JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

Docket No. 1017-11

IN RE: Petition for Declaratory Decision from the California-Pacific Annual Conference regarding the legality of the language added to The Book of Discipline 2016 ¶ *161.G) stating "...and considers this practice incompatible with Christian teaching," in particular if it violates the First and Second Restrictive Rules (Constitution ¶¶ 17-18).*

BRIEF OF *AMICUS CURIAE* THOMAS E. STARNES

I. INTRODUCTION

If asked to identify the highest governing authority in The United Methodist Church, most reasonably well-informed United Methodists would quickly reply, "The General Conference, of course!" And most of us have likely heard (and never questioned) that the General Conference is the "only body that can set official policy and speak for the denomination." After all, that is the testimony of the denomination's official website,[1] and *Discipline* ¶ 509.1 says as much."[2]

Similarly, *in recent times (but only recently, which is the principal point)*, the conventional wisdom is that the General Conference's authority is so broad as to encompass even the power to define church *doctrine*. The best evidence that this viewpoint is widespread may be that the General Conference's quadrennial doctrinal showdowns—with competing factions striving to command majorities for this or that perspective on "Christian teaching"—have largely come to be accepted, however begrudgingly, as within the range of the General Conference's authorized functions. And we lay folks can hardly be blamed for tolerating that supposed "reality," when we are advised by respected authorities that, "for better or worse, the United Methodist Church has chosen to place its doctrinal authority in the General Conference."[3] Yes, it is acknowledged that there "is an inevitably political side" when the delegated General Conference engages itself in

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[1] *See* http://www.umc.org/who-we-are/general-conference (accessed August 13, 2017).

[2] THE BOOK OF DISCIPLINE OF THE UNITED METHODIST CHURCH (2016) ("*Discipline 2016*"), ¶ 509.1 ("No person, no paper, no organization, has the authority to speak officially for The United Methodist Church, this right having been reserved exclusively to the General Conference under the Constitution.")

[3] Scott J. Jones, UNITED METHODIST DOCTRINE: THE EXTREME CENTER (2002) ("*Jones*"), 42.

formulating new doctrinal statements,[4] as it did for the first time in 1972,[5] only to repeat the exercise in 1988.[6] Indeed, even those whose theological expertise helped guide the General Conference through those exercises recognize that "[w]hat happened in General Conference" on those occasions was "generally not very good theological discussion for the most part, . . . but rather was political and programmatic maneuvering, with some theology by catchword and slogan."[7] Even so, we are told, we "must also realize that such a thing is all part of the process of the Church (people in the Church) coming to claim the statement as its (their) own."[8]

Except . . . that is *not* our process. Rather, from the outset, the text of the denomination's Constitution has left no doubt that the highest authority in The United Methodist Church is *not* the delegated General Conference, but the *combined* memberships of the Annual Conferences and the General Conference, who *together*—neither one unilaterally—must agree on any changes in the church's *organic* law, as enshrined in the Constitution.[9] And just as emphatically, in adopting that first written Constitution in 1808, the combined membership of the annual conferences "saw fit to place [the church's] *doctrines* . . . *beyond the reach* of the new General Conference,"[10] including by adopting Restrictive Rules to ensure "that the doctrine, form of government, and general rules of the United Societies in America [would] be preserved sacred and *inviolable*."[11]

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[4] *Jones* at 35.

[5] *See* Albert C. Outler, "Through a Glass Darkly: Our History Speaks to Our Future," *Methodist History* 28:2 (Jan. 1990) ("*Outler*"), 82, 86.

[6] Richard P. Heitzenrater, *In Search of Continuity and Consensus: The Road to the 1988 Doctrinal Statement* ("*Heitzenrater*") *in* DOCTRINE AND THEOLOGY IN THE UNITED METHODIST CHURCH, ed. Thomas Langford (1991) ("UMC DOCTRINE"), 96 *et seq.*

[7] *Id.* at 108.

[8] *Id.*

[9] *Discipline 2016*, ¶ 59 (permitting Constitutional amendments only if approved by two-thirds majorities of both the General Conference and "the aggregate number of members of the several annual conferences," and an even higher "three-fourths majority" of all annual conference members if the First or Second Restrictive Rules are implicated).

[10] John J. Tigert, A CONSTITUTIONAL HISTORY OF AMERICAN EPISCOPAL METHODISM, 3rd ed. (1908) ("*Tigert*"), 324 (emphasis added).

[11] *Report of the Committee Relative to Regulating and Perpetuating General Conferences* (May 16, 1808), *in* JOURNALS OF THE GENERAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH, Vol. I, 1796-1836 (1855) ("*Early Journals*"), 82 (emphasis added).

This does not mean doctrine is unimportant. On the contrary, it means that our founders thought the church's "present existing and established standards of doctrine"—as bestowed on the church by John Wesley himself—were *so* important that they should not be subject to re-definition by the ever-evolving whim of bare majorities of the delegates who might comprise the General Conference at any given point in time.[12] As Bishop Tigert explained long ago, "the wisest and most prudent ministers of the Church felt that such [an all-powerful] General Conference . . . was no safe center of power or bond of union for the rapidly expanding Methodism of America."[13] And for just that reason, as Professor Thomas Oden explained more recently, our founders "entered the definition [of Methodist doctrine] *unalterably* in the Constitution of American Methodism," knowing that, "[o]*nce decided, as it was in 1808*, the matter of *doctrinal standards needed no further mention or definition* because this matter was decided as *absolutely and irrevocably* as any constitution-making body could possibly act."[14]

None of this diminishes the General Conference's significance as the supreme *legislative* body. Nor does it limit the General Conference's ability to "pass any resolution which they approve on any social or economic question or issue," or to make any "pronouncement on any social, moral, and religious subject or issue."[15] The delegated General Conference has long made such pronouncements (as when it promulgates "Social Principles") and, when it does, we may trust (or at least hope) that "the character and quality of the members of the General Conference" is such that "their pronouncement . . . would and should have great influence and force in the

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[12] *See* Holland N. McTyeire, A HISTORY OF METHODISM (1888) ("*McTyeire*"), 511 (before 1808, the "whole *Discipline* was open to revision by a majority vote").
[13] *Tigert* at 298.
[14] Thomas C. Oden, DOCTRINAL STANDARDS IN THE WESLEYAN TRADITION, rev. ed. (2008) ("*Oden*"), 60 (emphasis added).
[15] John M. Moore, THE LONG ROAD TO METHODIST UNION (1943) ("*Road to Union*"), 223.

Church."[16] That said, just as the *Discipline* now explicitly states that the Social Principles are "not to be considered church law,"[17] it was recognized long ago that all such generalized proclamations—whether the subject at hand is "social, moral, [or] religious"— are "*without the binding power of law*."[18] Rather, in those instances, the members of the General Conference are "act[ing] personally and they cannot bind the Church by their action."[19] The reason this is so—as Bishop John Moore explained in outlining the constitutional amendments made to facilitate the divided church's reunification in 1939—is simple: "*Legislation* is [the General Conference's] *only province*, and *legislation has to do only with adopting rules and regulations for the governmental policy and procedure* of the Church as indicated in the Constitution," not with making generalized proclamations on any issue, let alone *doctrinal* proclamations, which are doubly prohibited by First and Second Restrictive Rules.

