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The Convocations of Canterbury and York

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The Convocations of Canterbury and York are of ancient origin and bring together clergy in a deliberative and legislative body. The convocations have been reformed at various points in their existence, notably in the Reformation and during twentieth-century reforms of Church government. While they have waxed and waned in terms of importance and influence, the two convocations remain important components of the complex system of government of the Church of England.

Keywords: convocation, Synod, clergy, Church of England, legislation

The Convocations of Canterbury and York – the ancient provincial assemblies of the Church of England – are formed of bishops and 'inferior' clergy. They were historically permitted to legislate of their own volition on Church matters and to agree the amount of tax payable by the clergy to the Crown. Their powers were drastically curtailed by the Submission of the Clergy Act 1533 and by the early eighteenth century they had fallen into desuetude. Attempts at revival have proved of mixed value and, since the passing of the Synodical Government Measure 1969, the two bodies tend only to meet as constituent parts of the General Synod, being joined by a separate House of Laity.[1] The 1997 report of the Synod's 'Bridge Commission' – *Synodical Government in the Church of England: a review* – concluded that 'the Convocations no longer perform a necessary or useful legislative function and … should cease to exist'.[2] This recommended death sentence was subsequently commuted: the convocations were retained and have survived largely intact ever since. Most recently, the convocations have been responsible for the publication in 2015 of a revised and updated version of *Guidelines for the Professional Conduct of the Clergy*, subsequently declared an Act of Convocation by both convocations. However, questions about the legal functions and efficacy of the convocations remain.

HISTORY

Since the earliest days of Christianity and formalised episcopal leadership, bishops were able to summon together the clergy of their diocese 'and in a

1 Constitution of the General Synod of the Church of England, Article 1.
2 *Synodical Government in the Church of England: a review*, GS 1252 (London, 1997) (cited throughout this article as the Bridge Report), para 13(9).

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common synod or council with them to transact such affairs as specially related to the order and government of the churches under [their] jurisdiction'.[3] Similarly, after the division of the Church in England into the provinces of Canterbury and York in 735,[4] each archbishop 'called together first the bishops, afterwards the other prelates, of their provinces; and by degrees added to these such of their inferior clergy, as they thought needful'.[5] This was no democratic exercise, nor an attempt at representing the inferior clergy, but rather a pragmatic and almost grudging example of patronage. It was to prove vitally significant, as it established the division of the councils into upper and lower houses – a distinction still extant in today's convocations, and central to their operation.

By the early fourteenth century the provincial councils had become formalised into what are now known as the Convocations of Canterbury and York.[6] Initially these assemblies met only to transact 'spiritual' business[7] related to doctrine, faith and liturgy; but from 1283 they were also tasked with voting subsidies to the Crown, the clergy being a separate estate of the realm and so outwith the secular taxation regime.[8]

Until the Reformation the convocations held supreme legislative authority in matters ecclesiastical, legislating in the form of Canons, without reference to any other power or authority. The Submission of the Clergy Act 1533 subordinated legislative sovereignty to the Crown, preventing any Canon from being made that was 'contraryaunt or repugnant to the Kynges prerogatyve Royall or the customes lawes or statutes of this Realme'.[9] Consequently Parliament became supreme legislator for all Church-related matters, its statutes eclipsing the Canons in the legislative hierarchy. The 1533 Act did not abolish the convocations, however, but instead prevented them from meeting without the Sovereign's permission: 'theire convocacions . . . alway shalbe assembled by auctorytie of the Kynges wrytte'.[10] These provisions are still in force today.

The convocations did not meet from 1640 until the Restoration, it having been held 'by the parliamentary party that the continuance of the convocation beyond that date was illegal'.[11] The first convocation called after the

3 R Burn, *Ecclesiastical Law*, vol II (London, 1797), p 18. Such 'diocesan synods' still exist in every diocese of the Church of England today, by virtue of the Synodical Government Measure 1969.
4 C Podmore, *Aspects of Anglican Identity* (London, 2005), p 2.
5 Burn, *Ecclesiastical Law*, vol II, p 18.
6 A Smethurst, *Convocation of Canterbury* (London, 1949), p 1. B Whitehead, *Church Law*, (second edition, London, 1899), p 101, suggests that 'The reason why there are two convocations is that the clergy objected to meet unless summoned by their archbishop', although this seems unlikely.
7 Burn, *Ecclesiastical Law*, vol II, p 18.
8 Smethurst, *Convocation of Canterbury*, p 9.
9 Submission of the Clergy Act 1533, s 3.
10 Ibid.
11 G Bray, *Convocation Facts and Figures* (Birmingham, AL, 2004), p 16.

