Many in the Communion are of the opinion that the final text of Section 4 will determine whether the covenant as a whole is meaningful. This view is held by groups that, among themselves, differ greatly. For some, the thrust of this view seems to be that the substance of the undertakings is unimportant so long as there are few procedural consequences. For others, the only thing that really matters is having *strong* procedural consequences; the rest is secondary. It is difficult to see how either view comports even with the good faith required of parties to contracts in the civil law, much less to the expectations of honesty and charity held by Christians in their dealings with each other and undergirding the Covenant as a whole.

Observers of the Covenant are right to view Section 4 as important to the proper functioning of both the Covenant and the Communion as a whole, but wrong to think that the consequences for failing to abide by the Covenant flow only from Section 4. When finalized, Section 4 will function in part as a “dispute resolution provision” not unlike such provisions routinely found in civil contracts. What needs to be recognized is that such provisions do not *create* remedies or consequences where none would otherwise exist; they serve instead to limit them or channel them through specified procedures. Without such provisions, there are still consequences. They are just not the ones specified in the dispute resolution provision. Parties to a civil law contract do not agree to resolve their disputes in a specified court or forum out of fear that otherwise the contract would be unenforceable. They do so because they know very well that it is enforceable and they do not want to be summoned to *some other* court and have their rights adjudicated there through unknown procedures and remedies.

With this recognition, we can readily see how a Covenant without a specific dispute resolution mechanism would work. The view by some churches of the Communion or some of the Instruments that one of the churches was in breach of its Covenant commitments would almost inevitably lead to reactive measures by other churches. Indeed, this is what has already happened in the present crisis. It follows necessarily from the strong view of communion defined in Section 3, “communion with autonomy and accountability,” that breaches of the principles of interdependence and accountability have significant consequences. By definition they place the offending church, in the words of the Archbishop of Canterbury, “outside or even across the central stream of life they share with other Churches,” outside, that is, the communion with autonomy and accountability.

But steps taken by other churches to formalize this consequence, such as acting within the territory of the church with which they were formerly in communion, are themselves actions that immediately trigger the standard of “intensity, substance and extent.” This fact was recognized

as long ago as the Windsor Report and has become the basis for the third of the Windsor moratoria, the moratorium on cross-border interventions. In this light we can see clearly the reason the three Windsor moratoria have been linked together by the Instruments of Communion. As has been emphasized, the actions and reactions are not morally equivalent, but they are procedurally equivalent in that both trigger the requirement for Communion-wide decision.

In other words, without a specific dispute resolution procedure, the procedures of Section 3 would themselves be applicable and any Instrument of Communion could commend direction for the resolution of the dispute. In practice, this task would fall upon the Archbishop of Canterbury working together with the Primates' Meeting because they are the most flexible and collegial of the Instruments. Indeed, we have seen them work together in precisely this fashion in recent years in the Primates' Meetings at Dromantine and Dar es Salaam.

The events of recent years demonstrate, however, the need for clear and effective procedures that are accepted by all. The absence of agreed remedies does not mean the absence of remedies; others will emerge, just as many have already emerged *ad hoc*, to the Communion's potential weakening. The lack of action by one Instrument does not mean that no action will occur; it means that action will take place elsewhere. Section 4 is important and badly needed, but not for the reasons many think. It is not necessary in order to create "consequences" or a mechanism for resolving disputes. Those follow naturally whenever there are disputes. Without an effective mechanism trusted by all, others will arise but they will have the demerit of not having been thought through and agreed by all the covenanting churches. Hence the importance of effective provisions in Section 4.

IV

CONCLUSION

An Anglican church cannot simultaneously commit itself through the Anglican Covenant to shared discernment and reject that discernment; to interdependence and then act independently; to accountability and remain determined to be unaccountable. If the battle over homosexuality in The Episcopal Church is truly over, then so is the battle over the Anglican Covenant in The Episcopal Church, at least provisionally. As Christians, we live in hope that The Episcopal Church will at some future General Convention reverse the course to which it has committed itself, but we acknowledge the decisions that already have been taken. These decisions and actions run counter to the shared discernment of the Communion and the recommendations of the Instruments of Communion implementing this discernment. They are, therefore, also incompatible with the express substance, meaning, and committed direction of the first three Sections of the proposed Anglican Covenant. As a consequence, only a formal overturning by The Episcopal Church of these decisions and actions could place the church in a position capable

of truly assuming the Covenant's already articulated commitments. Until such time, The Episcopal Church has rejected the Covenant commitments openly and concretely, and her members and other Anglican churches within the Communion must take this into account. This conclusion is reached not on the basis of animus or prejudice, but on a straightforward and careful reading of the Covenant's language and its meaning within the history of the Anglican Communion's well-articulated life.