II. STATEMENT OF INTEREST

I am the Chancellor of the Baltimore-Washington Conference, but I do *not* submit this brief in that capacity. Nor do I suggest that (or even know whether) the views expressed here reflect any consensus in my annual conference or are shared by our bishop. Rather, I make this submission as a life-long United Methodist who, besides having a legal practice that gives me a working knowledge of (and deep appreciation for) Methodist polity, finally became exhausted by our church's seemingly interminable debate over whether the "practice of homosexuality" is or is not "compatible with Christian teaching." More specifically, in the course of alternately bemoaning this state of affairs and reflecting on how common doctrinal ground might be identified, it recently dawned on me to ask: How in heaven's name did we Methodists—and particularly those

[16] *Id.*
[17] *Discipline 2016*, Part V, Preface.
[18] *Road to Union* at 223.
[19] *Id.*

of us inclined toward orthodoxy—ever come to accept the notion that something as sacred as church doctrine (of all things) is reliably and authoritatively revealed by a show of hands of a bare majority of General Conference delegates gathered at any given time?

Against that backdrop, and with a wealth of relevant historical and scholarly information now readily available electronically, I studied the issue and have outlined here the factors that convince me that the conventional wisdom—that the General Conference has doctrinal authority—is simply wrong. The General Conference's purely *legislative* power does ***not*** include power to render *binding* proclamations of *doctrine*, and indeed any such authority was constitutionally ***excluded*** from the General Conference's jurisdiction in 1808, when it became a *delegated* body and subject to the First Restrictive Rule, the very crux of which (now together with the Second Restrictive Rule) is precisely to shield church doctrine from legislative tinkering.

III. ARGUMENT

A. The Origin of the Delegated General Conference, Including the Genesis and Original Intent of the First Restrictive Rule

Any meaningful assessment of the General Conference's powers—and more specifically of the limits placed on that power by the Constitution generally and the Restrictive Rules in particular—should begin with understanding the context that brought the *delegated* (*i.e.*, representative) General Conference into being in 1808. Up to that point, the General Conference had not been a representative body, but rather "was *general* in the sense that it was made up of the ministry generally, and was essentially . . . the *combined membership of the Annual Conferences* assembled at one time and in one place."[20] It was this combined body—"all the Annual Conferences," "not

[20] Thomas B. Neely, THE BISHOPS AND THE SUPERVISIONAL SYSTEM OF THE METHODIST EPISCOPAL CHURCH (1912) ("*Neely*"), 136.

yet a delegated body, but the whole ministry in session"—that constituted "the supreme judicatory of the Church."[21]

Operating through such a "general General Conference" soon presented overwhelming practical problems: by 1808, the "whole ministry" was "composed of about five hundred travelling preachers . . . spread over an extent of country more than two [thousand] miles from one end to the other."[22] Travelling to whichever mid-Atlantic city was hosting the General Conference was far too expensive and time-consuming for many preachers in distant conferences, so elders from the nearby Baltimore and Philadelphia conferences inevitably dominated. By 1804, the imbalance was untenable; seventy elders from the Philadelphia and Baltimore conferences were present at that year's General Conference in Baltimore, but only 42 preachers showed up from the other five conferences combined.[23]

Against that backdrop, a consensus developed that "a *representative* or *delegated* General Conference, composed of a specific number on principles of equal representation from the several Annual Conferences, would be much more conducive to the prosperity and general unity of the whole body."[24] Using that device to reduce geographical imbalance, however, stood to exacerbate yet another concern—namely, that the General Conference's powers were believed to be far too broad for comfort. As things stood, the General Conference had absolute and plenary power, such that the "whole Discipline was open to revision by a majority vote" each time the General Conference met.[25] That concern stood to become all the more acute if such expansive

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[21] Abel Stevens, HISTORY OF THE METHODIST EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA, Vol. II (1867), 219.

[22] *Memorial of the New York Conference to the General Conference of The Methodist Episcopal Church in the United States, to sit in Baltimore, the Sixth of May, 1808, in Early Journals*, 77.

[23] *Tigert* at 292.

[24] *Early Journals* at 77 (emphasis added).

[25] Holland N. McTyeire, A HISTORY OF METHODISM (1888) ("*McTyeire*"), 511.

power were to be concentrated in the hands of far fewer people, as it would be if the General Conference became a representative body.

The solution to these twin dilemmas was to establish a delegated General Conference, but to limit its powers in a written constitution that the delegates would be powerless to amend on their own initiative. As our bishops later explained:

> When the General Conference was simply a general convention, consisting of all the elders who might attend, it possessed plenary power, and needed no formal or written constitution. It had power to make rules and regulations for the Church; to fix terms of membership; to make and unmake the Episcopacy; to ordain, modify, or annul the General Rules, the itinerancy, or the Book Concern; *to prescribe doctrines and standards of doctrine*, and to meet as often as it chose, and to do what it would. It was supreme, and its members represented only themselves. But when the Church grew to such magnitude that it became impracticable for the whole body of the eldership to meet in convention a delegated body was declared a necessity, and then *a written constitution, defining the composition and power of such a General Conference, became as indispensable as was the representative principle in the body itself*.[26]

The connection's deeply felt anxiety over the original General Conference's unrestricted powers—especially over church doctrine—is well-captured in our historical literature. As previously mentioned, in his seminal history of the denomination's constitution, Bishop John Tigert identified the primary concern that such an all-powerful General Conference, by a simple "*majority vote,*" "might at any time overthrow the Articles of Religion, the General Rules, or the Episcopal government of the Church."[27] Similarly, Bishop McTyeire's *History of Methodism* affirms that, prior to 1808, a "feeling of insecurity with regard to Church order" had taken hold, knowing that, "whenever it met," the General Conference "had *absolute* authority, and by the vote of a *bare majority* could at any time change the *doctrines* or the economy of the Church."[28] And Nathan Bangs (an eyewitness to the proceedings of the 1808 General Conference), wrote that many of

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[26] JOURNAL OF THE 1888 GENERAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH (1988), 52 (emphasis added).

[27] *Tigert* at 298.