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Interregnum met in 1661 to approve the revised *Book of Common Prayer*,[12] and in 1663 granted a final subsidy to the Crown.[13] In 1664

> by a private agreement between Sheldon archbishop and the lord chancellor Clarendon and other [of] the king's ministers, it was concluded, that the clergy should silently wa[i]ve the privilege of taxing their own body, and permit themselves to be included in the money bills prepared by the commons.[14]

It appears that this waiver was in exchange for the right to vote in elections.[15]

The convocations were prohibited from meeting between 1690 and 1701, despite the attempts of campaigners such as Dr Francis Atterbury (later Bishop of Rochester), who questioned the interpretation of the wording of the 1533 Act and contended that 'the Doctrine of the Clergy's Inability to enter on any *Synodical Debates* whatsoever, without a Royal Commission, was as utterly Unknown as it is still Untrue and Groundless'.[16]

During Queen Anne's reign, tensions between the lower and upper houses in the Convocation of Canterbury reached an impasse: the lower house

> refused to join with the Bishops in an address to the Crown, claiming the right to send an address of their own. The primate informed them that they were not constitutionally a separate House; they were the Council of the Bishops, to give advice when advice was sought.[17]

Nor did the convocations meet to transact business between 1717 and 1852,[18] owing to 'an arbitrary act of George I, because the clergy were suspected of Jacobite sympathies'.[19] While this was 'scandalous, and … harmful', it was also symptomatic of a sense of ennui within the Church.[20]

12 *Report of the Archbishops' Committee on Church and State* (London, 1916), p 234.
13 Bray, *Convocation Facts and Figures*, p 27.
14 Burn, *Ecclesiastical Law*, vol II, p 29. A Reynolds, *The Churchman's Guide* (London, 1912), p 112, observes that 'the right of self-taxation has been waived (but not abolished)'.
15 H Cripps, *A Practical Treatise on the Laws Relating to the Church and the Clergy* (London, 1845), p 28. R Phillimore, *The Ecclesiastical Law of the Church of England* (second edition, London, 1895), vol II, para 1538, cites Speaker Onslow: 'Gibson, Bishop of London, said to me this was the greatest alteration in the constitution ever made without an express law.'
16 F Atterbury, *Additions to the First Edition of the Rights, Powers and Privileges of an English Convocation* (London, 1701), p iii. R Rodes Jr, *Law and Modernization in the Church of England: Charles II to the welfare state* (Notre Dame, IN, 1991), p 9, suggests that 'On the wording of the statute, Atterbury had the better case, and if he and his followers had been willing to cooperate with the bishops they might have prevailed.'
17 *Report of the Archbishops' Committee on Church and State*, pp 235–236.
18 The Convocation of Canterbury met in November 1852, that of York in 1861. Bray, *Convocation Facts and Figures*, p 29.
19 *Crockford Prefaces* (Oxford, 1947), p 6, n 1.
20 *Report of the Archbishops' Committee on Church and State*, p 236.

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Owing to Parliament's lack of 'leisure, fitness or inclination' to pass laws on ecclesiastical matters,[21] the convocations petitioned the Crown in 1919, seeking, 'subject to the control and authority of Your Majesty and of the two Houses of Parliament, powers in regard to legislation touching matters concerning the Church of England'.[22] The Church was subsequently empowered to legislate by Measure – a form of statute – for itself by the Church of England Assembly (Powers) Act 1919, which established the Church Assembly – composed of a house of bishops (consisting of the upper houses of the two convocations), a house of clergy (consisting of the lower houses), and a house of laity – as the Church's representative assembly.[23] While this permitted the convocations and the House of Laity to work together on drafting Measures, the making of Canons remained the sole legal responsibility of the convocations. The long and complex revision of the Church's Canons from 1947 to 1969 therefore involved the convocations proposing amendments, the drafts being sent to the House of Laity for comment, reconsidered by the convocations and submitted to the House of Laity again, before finally being approved by the convocations.[24]

The Synodical Government Measure 1969 vested the power of the convocations to legislate by Canon in a new body – the General Synod – which was the Church Assembly reformed and renamed. From the Measure's coming into force in 1970, the laity were permitted to play an equal role to the clergy in the consideration and making of Canons.