¹ Giles Goddard, "TEC and CofE: the makings of a progressive alliance," Aug. 10, 2009,

http://www.episcopalcafe.com/daily/anglican_communion/by_giles_goddard_two_years.php

² Resolution C056, http://gc2009.org/ViewLegislation/view_leg_detail.aspx?id=898&type=Final

³ George Conger, "Bishops Weigh Authorizing Local Same-Sex Blessing Rites," The Living Church, July 14, 2009, (quoting Bishop Wayne Smith of West Missouri), <http://geoconger.wordpress.com/2009/07/15/bishops-weigh-authorizing-local-same-sex-blessing-rites-tlc-7-14-09>

⁴ Resolution D025, http://gc2009.org/ViewLegislation/view_leg_detail.aspx?id=986&type=Final

⁵ Bishop John Shelby Spong, "Battle Over Homosexuality in Episcopal Church Is Over," Washington Post, Aug. 6, 2009,

http://newsweek.washingtonpost.com/onfaith/panelists/john_shelby_spong/2009/08/episcopal_bishop_elections_in_diocese_of_la_and_minnesota.html?hpid=talkbox1

⁶ Resolution D020, http://gc2009.org/ViewLegislation/view_leg_detail.aspx?id=954&type=Final

⁷ http://gc2009.org/ViewLegislation/view_leg_detail.aspx?id=954&type=Original

⁸ Inter-Anglican Theological and Doctrinal Commission, "The Virginia Report," p. 5 (1997)

<http://www.lambethconference.org/1998/documents/report-1.pdf>

⁹ Inter-Anglican Theological and Doctrinal Commission, "The Virginia Report," par. 5.27 (1997)

<http://www.lambethconference.org/1998/documents/report-1.pdf>

¹⁰ Archbishop Rowan Williams, "The Challenge and Hope of Being an Anglican Today: A Reflection for the Bishops, Clergy and Faithful of the Anglican Communion," June 27, 2006, <http://www.archbishopofcanterbury.org/640>

¹¹ Inter-Anglican Theological and Doctrinal Commission, "The Virginia Report," par. 4.18 (1997)

<http://www.lambethconference.org/1998/documents/report-1.pdf>; WCG Report, para. 55.

¹² Inter-Anglican Theological and Doctrinal Commission, "The Virginia Report," par 4.18, 5.21, 5.24 (1997)

<http://www.lambethconference.org/1998/documents/report-1.pdf>

¹³ The Lambeth Commission on Communion, The Windsor Report, par. 51 (2004)

<http://www.anglicancommunion.org/windsor2004/index.cfm>

¹⁴ "A Statement by the Primates of the Anglican Communion Meeting in Lambeth Palace," Oct. 16, 2003,

<http://www.anglicancommunion.org/acns/news.cfm/2003/10/16/ACNS3633>

¹⁵ Archbishop Rowan Williams, "The Challenge and Hope of Being an Anglican Today: A Reflection for the Bishops, Clergy and Faithful of the Anglican Communion," June 27, 2006, <http://www.archbishopofcanterbury.org/640>

¹⁶ Archbishop Rowan Williams, "The Archbishop's Advent Letter to the Primates, Dec. 14, 2007

<http://www.archbishopofcanterbury.org/1587>

¹⁷ Archbishop Rowan Williams, "Communion, Covenant and Our Anglican Future, July 27, 2009

<http://www.archbishopofcanterbury.org/2502>

¹⁸ Inter-Anglican Theological and Doctrinal Commission, "The Virginia Report," par. 5.18 (1997)

<http://www.lambethconference.org/1998/documents/report-1.pdf>

¹⁹ Inter-Anglican Theological and Doctrinal Commission, "The Virginia Report," par. 4.18 (1997)

<http://www.lambethconference.org/1998/documents/report-1.pdf>

²⁰ Windsor Continuation Group, "Report to the Archbishop of Canterbury," par. 55, 52 (2009)

http://www.anglicancommunion.org/commission/windsor_continuation/WCG_Report.cfm

²¹ Archbishop Rowan Williams, "The Challenge and Hope of Being an Anglican Today: A Reflection for the Bishops, Clergy and Faithful of the Anglican Communion," June 27, 2006, <http://www.archbishopofcanterbury.org/640>

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- ²² Inter-Anglican Theological and Doctrinal Commission, "Reflections Offered to the Primates of the Anglican Communion," par. 3-6, (2003)
<http://www.anglicancommunion.org/ministry/theological/iatdc/docs/2003reflections.cfm>
- ²³ "Bishops' Statement on the Polity of The Episcopal Church," p. 17, Apr. 18, 2009,
http://anglicancommunioninstitute.com/wp-content/uploads/2009/04/bishopsstatement_pdf.pdf
- ²⁴ Inter-Anglican Theological and Doctrinal Commission, "The Virginia Report," par. 4.16 (1997)
<http://www.lambethconference.org/1998/documents/report-1.pdf>; The Lambeth Commission on Communion, The Windsor Report, par. 13-14 (2004) <http://www.anglicancommunion.org/windsor2004/index.cfm>
- ²⁵ Inter-Anglican Theological and Doctrinal Commission, "The Virginia Report," par. 4.17 (1997)
<http://www.lambethconference.org/1998/documents/report-1.pdf>; The Lambeth Commission on Communion, The Windsor Report, par. 17-19 (2004) <http://www.anglicancommunion.org/windsor2004/index.cfm>
- ²⁶ The Lambeth Commission on Communion, The Windsor Report, par. 122, 143 (2004)
<http://www.anglicancommunion.org/windsor2004/index.cfm>
- ²⁷ J. Crawford, *The Creation of States in International Law*, pp. 211-12 (1979).
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