[28] *McTyeire* at 505 (emphasis added).

the church fathers—including Francis Asbury, who had "suffered so much for the propagation and establishing" the church's bedrock principles of doctrine and polity[29]—"had felt uneasy apprehensions for the safety and unity of the church, and the stability of its doctrines, moral discipline, and the frame of its government," all of which was imperiled for as long as the General Conference remained "at full liberty, not being prohibited by any standing laws, to make whatever alterations it might see fit."[30]

In sum, by the time the General Conference convened in 1808, the assembled elders well understood that the conference's "hitherto . . . unlimited powers over our entire economy," including especially the power "to alter, abolish, or add to any article of religion," were "considered too great for the safety of the Church and the security of its government and doctrine."[31] And knowing that "Bishop Asbury," in particular, "was exceedingly desirous . . . to provide a remedy for these evils,"[32] a committee of fourteen was assigned to prepare for the body's consideration and approval what came to be known as the Constitution,[33] the essential thrust of which was to allow for a delegated General Conference, but simultaneously to restrict its future powers, so that certain fundamentals, including first and foremost the Church's *doctrines*, would be "*fixed* upon a *permanent* foundation."[34]

On Monday, May 16, 1808, the drafting committee presented their "Report on the Constitution of the General Conference."[35] The report's preamble confirmed that the committee grasped

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[29] Nathan Bangs, A HISTORY OF THE METHODIST EPISCOPAL CHURCH, Vol. II, 3rd ed. (1845) ("Bangs-II"), 234.
[30] *Id.* at 233.
[31] *Id.* at 177-78.
[32] *Id.* at 178.
[33] *Early Journals* at 79.
[34] *Bangs-II* at 234 (emphasis added).
[35] *Early Journals* at 81.

that the objective "of the greatest importance" was to ensure "that the doctrine, form of government, and general rules of the United Societies in America be preserved sacred and *inviolable*."[36] As Joshua Soule, the Constitution's chief architect and draftsman,[37] later explained:

> [The] *one great controlling motive* in introducing the representative principle was to lessen the danger of sudden and violent changes in the fundamental polity of the Church by establishing a delegated *legislative* body *under restrictions*, thus insuring stability to the *organic* institutions and equality in representation. It matters not by what name these restrictive rules may be called, *the design and effect were to take the questions enumerated from under the control of the delegated Conference*, except in the way and manner specified.[38]

With that overriding objective at the forefront, the last "general General Conference" of 1808 adopted a constitution that provided that the new delegated General Conference "shall have full powers to make *rules and regulations* for our Church,"[39] but subject to six explicitly delineated restrictions, the very first of which—signifying the paramount importance placed on protecting Methodist doctrine from legislative tinkering—provided that the new "General Conference shall not revoke, alter, or change our articles of religion, nor establish any new standards or rules of doctrine, contrary to our present existing and established standards of doctrine."[40] The newly adopted Constitution also prohibited any amendment of the Restrictive Rules except upon "the joint recommendation of all the ***annual*** conferences," and even then only if a majority of two-thirds of the delegates in the succeeding General Conference agreed to the amendment.[41]

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[36] *Id.* at 82 (emphasis added).

[37] Just as James Madison receives primary credit as the genius behind the Constitution of the United States, the "transition of [American Methodist] polity from largely unwritten to definitely written principles—a preeminent stage of advance in Methodism—employed chiefly the acumen and statesmanlike wisdom of one of its younger itinerants, Joshua Soule." Horace M. DuBose, LIFE OF JOSHUA SOULE (1916) ("*DuBose*"), 71.

[38] Robert Paine, LIFE AND TIMES OF WILLIAM MCKENDREE (1922) ("*Paine*"), 295 (emphasis added).

[39] THE DOCTRINES AND DISCIPLINE OF THE METHODIST EPISCOPAL CHURCH (1808) ("*Discipline 1808*"), 15; *Early Journals* at 89.

[40] *Discipline 1808* at 15; *Early Journals* at 89.

[41] *Discipline 1808* at 15; *Early Journals* at 89.

Before addressing the limitations placed in particular on the delegated General Conference's involvement in doctrine, it bears emphasis that the new Constitution's overall structure and terms—and especially the limitation placed on amending the Constitution—contradict any supposition that the delegated General Conference is the denomination's supreme judicatory. Although the "empowering clause seems very broad," declaring that the delegated conference "'shall have full power to make rules and regulations for the Church,'"[42] the Constitution actually "diminished the power of the new General Conference as compared with the old style of General Conference," which truly "was the supreme power in the Church and could, by and of itself, do whatever it deemed best for the Church, even to the making and mending of the Constitution of the Church."[43] In other words, the ultimate power of "constitution making and mending . . . essentially belonged to the sovereign authority of the Church, namely, to the body of the [whole] ministry in the Annual Conferences, and, as the body of the ministry no longer would come together in the General Conference, the body of the ministry retained that power in the Annual Conferences," by forbidding any amendment of the Restrictive Rules except upon "the joint recommendation of all the annual conferences."[44]

Over time, the level of annual conference approval needed for constitutional amendments has changed, but the general principle remains: to this day, the General Conference is powerless to amend the denomination's Constitution—understood as the organic law of the church—on its own. All such amendments, including any amendment to the provisions defining the General Conference's basic powers—require the approval of the requisite "majority of all the members of

[42] *Neely* at 139.
[43] *Id.*
[44] *Discipline 1808* at 15.

the annual conferences," which is to say the combined membership of the bodies that the Constitution likewise now recognizes "as the *fundamental* bodies of the Church."[45]

And what likewise remains true today is that our Constitution deliberately and thoughtfully structures United Methodist polity so that its organic fundamentals, and especially its doctrine, was placed beyond the reach of the delegated General Conference. As Bishop Tigert put the matter long ago:

> The term "Delegated" is chosen to mark the altered and distinct character of all subsequent General Conferences. This word indicates, not only that the members of these later bodies are elected representatives, or delegates, but that the Conference itself exercises *delegated powers*. *It is an agent, not a principal. It is a dependent body, with derived powers*. These powers are defined in a Constitution issuing from the body that ordained the Delegated Conference. Historically the fountain of authority in Episcopal Methodism is the body of traveling elders. They created the existing General Conference, ordained its Constitution, and finally admitted laymen to their seats in the body. *That body of traveling elders saw fit to place* (1) ***the doctrines,*** (2) the General Rules, (3) the Episcopacy, or itinerant general superintendency, according to the "plan" then existing in the Church, (4) the rights of ministers and members to formal trial and appeal, (5) the produce of funds and plants originating with and sustained by the traveling preachers, and (6) the ratio of representation in the delegated body, ***beyond the reach*** *of the new General Conference*.[46]

All of this may seem jarring when viewed from a perspective informed by our current reality, which is that doctrinal debate has been the hallmark of the General Conference's gatherings since 1972. And it seems all the more jarring because it cuts against the grain of such incantations as "the authority to speak officially for The United Methodist Church [has] been reserved exclusively to the General Conference,"[47] or the "General Conference holds the *teaching* office in United Methodism,"[48] or "for better or worse, The United Methodist Church has chosen to place its doctrinal authority in the General Conference."[49]

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[45] *Discipline 2016*, ¶ 11.
[46] *Tigert* at 323-324 (emphasis added).
[47] *Discipline 2016*, ¶ 509.1.
[48] Thomas A. Langford, *Conciliar Theology: A Report* ("*Langford*"), *in* UMC DOCTRINE at 176.
[49] *Jones* at 42.

Nevertheless, the conclusion is inescapable that Constitution has always bestowed but a *single* power upon the General Conference, which is to enact *legislation*. And as explained in detail below, until relatively recently, that single power, when read in tandem with the First Restrictive Rule, was well understood to ***exclude*** from the delegated General Conference's jurisdiction any authority to make binding declarations of church doctrine.