COMPOSITION

While it often said that individuals are 'elected to General Synod', this is not always strictly the case. Clergy are elected (either directly or specially) as 'proctors' to their convocations,[25] which together constitute the House of Clergy of the Synod; only members of the House of Laity are elected directly to membership of the Synod. While the convocations have become (by virtue of the Synodical Government Measure 1969) a constituent part of the General Synod, they maintain a distinct character and identity.

Before 1966, the convocations were summoned and dissolved at the same time as Parliament. The Church of England Convocations Act 1966 broke this link and permitted the convocations to be called together and dissolved 'at such times as Her Majesty may determine, without regard to the time at

21 Ibid, p 39.
22 *Halsbury's Statutes*, vol 10: *Ecclesiastical Law* (third edition, London, 1969), pp 51–52.
23 See Article 6 of the Constitution of the National Assembly of the Church of England, reproduced in ibid, p 53.
24 Podmore, *Aspects of Anglican Identity*, p 110.
25 T Briden (ed), *Moore's Introduction to Canon Law* (fourth edition, London, 2013), p 29.

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which Parliament is summoned or dissolved'.[26] As with Parliament today, the term of the convocations is fixed at five years, unless dissolved sooner at Her Majesty's direction.[27] Consequently, the General Synod 'shall, on the dissolution of the Convocations, itself be dissolved, and shall come into being on the calling together of the new Convocations'.[28]

The convocations are summoned by a writ from Her Majesty, addressed to the relevant archbishop, commanding them to 'call together a new Convocation of your Province'.[29] While addressed to the archbishop and couched in terms of the convocations, in practice the writ begins the process of assembling the General Synod. However, the convocations 'may continue to meet separately, within the province or elsewhere at such places and times as they may determine, for the purpose of considering matters concerning the Church of England'.[30]

Diocesan bishops (including the two archbishops) sit *ex officio* in the upper houses of their convocations,[31] as does the Bishop of Dover.[32] A similar provision exists for the Bishop to the Forces,[33] who exercises 'pastoral supervision' over armed forces chaplains on behalf of the Archbishop of Canterbury.[34] Elections

26 The Church of England Convocations Act 1966, s 1(1).
27 Ibid, s 1(2).
28 Constitution of the General Synod of the Church of England, Article 3(2).
29 The writ also specifies the date and location of the meeting: 'to appear before you in [*here insert the place where the Convocation is to meet*] or elsewhere as it shall seem most expedient on the __ day of _____: And this as you love Us, the state of Our Kingdom and the honour and good of the Church of England, by no means omit' (The Crown Office (Forms and Proclamations Rules) Order 1992, Schedule, Part 1, Form C). No archbishop would surely dare to omit to do as instructed, having sworn an oath of allegiance to Her Majesty upon their election (Canon C 13(1)). Quite what would happen if an archbishop were to omit to call a convocation, or alternatively to call one without authorisation, is not clear.
30 Canon H 1(2). Indeed, the Queen may herself seek the counsel of the convocations on matters of ecclesiastical import by issuing letters of business, specifying the matter for discussion and authorising them to report back to her (*Halsbury's Laws of England*, vol 34 (fifth edition, London, 2011), para 161). The last time this occurred appears to have been in 1904 to consider a revised Prayer Book (ibid, para 161, n 8). However, given that the General Synod is now the representative assembly of the Church of England, whose functions are 'To consider matters concerning the Church of England and to make [legislative] provision in respect thereof … [and] to consider and express their opinion on any other matters of religious or public interest' (Constitution of the General Synod of the Church of England, Articles 6(a) and (b)), it seems unlikely that the convocations alone will be tasked again with such a commission.
31 Canon H 3(1)(a) (as applicable to the Convocation of Canterbury).
32 Canon H 3(1)(b) (as applicable to the Convocation of Canterbury). The Bridge Report recommended that, as the Archbishop of Canterbury delegated 'the great majority of the episcopal responsibilities for the diocese of Canterbury' to the Bishop of Dover, they ought also to be permitted full attendance and voting rights, 'recognising the unique wider responsibilities which the Archbishop of Canterbury has in relation to the Anglican Communion' (Bridge Report, para 8(12)).
33 Canon H 3(1)(bb) (as applicable to the Convocation of Canterbury).
34 N Doe, *The Legal Framework of the Church of England* (Oxford, 1990), p 195, n 104. The Bridge Report had suggested that, as the archbishop was the 'episcopal ordinary to the armed forces … he is in a position sufficiently to represent their interests and reflect their concerns', and so did not recommend that the bishop should sit as of right in the House of Bishops (Bridge Report, para 8(37)). Synod felt differently, and voted to extend membership to the Bishop to the Forces, 'if chosen by

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are held for a specified number of suffragan bishops from each province (who join the upper house of the relevant convocation and, therefore, the House of Bishops of the General Synod) and also for 'proctors', who are elected by and from the licensed clergy of each diocese.[35]

Currently five suffragan bishops are elected from the Province of Canterbury and four from the Province of York, increased from four and three respectively in 2014. The rationale for these increases was distinct. That in the Convocation of Canterbury was intended 'to provide a fairer level of representation for the suffragans in the province and, indeed, of suffragan and assistant bishops more generally (who were not well-represented in the Synod)'.[36] At the time of the amendment there were four elected places for 47 suffragan bishops from the Province of Canterbury, and three places for the 16 suffragans from the Province of York, meaning twice as many voters were needed to elect one suffragan bishop in the Province of Canterbury than in the Province of York. The increase in the Province of York was as a response to 'the loss of two diocesan bishops in the West Yorkshire Reorganisation Scheme', which replaced the Dioceses of Bradford, Ripon and Leeds and Wakefield with a new Diocese of Leeds.[37]

It could be argued that increasing the number of elected suffragans in the Province of York diluted the benefit to the Province of Canterbury: while its suffragans were undeniably better represented as a result of the changes, comparatively and proportionally they were worse off. However, despite the dissolution of all three dioceses and the loss of two diocesan bishops, the Reorganisation Scheme created two new suffragan sees – of Bradford and Huddersfield[38] – by the time that the amendments to the Convocations (Elections to Upper House) Rules were made. A further suffragan see – Richmond[39] – was

the Armed Forces Synod as soon as practicable after any dissolution of the Convocations' (Canon H 3(1)(bb) (as applicable to the Convocation of Canterbury)).

35 While 'suffragan' is a useful shorthand for describing the bishops eligible to vote in and be elected to this constituency, 'persons in episcopal orders working in a diocese in either of the provinces who are members of the house of bishops of that diocese' are also qualified to vote and stand for election (The Convocations (Elections to Upper House) Rules 1989–2014, Rule 1). This provision would therefore have encompassed the previous stipendiary assistant bishops of Newcastle and Leicester, before their replacement with the suffragan bishops of Berwick and Loughborough in 2016 and 2017 respectively. The four provincial episcopal visitors ('PEVs', also known as 'flying bishops'), commissioned to provide 'extended pastoral care and sacramental ministry' to those parishes who are unable, in conscience, to receive the ministry of their bishop because of their having ordained women to the priesthood (Episcopal Ministry Act of Synod 1993, s(5)(3)), are also eligible for election, as they are suffragans of the archbishops.

36 'Report of the Revision Committee for Draft Amending Canon No. 32, The Convocations (Elections to Upper House) Rules (Amendment) Resolution 201-, The Clergy Representation Rules (Amendment) Resolution 201-, The Church Representation Rules (Amendment) Resolution', GS 1902-5Y (henceforth 'Report of the Revision Committee', GS 1902-57), para 34.

37 Ibid, para 38.

38 The Dioceses of Bradford, Ripon and Leeds and Wakefield Reorganisation Scheme 2013, Art 9.

39 Renamed 'Kirkstall' by Order in Council on 14 March 2018.

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revived in the diocese in 2015 after nearly a century in abeyance, so the ratios are now proportionally fairer on the Province of Canterbury than previously. The elected suffragan/assistant bishops represent the interests of their fellow suffragans in the councils of the Church, but also bring a distinctive voice. In addition, they help to ensure that the Province of York is appropriately represented in the upper house.