B. The 160-Year Consensus that the Delegated General Conference Lacks Power to Define Church Doctrine

There is abundant historical support for the proposition that the denomination's Constitution—both in describing the General Conference's single power as "legislative," and in deploying the Restrictive Rules to expressly limit the exercise of even that lone power—*deprives* the General Conference of jurisdiction to define church doctrine. Such support can be located not only in a logical, present-day reading of the Constitution's actual text, but in the interpretations made of that text throughout the church's history, which have emanated from all quarters, including bishops, church historians, theologians and polity scholars, and regardless of whether they seem to have "conservative," "liberal," "northern" or "southern" sensibilities.

We know from *Nathan Bangs*—the denomination's first great historian—that the General Conference's original "depository of power was considered too great" not merely because the Conference might "alter" or "abolish" existing doctrines, but also because it might "*add to* any article of religion,"[50] or "*introduce* any *new* doctrine . . . which either fancy, inclination, discretion, or indiscretion might dictate."[51] Thus, the First Restrictive Rule's objective was "to secure forever the essential doctrines of Christianity from *all* encroachments" by specifically "limiting

[50] *Bangs-II* at 178 (emphasis added).
[51] *Id.* at 233-34 (emphasis added).

[the General Conferences] in all their legislative acts, and prohibiting them from making *inroads* upon the doctrines . . . of the church."[52]

We know from Joshua Soule's biographer that the Restrictive Rules were hailed as "the Magna Charta of Methodism"—"a settled and fully recognized constitution" that displayed "the good sense and the diligent forethought of those who framed it" by providing that the "*legislative* power is *not* at liberty to *alter anything* deemed *fundamental*," including the "*doctrines* of the Church."[53] Conclusions to the same effect appeared in scholarly articles published in the late 1800s, some 70-80 years *after* the Restrictive Rules were first adopted. In 1879, for example, George Prentice wrote in the *Methodist Quarterly Review* that, even then, it remained "well known that Asbury . . . and others" had been motivated to act in 1808 because the "condition of things" at the time was simply "too perilous to continue," given that the General Conference had "quite unlimited power" to "bind and loose at pleasure," based on a "simple majority vote."[54]

And we know that it is not only Bishop Tigert who concluded that the assembled annual conferences in 1808 "saw fit to place" church "*doctrines* . . . *beyond the reach* of the new General Conference,"[55] but that more recent works by the denomination's most preeminent theologians are to the same effect. In his widely acclaimed *Doctrinal Standards in the Wesleyan Tradition,* Thomas Oden stated: "*After 1808* the General Conferences understandably *turned away from doctrinal definition* for that issue had been *once and for all rigorously settled*."[56] Similarly, in

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[52] *Id.* at 233 (emphasis added).
[53] *DuBose* at 86-87.
[54] George Prentice, "The Election of Presiding Elders," *Methodist Quarterly Review*, Vol. LXI (April 1879), 326. *See also* Joseph Pullman, "Methodism and Heresy," *Methodist Quarterly Review*, Vol. LXI (April 1879) ("*Pullman*"), 346 (the motive of the Constitution was "to preserve in *statu quo* the creed and polity of the Church as received from Mr. Wesley"); Richard Wheatley, "Methodist Doctrinal Standards," *Methodist Quarterly Review*, Vol. LXV (Jan. 1883), 27 (the effect of the First Restrictive Rule, coupled with the strict limits placed on constitutional amendments, was that "the orthodoxical symbols of the Church are [as] unalterable as 'the laws of the Medes and Persians'").
[55] *Tigert* at 324 (emphasis added).
[56] *Oden* at 60 (emphasis added).

John Wesley's Experimental Divinity: Studies in Methodist Doctrinal Standards, Robert Cushman explained that "the First Restrictive Rule . . . presupposes that both the Articles [of Religion] and the 'standards' and 'rules,' or canons of doctrine, are *already supplied and acknowledged*," and "*from them no departure is allowable* by a General Conference."[57]

Importantly, Professor Cushman further emphasized that, "[h]owever strange it may seem" to us now, "the General Conference of 1808 deem[ed] it the case" that all future General Conferences are "empowered ***neither*** *to make rules or canons of doctrine* ***nor*** *to alter those hitherto received and acknowledged.*"[58] Cushman's phraseology here is crucial. It was not lost on him that the wording of the First Restrictive Rule led some to suppose that the delegated General Conference remained free "to *make* rules or canons of doctrine," *provided only* that any *new* doctrinal pronouncement did not "alter those hitherto received and acknowledged."[59] After all, some might argue, isn't that a sensible construction of the bare text that comprises the prohibition against "establish[ing] any new standards or rules of doctrine *contrary* to our present existing and established standards of doctrine?" But however natural that reading may seem now, after forty years during which doctrinal debate has taken center stage at General Conference, a longer view demonstrates that Professor Cushman was correct that our Methodist forbearers recoiled from that prospect and aimed precisely to *block* future General Conferences from *both* (1) altering existing doctrinal standards and (2) formulating new ones.

No one disputes that our founders were motivated to guard against any tendency to *relax* established doctrinal standards should future generations come to regard them as too confining. But the framers also understood that, "[b]esides this tendency, there is always found another, namely,

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[57] Robert E. Cushman, JOHN WESLEY'S EXPERIMENTAL DIVINITY: STUDIES IN METHODIST DOCTRINAL STANDARDS (Nashville: Kingswood Books, 1989) ("*Cushman: Experimental Divinity*"), 180 & n. 5 (at 216-217).
[58] *Id.* (emphasis added).
[59] *Id.*

that of adventurous speculation,"[60] and history shows that this, too, was something the founders were intent on preventing when it came to something as fundamental as church doctrine. As one observer explained:

> One age is never satisfied with the past. While praising the great men of former times, yet still we generally think we can improve on their intellectual labors, and do something better for ourselves than they could do for us. The "go-ahead" principle, so rife in America, in political and social matters, is not absent from the genius of its theologians. They seem to be much tempted to drive criticism to something beyond its legitimate province, and to push their inquiries into the spiritual world beyond what is revealed. The age and the circumstances of the country favor this sort of adventurous spirit. It must consequently be considered a wise arrangement, that the great truths of the evangelical system, embodied in their Articles of Religion, *are not to be altered,—are not, indeed, to be discussed*.[61]

In addition, as Professor Cushman reminded us, the historical record includes concrete instances in which the General Conference has been asked to augment, without contradicting, the church's formally stated doctrinal standards, but has *refused* to do so, heeding the advice of the church's bishops. "Following a motion by its Committee of Revisals, the General Conference . . . in 1870, and again in 1874, declined to authorize official restudy of standards or any doctrinal reformulation."[62] And the General Conference "was [later] confirmed in this stand by the council of Bishops,"[63] who admonished the church that the First Restrictive Rule cannot safely be interpreted to allow the General Conference to make proclamations of Methodist doctrine whenever a bare majority persuades itself that its doctrinal assessment is not "contrary to" the Church's previously expressed standards.[64]

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[60] James Dixon, PERSONAL NARRATIVE OF A TOUR THROUGH A PART OF THE UNITED STATES AND CANADA: WITH NOTICES OF THE HISTORY AND INSTITUTIONS OF METHODISM IN AMERICA, 2nd ed. (1849), 293.
[61] *Id.* at 293-94.
[62] *Cushman: Experimental Divinity* at 178.
[63] *Id.*
[64] *See Report of the Bishops on the Paper of Rev. Alfred Brunson* (May 12, 1876), in JOURNAL OF THE GENERAL CONFERENCE OF THE METHODIST EPISCOPAL CHURCH (1876) ("*Bishops' Report*"), 207.