The total number of proctors to be elected to convocation is capped: the Province of Canterbury may currently elect up to 133, and the Province of York up to 58.[40] Before a quinquennial election, each diocese is assigned a number of seats – being a proportion of the total permitted for each province – to be filled by elected proctors, according to the number of clergy eligible to vote within that diocese.[41] Discounting the 4 'specially elected' proctors for the Province of Canterbury and 2 for the Province of York (who will be considered shortly), the figures are 129 for Canterbury and 56 for York, representing a 70:30 split.

Before the 2015 quinquennial elections the actual ratio – based on the number of clergy electors in dioceses[42] – was nearer 72:28.[43] There is therefore an artificial bias to the Province of York. This is not a new phenomenon: Burn commented in 1797 that, while dioceses in the Province of Canterbury each sent two proctors to Convocation at that time, in the Province of York each archdeaconry sent that number: 'otherwise the number would be so small, as scarce to deserve the name of a provincial synod'.[44] The reason for the modern weightings is identical: to ensure that the 'distinctive voice of the northern province' might be heard.[45]

The General Synod considered whether to remove this weighting before the 2015 elections. Some members argued that the distinction between the provinces was entirely arbitrary and that the weighting ought to be removed in the interests of justice and equal representation, maintaining that all votes ought to count the same, no matter where in the country one happened to live.[46] However, the majority agreed that the Province of York was distinctive:

> the issue was really one about the relationship between the two provinces since they had different characters and if the representation of the northern province were reduced further, that could result in the northern province becoming even less able to make its distinctive voice heard in

40 Canon H 2(2) proviso (a).
41 See the seat allocations prescribed for the 2015 elections by the report 'General Synod elections 2015: report by the Business Committee', GS 1975.
42 And, indeed, the number of lay electors entered on electoral rolls for elections to the House of Laity.
43 'Report of the Revision Committee', GS 1902-57, para 8.
44 R Burn, *Ecclesiastical Law*, vol I (sixth edition, London, 1797), p 26.
45 'Report of the Revision Committee', GS 1902-57, para 12.
46 Ibid, para 10.

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> the councils of the Church. . . [T]he weighting reflected the commitment of the Church to the northern province and its Convocation, which in turn reflected the fact that the Church's ministry was to the entire nation and not just the prosperous south . . .[47]

Maintaining the weighting in favour of the Province of York underlines the importance not solely of the 'northern voice' brought by the clergy and laity of that province, but also of the significance of the Convocation of York – a distinctly northern, distinctly clerical, body.

The eligibility of proctorial electors is set out in Canon H 2(4). The first category – clerics holding office as assistant bishop in the diocese[48] – might appear an unusual group of clergy eligible to vote in elections to the lower house of a convocation. However, Canon H 2(1)(a) provides that, while no person in episcopal orders is eligible to be elected, appointed, chosen or co-opted to the lower house, they are permitted to vote in a proctorial election so long as they are not a member of the diocesan house of bishops.[49]

The second category comprises archdeacons holding office in the diocese.[50] Until 2005, archdeacons were a 'special constituency' of the convocations: the archdeacons of each diocese 'chose' one of their number to be a member of the lower house.[51] The Bridge Report, acknowledging that archdeacons 'have a role which is distinct from that of the bishop or the parish priest . . . [and therefore] should have the opportunity to be represented on the General Synod', called for the abolition of this special constituency.[52]

> We have concluded that, in the circumstances of synodical life in the late twentieth century, it should be properly a matter for the electors in the diocese to determine who should represent them . . . we are confident that a sufficient number will be elected by this route to Synod to ensure that their valuable contribution continues to be heard.[53]

47 Ibid, para 11.
48 Canon H 2(4)(a).
49 In practice, this segment of the electorate is likely only to include retired honorary assistant bishops who – as they are unlikely to be members of their diocesan house of bishops – would otherwise be disenfranchised.
50 Canon H 2(4)(b).
51 Until the establishment of the General Synod in 1970, each diocese sent two archdeacons to the convocation and therefore to the Church Assembly (see former Canon 143) – a total of 85 in 1966 (*Government by Synod: synodical government in the Church of England*, CA 1600 (London, 1966), p 128). Any archdeacons who were unsuccessful in being chosen as the representative archdeacon of their diocese were permitted to stand for election as a proctor by the diocesan clergy.
52 Bridge Report, para 8.31. The *Report of the Archbishops' Committee on Church and State*, p 51, had called archdeacons 'a body of men who by general admission possess an exceptional knowledge of the clergy and their interests'.
53 Bridge Report, paras 8.32–33.

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The provisions relating to the archdeacons' constituency were repealed in 2005,[54] bringing archdeacons within the compass of the eligible proctorial electors for the convocations.[55] As over half of dioceses number an archdeacon among their proctors today, the Bridge Report would seem to have been proved right on this count. It also suggests that archdeacons are well thought of among their fellow clergy, and their distinctive contribution is valued.[56]

The third category – clerks in holy orders beneficed in a diocese[57] – is the largest. They are joined by clergy holding office within a cathedral church in the diocese[58] (excluding cathedral deans[59]), and all clergy either licensed under seal by the bishop of the diocese, or who are members of a deanery synod and hold the bishop's permission to officiate in the diocese.[60] Where an elector is eligible to vote in more than one area they must decide in which they wish to vote.[61]

Historically, all deans and provosts were members of their convocations. From 1970 this was reduced to 15, elected from among their number: 9 from Canterbury and 6 from York.[62] The Bridge Report recognised that, while their contribution

> ... is considerable... [and] [n]otwithstanding this and the significant role which cathedrals have in the local and regional life and work of the Church, and some in its national life, cathedrals are a component part of the diocese ... We believe it should be for the clergy of the diocese to decide whether or not to elect their dean or provost as a member of the House of Clergy.[63]

Unlike archdeacons the special constituency for deans and provosts was not abolished, but rather reduced: five deans are now elected by and from the deans of the cathedral churches – three from the Province of Canterbury[64] and two from the Province of York[65]. By their nature deans are creatures of their cathedrals, not prone to visiting parishes and clergy in their dioceses,

54 By Amending Canon No 26, promulged on 15 February 2005.
55 Provision was also made to ensure that not more than one archdeacon might be elected per diocese (or electoral area, if the diocese is divided): Canon H 2(1)(e) (as applicable to the Convocation of Canterbury) and Canon H 2(1)(c) (as applicable to the Convocation of York).
56 Whether those elected are the most able, or merely the most well known, in the diocese is unclear.
57 Canon H 2(4)(c).
58 Canon H 2(4)(d), including the collegiate churches of Westminster Abbey and St George's Windsor.
59 Canon H 2 proviso, including both collegiate churches.
60 Canon H 2(4)(e).
61 Canon H 2 proviso.
62 See *Government by Synod*, p 70.
63 Bridge Report, paras 8.25–27.
64 Canon H 2(1)(a) (as applicable to the Convocation of Canterbury), the deans of Westminster Abbey and St George's Windsor being among the electorate.
65 Canon H 2(1)(a) (as applicable to the Convocation of York).

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and therefore unlikely to be well known outside their chapters. Unlike archdeacons, they are less likely, contrary to the Bridge Report's arguments, to fare well in diocesan proctorial elections. The fact that the Synod has maintained them as a distinct constituency suggests that they have valuable and unique contributions to make. Similar arguments could be made for other cathedral clergy, so perhaps the deans' constituency might usefully, in time, be replaced with one for cathedral clergy generally.[66]

Another special constituency reserves seats for armed forces chaplains in the Lower House of the Convocation of Canterbury.[67] The Canons provide for no fewer than three and no more than four ordained chaplains to be elected or chosen 'in such manner as may be determined by the Armed Forces Synod as soon as practicable after any dissolution of the Convocation'.[68] In practice, the Armed Forces Synod tends to choose the senior Anglican chaplain from each force as their clerical representatives.[69]

There is a proviso that the number of armed forces representatives overall – episcopal, clerical and lay – may not exceed seven.[70] As the clerical members may be no fewer than three and no more than four, and an identical provision exists for the lay representatives,[71] this suggests that the Armed Forces Synod may elect not to 'choose' the Bishop to the Forces,[72] and instead elect an extra clerical or lay representative. It is not immediately clear why this discretion exists, but it seems to offer the Armed Forces Synod a modicum of flexibility, should it wish to exercise it.