Fortunately, the bishops took the time to explain their position on the record during the General Conference in 1876. Having been presented with a petition that sought only to *expand* the Articles of Religion, without purporting to change any existing provisions, the bishops counseled that the proposed additions—though substantively containing "little to which . . . serious objections could be offered"—should be rejected on two grounds. For starters, the bishops emphasized the fairly incontestable idea that religious doctrine is hardly susceptible of being authoritatively revealed by ballot:

> We do not suppose it possible for any one person to form a series of Articles which will so clearly express the doctrines intended, and yet avoid all ambiguities, and all objectionable shadings and implications, as to command the approval of a large denomination of Christians.[65]

But more fundamentally, the bishops reasoned that allowing the General Conference to formulate new expressions of church doctrine, provided only they were deemed "not contrary to the old ones,"[66] could not be squared with "the manifest purpose of the framers of the Constitution," which was "that the established doctrines of the Church should be forever safe from alteration."[67]

> [I]f we admit that the phrase, "New standard or rules of doctrine not contrary," etc., implies a power in the General Conference to establish *additional* Articles of Religion within the expressed limitations, we should still encounter the fact, that if such power is implied, it is found only by a questionable inference. *And even if it could be fairly deduced from the [bare] language of the law, it is certain that those who ordained the delegated General Conference, and gave it all the power it possesses, did not intend to clothe it with authority to make additions to the Articles of Religion*; and the intention of the law-makers, in a case like this, ought to govern in determining the meaning and application of the instrument. . . . To us it is evident, that *nothing so fundamental as an authoritative declaration of faith should be taken into the organic law of the Church by any questionable process, or by the exercise of any doubtful authority*. . . . The path of safety is in the conscientious adherence to the organic law, construed in the interests of its own safeguards and in the avoidance of extreme and doubtful interpretations. . . . It is not safe to employ a latitudinarian method in the interpretations of law in regard to

[65] *Bishops' Report* at 207.
[66] *Id.*
[67] *Id.* at 208.

> the limitations of power, but it is better in all cases that stricter constructions shall prevail, so that *all the guarantees of the soundness of our doctrines, so wisely adopted by our fathers, may be perpetuated unimpaired* to bless the generations yet unborn.[68]

No one took exception to the bishops' reasoning in 1876. On the contrary, by that time—nearly a century removed from the Church's founding—it had "been accepted as Church law that the [First Restrictive Rule] does not authorize the General Conference to make new doctrines, whether taken from the existing standards, or elsewhere."[69] As Bishop Thomas Neeley put it: "The Church was not to take its Articles of Religion *or other doctrinal standards* from the delegated General Conference, but the General Conference was to take them from the Church. In other words *the delegated General Conference itself was* ***not*** *to be the doctrine-making body of the Church*."[70]

C. The 1939 Plan of Union Reinforces the General Conference's Purely Legislative, Non-Doctrinal Functions

The constitutional provisions adopted in 1808 to restrict the delegated General Conference's powers remained substantially the same until 1939, when changes were made to accommodate the reunification of The Methodist Episcopal Church, The Methodist Episcopal Church, South (MECS), and The Methodist Protestant Church. It is widely recognized—and a source of considerable shame to many United Methodists—that a key factor in reaching agreement on reunification was the decision to create the racially segregated "Central Conference." What has been all but forgotten, however, is that the southern conferences also sought and received *constitutional* reassurance that the views of its membership—including especially when it came to ordaining pastors and electing bishops—would not be overwhelmed in subsequent General Conferences by the then massive *northern* majority.

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[68] *Id.* at 207-208 (emphasis added).
[69] *Pullman* at 338.
[70] Thomas B. Neely, DOCTRINAL STANDARDS OF METHODISM (1918), 225 (emphasis added).

Bishop Elijah Hoss described the southern church's concern over numerical imbalance at a May 1911 meeting of the Joint Commission on Federation of Methodism, at a juncture when the outlines of a mutually acceptable plan of union, including the crucial establishment of jurisdictional conferences, were beginning to take shape:

> The minority Methodist bodies going into this proposed organization [will] surrender more than the larger bodies. That cannot be questioned. The larger body will necessarily have, and ought to have, more influence in the reorganized Church than either of the other bodies. It is only a fair principle that numbers should count. On the other hand, it is an equally fair principle that there should be ample protection and guarantee for the rights of the minority.[71]

Having highlighted the southern church's minority status, Bishop Hoss next emphasized that the southern church's concerns were exacerbated by the perception that many northerners had a far more expansive view of the General Conference's powers:

> Some of you believe that the General Conference is supreme, absolutely. But there are some of us who cannot accept that doctrine concerning the General Conference. *We are willing to give it all the powers it ought to have in order to make it a vital governing body of Methodism, and we want these powers to be under constitutional restrictions and limitations*. . . . *When we go into a partnership with a partner twice as strong as ourselves and the making of laws depends upon the counting of heads, we want protection, and this we can have only by . . . insist[ing] upon the strict definition and limitation of the rights and powers of the General Conference*, expressly reserving everything else into the hands of these [Jurisdictional] Conferences.[72]

The 1939 "Plan of Union" included several constitutional amendments that were aimed precisely at ameliorating the southern conferences' expressed concerns about unbridled General Conference power.[73] Bishop John Moore—lead representative of the MECS when agreement was reached in 1939—put it this way: "No union would come and no union would successfully remain without the complete and constant recognition of [the] basic principle" that the "powers of the

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[71] *Road to Union* at 100-101.

[72] *Id.* at 101.

[73] The Plan of Union, which was essentially the revised Constitution, appears in its entirety in the 1940 *Discipline*. *See* DOCTRINES AND DISCIPLINE OF THE METHODIST CHURCH (1940) ("*Discipline 1940*"), ¶¶ 1-44, at 17-36.

General Conference should be limited and designated beyond which it may not speak with authority."[74] And the chief means of driving this home was to amend the Constitution so as to make the following points explicit:

- Going forward, besides being confined by the Restrictive Rules, the General Conference's basic authority would no longer be expressed as having "full powers to make rules and regulations for our church," but rather has having "full ***legislative*** power," and then only on matters that are "***distinctively connectional***."
- Meanwhile, the ***Annual*** Conferences—which the Constitution had previously mentioned only perfunctorily[75]—would henceforth be described in the Constitution as "the ***fundamental*** bodies of the Church,"[76] and even more expansively as follows:

> [T]he Annual Conference is the ***basic*** body in the Church, and as such shall have ***reserved*** to it the right to vote on all constitutional amendments, on the election of Ministerial and Lay Delegates to the General and the Jurisdictional or Central Conferences, on ***all matters relating to the character and Conference relations of its Ministerial Members***, and on the ordination of Ministers, and such other rights as have not been delegated to the General Conference under the Constitution, with the exception that the Lay Members may not vote on matters of ordination, character, and Conference relations of Ministers.[77]

- The church's bishops would now be elected by the newly established Jurisdictional Conferences,[78] giving each region autonomy in the episcopal selection process, just as autonomy was reserved to annual conferences on all matters relating to the character, conference relations and ordination of pastors.

In principle, some of the constitutional revisions made in 1939 were essentially *clarifications* of the framer's *original* intent in 1808, not substantive changes in the constitutionally approved roles of the annual and general conferences. Thus, the power "to make *rules and regulations*"—

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[74] *Road to Union* at 134.
[75] Before 1939, the Constitution described Annual Conferences solely by saying: "The Traveling Preachers shall be organized by the General Conference into Annual Conferences, the sessions of which they are required to attend." See, e.g., DOCTRINES AND DISCIPLINE OF THE METHODIST CHURCH (1920) ("*Discipline 1920*"), ¶ 36.
[76] *Discipline 1940*, ¶ 4.4 (emphasis added).
[77] *Id.*, ¶ 22 (emphasis added).
[78] *Id.*, ¶ 15.2.

as the General Conference's power was originally described—had long been understood to be "practically synonymous" with "*legislative*" power.[79] Further, the animating principle of the original Constitution was precisely to distinguish (1) the ***organic*** law of the church, as enshrined in a constitution that lays out those "laws which the General Conference did not make, and which it cannot unmake or modify,"[80] from (2) the ***statutory*** law, which is the phrase historically used to describe the universe of "legislation" the General Conference is free to enact, amend or repeal at its pleasure, subject to the limitations imposed by the Restrictive Rules.[81]

Secondly, this same distinction between *constitutional* and *legislative* power reflects the practical (if previously unstated) truth that *annual* conferences had *always* been "the *fundamental* bodies of the Church."[82] Bishop Tigert (among others) often emphasized that the original, all-powerful General Conference was none other than "the body of [all] traveling preachers distributed in the several Annual Conferences," and that when "the General Conference of 1808 adjourned, it ***left in existence*** [that same] body of traveling preachers distributed in the several Annual Conferences,"[83] which retained the power to "make and mend" the Constitution.[84] In short, the delegated General Conference's powers had originally "belong[ed] alone to the Annual Conferences which, in a very vital sense, created the General Conference to act as their agent, with instructions."[85]

Yet, even as some of the 1939 amendments were aimed at explicitly *reinforcing* certain *founding* principles of Methodist polity, other amendments unquestionably *narrowed* the scope

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[79] *Tigert* at 401.
[80] *Id.* at 358.
[81] *See Early Journals* at 82; *Paine* at 295; *Tigert* at 315, 358.
[82] *Discipline 1940*, ¶ 4.4 (emphasis added).
[83] *Tigert* at 362.
[84] *Neely* at 139; *Tigert* at 362.
[85] *Tigert* at 361.

of the General Conference's authority going forward. Most notably, before 1939, the General Conference held "full power to make rules and regulations ***for our church***."[86] Beginning in 1939, however, the General Conference's otherwise "full" legislative power was affirmatively *confined* to "all matters ***distinctively connectional***."[87] Consequently, to justify General Conference legislation, it would no longer be sufficient that the legislation had some nexus with "the Church." Rather, going forward, the legislation must relate to a matter that is not only "*connectional*," but "***distinctively***" so.

In that same vein, the 1939 amendments, together with accounts of central players in the reunification process, indicate that certain matters commonly thought to be of "connectional" concern are, if anything, more *distinctively* associated with matters that the 1939 amendments expressly reserved to the ***annual*** conferences. Thus, at the very moment the General Conference's legislative authority was affirmatively restricted to "matters distinctively connectional," the church simultaneously amended the Constitution to state that the annual conference was not only the "basic body in the Church," but "shall have *reserved* to *it* . . . *all matters* relating to the *character* and conference relations of *its clergy members*, and on the *ordination of clergy* and *such other rights as have not been delegated to the General Conference under the Constitution*."[88]

In sum, the record establishes that at two of the most critical moments in the denomination's constitutional history—when the delegated General Conference was first created in 1808, and

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[86] *Discipline 1808* at 15 (emphasis added). *Accord Discipline 1920*, ¶ 46.

[87] *Discipline 1940*, ¶ 8 (emphasis added). *Accord Discipline 2016*, ¶ 16.

[88] *Discipline 1940*, ¶ 22 (emphasis added); *Discipline 2016*, ¶ 33. That these changes were related, intentional, and indispensable to the southern church's willingness to reunite, is well-documented by Bishop Moore, who explained that, once reunification discussions began in earnest, it soon emerged that the only viable path to union required agreement on a constitution that would "declare the annual conferences the *basal bodies of the church* with the *ultimate power* over the constitution, and the *membership of the ministry*, and the legislative conferences, and the voice of the church." John M. Moore, *The Story of Unification*, in METHODISM: A SUMMARY OF BASIC INFORMATION CONCERNING THE METHODIST CHURCH, ed. William K. Anderson (Cincinnati: Methodist Pub. House, 1947), 270 (emphasis added).

again when the northern and southern churches reunited in 1939—the "great controlling motive"[89] was to *restrict* the powers of the General Conference, not to make them expansive. Moreover, when it comes to church doctrine in particular, the record confirms that the announced purpose of the First Restrictive Rule was precisely to ensure that "the doctrine . . . of the United Societies in America [would] be preserved sacred and *inviolable*."[90] And we know that the Church's own bishops—in accord with the denomination's leading theologians and church historians—have previously admonished the General Conference that "nothing so fundamental as an authoritative declaration of faith should be taken into the organic law of the Church . . . by the exercise of any doubtful authority," lest a "very wide door [be] opened, which will not close at our bidding," and which diminishes "the guarantees of the soundness of our doctrines, so wisely adopted by our fathers."[91]

Against that historical backdrop, it is certainly fair to ask how a denomination that for 160 years apparently agreed that the General Conference *lacked* jurisdiction to make "authoritative declaration[s] of faith"[92] came to be described as a denomination that had "chosen to place its doctrinal authority in the General Conference."[93] How is it that a church judicatory whose constitutional power remains expressly limited to "legislation," is sometimes also described as holding a "teaching office,"[94] or even as the "magisterium of the Church?"[95]

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[89] *Paine* at 295.
[90] *Early Journals* at 82 (emphasis added).
[91] *Bishops' Report* at 207-208.
[92] *Id.* at 207.
[93] *Jones* at 42.
[94] *Langford* at 176.
[95] *Jones* at 40.

As addressed in the next section, it appears that the pivot point that allowed such notions to take hold came in the wake of the 1968 merger of The United Methodist Church and The Evangelical United Brethren Church. A compelling case can be made that the delegated General Conference's first significant forays into doctrinal definition not only began then, but quickly came to be *normalized*, unleashing the decades of doctrinal wrangling in which many now mistakenly assume the General Conference has constitutional authority to engage.

D. The General Conference's Intrusion into Doctrinal Definition Following The 1968 Merger with The Evangelical United Brethren Church

In 1968, following the merger of The Methodist Church and The Evangelical United Brethren Church, a two-page "preface" was added to the *Discipline's* verbatim recitation of the denomination's historic doctrinal standards.[96] Including such a preface, though unprecedented, was understandable given the context. It had been decided that, following the merger, the EUB Confession of Faith should appear alongside the Articles and the General Rules, and thus the "primary function" of the new preface was "to establish the *congruence* of the Methodist Articles of Religion and the EUB 'Confession of Faith.'"[97]

Having declared the predecessor churches' doctrinal standards to be congruent, the General Conference might have chosen to "leave well enough alone," resting on the 1968 preface, but otherwise continuing to let the historic doctrinal standards speak for themselves. But that is not

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[96] *Discipline 1968* at 35-37. The Articles of Religion and the General Rules were reprinted in the *Discipline* as early as 1792. Thereafter, the organizational and numbering schemes changed, but before 1968 no published version of the *Discipline*, save one, attempted to introduce or "frame" the Articles or the General Rules; they were presented "as is," unadorned by any commentary. The only exception occurred in 1796, when the General Conference asked 1798 Francis Asbury and Thomas Coke to "draw up Annotations on the Form of Discipline." THE DOCTRINES AND DISCIPLINE OF THE METHODIST EPISCOPAL CHURCH IN AMERICA, WITH EXPLANATORY NOTES BY THOMAS COKE AND FRANCIS ASBURY (Philadelphia: Henry Tuckniss Parry Hall, 1798), iv. Asbury and Coke obliged, and the next edition of the *Discipline*, which included their "Explanatory Notes," was also the last. The General Conference of 1800 ordered that the Explanatory Notes be omitted from the *Discipline*, reclaiming the practice of letting our constitutionally protected doctrinal standards speak for themselves—a practice followed without interruption for the ensuing ***168*** years, or ***42*** quadrennia. Lewis Curts, THE GENERAL CONFERENCES OF THE METHODIST EPISCOPAL CHURCH FROM 1792 TO 1896 (1851), 64).

[97] Russell Richey, *History in the Discipline* ("*Richey*"), *in* UMC DOCTRINE at 197 (emphasis added).

how things unfolded. Instead, the 1968 General Conference decided the church should have yet another "*unprecedented* thing,"[98] and appointed a "Theological Study Commission" and gave it this mandate: "to bring to the General Conference of 1972 a progress report concerning 'Doctrine and Doctrinal Standards' in The United Methodist Church," and further, "[i]f the Commission deems it advisable," to "undertake the preparation of a contemporary formulation of doctrine and belief, in supplementation to all antecedent formulations . . . ."[99]

The General Conference's creation of the Theological Study Commission in 1968 came as a surprise even to the person appointed as its Chair, Albert Outler, widely regarded as having "no peer as a John Wesley scholar."[100] And both Outler and Robert Cushman (then Dean of Duke Divinity School) recognized that the appointment of such a commission constituted a major break with the past. As Cushman put it, "until 1968, no officially authorized reexamination of doctrinal standards had been ventured by the two original branches of American Methodism, north or south, since 1808."[101] Meanwhile, although the 1972 Theological Study Commission ultimately opted against formulating a new creed,[102] Outler later explained that the doctrinal statement that Commission produced had broken entirely new ground, in that it stands as the "*first* official Statement about Doctrine and Doctrinal Standards in American Methodist Church history to be proposed to a General Conference and submitted for a signed ballot."[103]

It was also a uniquely expansive statement on United Methodist doctrine. When the *1972 Discipline* was published, the Articles, the Confession of Faith, and the General Rules were retained

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[98] *Outler* at 82.
[99] JOURNAL OF THE 1972 GENERAL CONFERENCE OF THE UNITED METHODIST CHURCH (April 16-28, 1972) ("*1972 Journal*"), Vol. I, 281 (consisting of Albert Outler's "Introduction to the Report of the 1968-1972 Theological Study Commission," which began by quoting the 1968 General Conference's mandate to the Commission).
[100] Martin E. Marty, "Albert C. Outler: United Methodist Ecumenist," *Christian Century* (Feb. 29, 1984), 218.
[101] *Cushman: Experimental Divinity* at 178.
[102] *See 1972 Journal* at 280-81.
[103] *Outler* at 86.

intact,[104] but they were now "sandwiched between a fourteen-page 'Historical Background' and a fifteen-page section entitled 'Our Theological Task.'"[105] And both sections were designed to serve fundamentally interpretive purposes, and accordingly were infused with profoundly theological content. Indeed, in introducing the Commission's draft to the General Conference, Outler acknowledged that the intent was to *reframe* "the old Articles, Confession and Rules," setting them "in a new context of interpretation," and thereby making "a *decisive change* in their role in the *theological* enterprise in The United Methodist Church."[106]

After just seventeen minutes of debate,[107] ballots were distributed to the delegates,[108] and before long it was announced that the Commission's draft had been overwhelmingly approved, with 925 delegates voting in favor and only 17 opposed.[109] But the favorable reception proved fleeting.[110] Persistent objections soon emerged across the denomination, the primary theme being that the 1972 statement's "celebration of theological pluralism . . . tended to legitimate theological 'indifferentism.'"[111] Still, "[l]oyalty to the 1972 Statement [remained] strong,"[112] and even its detractors recognized that it "helpfully interpreted the denomination's theological history," and had made a "lasting contribution" by developing the "Wesleyan quadrilateral."[113]

In the face of such divergent positions on the merits of the doctrinal commentary the General Conference had approved in 1972, one might have expected the Conference to revisit whether it remained viable to have the delegates pass upon expansive, theologically nuanced doctrinal

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[104] *Discipline 1972*, ¶ 69.
[105] *Richey* at 198, *referencing Discipline 1972*, ¶¶ 68 & 70.
[106] *1972 Journal*, Vol. I at 281 (emphasis added).
[107] *Outler* at 86.
[108] 1972 *Journal*, Vol. I at 360.
[109] *Id.* at 365. *See also Outler* at 86.
[110] *Outler* at 86.
[111] Thomas Ogletree, *In Quest of a Common Faith* ("*Ogletree*"), in UMC DOCTRINE at 168.
[112] *Langford* at 177.
[113] *Langford* at 176-77.

statements, fashioned with predictably divergent input from esteemed scholars. But that, too, is not what happened. Instead, when dissatisfaction with the 1972 statement failed to abate, the General Conference was persuaded to attempt a "do-over." Gathering in Baltimore in 1984, the delegates directed the bishops to appoint yet another blue ribbon panel, this one called the "Committee on Our Theological Task,"[114] which understood its mandate to be nothing less than to guide the United Methodist "people in a *corporate* process of *theological reflection*,"[115] with the stated objective of fashioning a "*new* statement on the *theological* task of United Methodists"—one which would better "set forth the *full scope* of our Wesleyan heritage in its bearing on the mission of our church."[116]

Four years later, the 1988 General Conference approved the new Committee's extensive re-write of the doctrinal discourse that had been inserted into the *Discipline* just sixteen years previously. Like the 1972 iteration, the 1988 statement bracketed the Articles, Confession and General Rules with historical and interpretive sections, but the 1988 version was about five pages longer and included "major departures from the approach of the 1972 statement."[117] In addition, by the time the 1988 statement was presented to the delegates in plenary session, the General Conference's relevant legislative committee had made several changes of its own, including some of an intensely theological character:

- Added "specific terminology for the triune God (Father, Sone and Holy Spirit)."
- Developed a "paragraph that introduced theological inquiry in terms of 'our effort to reflect on God's gracious action in our lives.'"
- Included a paragraph "on the 'contextual and incarnational' nature of our theological task."

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[114] *See* JOURNAL OF THE 1984 GENERAL CONFERENCE OF THE UNITED METHODIST CHURCH ("*1984 Journal*"), Vol. I, at 319-20 & Vol. II at 1158-59.
[115] *Ogletree* at 168 (emphasis added). *See also Langford* at 176; *Heitzenrater* at 95.
[116] *Ogletree* at 168-69 (emphasis added). *See also 1984 Journal*, Vol. I at 319.
[117] *Heitzenrater* at 97.

- Made changes that "highlighted God's work in creation and reinforced the church's responsibilities for evangelism and its recognition of systemic evil in society."[118]

In the end, the doctrinal statement adopted in 1988 "was approved by ninety-five percent of the delegates."[119] Some considered such an "overwhelmingly positive vote" evidence that the "church had found a common voice" and was nothing short of "a miracle."[120] But, in truth, an even ***more*** "overwhelmingly" favorable vote had been tallied in ***1972***, when ninety-***eight*** percent of the delegates to ***that*** General Conference approved the doctrinal statement developed under the guidance of an equally august commission.

How is it that the same church judicatory could overwhelmingly approve "the first official Statement about Doctrine and Doctrinal Standards in American Methodist Church history to be proposed to a General Conference and submitted for a signed ballot,"[121] only to overwhelming approve its wholesale replacement just sixteen years later? As it happens, Albert Outler provided an answer in 1989, saying then that he had come to accept that "United Methodists will vote for almost any kind of doctrinal statement provided only: 1) that it is not emotively offensive; and 2) that it promises to avoid or ease doctrinal contention?"[122] Coming from a brilliant scholar, who had invested so much in guiding the 1972 effort, Albert Outler's pragmatic characterization of the General Conference's pattern is disconcerting, to say the least. But more to the point, as developed below, one can hardly avoid concluding that Outler came to regret the whole endeavor; that he was not alone; and that the best recourse is to reclaim the bedrock principle that served the denomination well from 1808 through 1972—which that the General Conference lacks authority to issue binding proclamations of church doctrine.

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[118] *Id.* at 106-07.
[119] *Langford* at 185.
[120] *Id.*
[121] *Outler* at 86.
[122] *Outler* at 79.

E. Reclaiming Original Principles

There is no question that, in undertaking to develop new doctrinal statements in 1972 and 1988 "the church has been blessed by the services of such qualified scholars" as Albert Outler and Richard Heitzenrater.[123] And not only them, but Professors Cushman, Langford, Ogletree and Oden, among others who provided input. But the "rest of the story" is that some very prominent theologians—including Outler and Heitzenrater themselves, whose guided the General Conference's doctrinal output in 1972 and 1988, respectively—ultimately came to *question* the General Conference's role in generating doctrinal dissertations.

First out of the gate was Robert Cushman, who initially conveyed his disappointment with the 1972 statement by "petition[ing] the General Conference [of 1976] to revert to the older form of ***un***interpreted text of Foundation Documents with all historical and theological excursus omitted."[124] Evidently, Cushman's 1976 petition failed, because just eight years later the General Conference moved headlong into replacing the 1972 statement with one even more loaded with "historical and theological excursus." But shortly thereafter other prominent voices began asking if Cushman might not have been on the right track.

Thus, after digesting the 1988 statement, Albert Outler remarked that he had come to "see the exasperated wisdom embedded in Dean Cushman's proposal" of letting the "Foundation Documents" speak for themselves in the *Discipline*.[125] After all, Outler quipped, the "earthly remains of the last United Methodist theologian who was decisively influenced by official stipulations in the *Discipline* . . . lie somewhere in an unmarked grave."[126]

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[123] *Richey* at 201.
[124] *Outler* at 86-87 (emphasis added).
[125] *Id.* at 87.
[126] *Id.* at 89.

And following the adoption of the 1988 statement—but in looking back as well at the thrust of the 1972 statement—Professor Russell Richey asked, "why in this whole section does it need anything more than the Standards themselves? Why all the explanation? Do not the history and the explanation infringe upon the Standards?"[127] Richey recognized that historical narrative at the very front of the *Discipline* had long "played an important legitimating role for Methodist *polity*," but reasoned that "change to a narrative explanatory of Methodist doctrine would seem to be of greater moment than change to the historical prefaces. That, after all, was the point of the Restrictive Rules, to inhibit change that touched things most precious to Methodism."[128]

And just as Albert Outler's perspective is telling (given his leadership in drafting the 1972 statement), it is sobering to learn that Richard Heitzenrater's account of the 1988 statement has less than laudatory things to say about the General Conference's role in that exercise. "I would *dis*agree with those who were ecstatic at the sight of the General Conference 'doing theology,'" Heitzenrater said, because "[w]hat happened at General Conference was generally *not very good theological discussion* . . . , but rather was *political and programmatic maneuvering*, with some theology by *catchword* and *slogan*."[129]

I recognize that, in the end, Professor Heitzenrater concluded that the General Conference's perfectly predictable "political maneuvering" and superficial theologizing is a reality we must accept—"all part of the process of the Church . . . coming to claim the statement as its . . . own."[130] But with all respect—and with equal respect for and confidence in our constitutional heritage—I am unable to locate any sound basis for resigning ourselves to a "process" that, without the slightest mooring in the Constitution, purports to "define" United Methodist doctrine by

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[127] *Richey*, n.2 at 262.
[128] *Id.* at 199-200.
[129] *Heitzenrater* at 108.
[130] *Id.*

ballot, leaving our beloved connection's doctrinal understandings at the mercy of whichever bare majority of delegates can be persuaded to endorse a given doctrinal perspective at any given General Conference.

If it is time to show fidelity to our Wesleyan heritage—and from my perspective there is always time for that endeavor—we must include reclaiming the founding principle that the "Church [is] not to take its Articles of Religion or other doctrinal standards from the delegated General Conference, but the General Conference [is] to take them from the Church."[131] Having once been defined "unalterably in the Constitution of American Methodism," our doctrinal standards have been settled "as *absolutely* and *irrevocably*" as is possible,[132] and there can be no addition or subtraction to those standards by mere legislation, but only by constitutional amendment. For better or worse, that is our process, and the fact that it leaves us unable to impose our ever-evolving doctrinal perspectives on one another by ballot does not in least distinguish us from our forbearers.

Respectfully submitted,

August 14, 2017

Thomas E. Starnes

[131] *Neely: Doctrinal Standards* at 225.
[132] *Oden* at 60 (emphasis added).

Certification

I hereby certify that, on this 14th day of August, 2017, I delivered an electronic copy of the foregoing brief to the Interested Parties identified by the California-Pacific Annual Conference of The United Methodist Church, at the email addresses set forth below:

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