66 In addition to the cathedral deans, either the Dean of Jersey or the Dean of Guernsey will be a member of the Convocation of Canterbury, but not within the deans' constituency: rather they serve as the sole clerical representative for the Channel Islands. Rule 4 of the Clergy Representation Rules 1975 to 2014, Rule 4, provide that 'The Dean of Jersey and the Dean of Guernsey shall agree and, in default of agreement, the Bishop of Winchester shall determine, which of them shall represent the Channel Islands in the Lower House of the Convocation'. The Bridge Report recommended the abolition of the constituency and suggested instead that all licensed or beneficed clergy on the Islands ought to be entitled to vote and stand in the proctorial elections for the Diocese of Winchester. This recommendation was not pressed, however, once the complexities of amending another jurisdiction's legislation were considered ('Review of synodical government in the Church of England: second report to the General Synod by the follow-up group', GS 1412 (2001), para 32 and Appendix 3), and the reforms in 2014 did not reopen the issue. Thus the *status quo* remains.

67 As the Archbishop of Canterbury is the 'episcopal ordinary' to the Armed Forces (Bridge Report, para 8.37), and all forces chaplains are licensed by him and serve under his jurisdiction, these seats are in the Convocation of Canterbury, no matter where the chaplain is based or serving. See Briden, *Moore's Introduction*, p 63. See also (Canon H 2(1)(d) (as applicable to the Convocation of Canterbury).

68 Canon H 2(1)(d) (as applicable to the Convocation of Canterbury).

69 All of whom are styled 'archdeacon' – of the Army, Navy and Royal Air Force. See Briden, *Moore's Introduction*, p 63. Before 2005, the forces archdeacons served *ex officio* as the only representatives of the armed forces on the General Synod. The Bridge Report recommended that, 'on the grounds of equity and of proper access to the national councils of the Church' (para 8.36), forces chaplains and lay service personnel ought to be permitted to elect their own representatives to the Synod (paras 8.38 and 8.49).

70 Canon H 2(1)(d) (as applicable to the Convocation of Canterbury).

71 Church Representation Rules 2017, Rule 35(1)(d).

72 Canon H 3(1)(bb).

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The next special constituency is effectively an *ex officio* appointment: the Chaplain General of Prisons,[73] who also sits in the Lower House of the Convocation of Canterbury.[74] In cases where the chaplain general is not ordained, the Archbishop of Canterbury may nominate a prison chaplain of their choice.[75] The Bridge Report recommended that the chaplain general ought not to sit *ex officio*, but instead – as all prison chaplains are licensed by the bishop in whose diocese they minister, and therefore eligible to vote and stand in diocesan proctorial elections – that the special constituency be abolished and all prison chaplains, including the chaplain general, be eligible to stand for election.[76] As with the Bishop to the Forces, the chaplain general survived the Bridge proposals, and remains an *ex officio* member of the Convocation of Canterbury and the Synod.

It is perhaps unsatisfactory that the Convocation of York has no representatives from the Armed Forces Synod or the Prisons Chaplaincy – its deliberations may be the poorer for their absence – but, given that the armed forces and prisons are the particular responsibility of the Archbishop of Canterbury, it seems appropriate that the clerical representatives for these bodies sit in that convocation: their presence signifies the distinctiveness of their contribution, and the importance of their involvement in the Church's councils.

The religious communities of the Church of England also comprise a special constituency within the convocations. Two seats are available for ordained members of religious communities whose mother house is in either the Province of Canterbury or the Province of York.[77] The electors are priests or deacons who have been certified by the superior of their community to belong to that community, and are resident in one of the two provinces.[78] The Bridge Report considered that, as

> the nature of each of the communities concerned varies enormously – some are concentrated in one location, in others the members are widely dispersed ... [–] it would not be reasonable, in our view, to expect that they could secure election unless some special provision for them is continued.[79]

The Report also recommended reducing the number of representatives from two to one, to be elected from either province, but this was not approved by the Synod.[80]

73 Canon H 2(1)(dd) (as applicable to the Convocation of Canterbury).
74 As with the senior forces chaplains, the chaplain general is styled 'archdeacon' – for prisons.
75 Canon H 2(1)(dd) (as applicable to the Convocation of Canterbury).
76 Bridge Report, para 8.41.
77 Canon H 2(1)(f) (as applicable to the Convocation of Canterbury) and Canon H 2(1)(d) (as applicable to the Convocation of York).
78 Clergy Representation Rules 1974 to 2014, Rule 16.
79 Bridge Report, para 8.43.
80 Ibid.

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Before 2005, one ordained religious was elected from each province; both representatives may now be from one province or the other, or one from each. This seems a pragmatic response to the small number of ordained religious in the Church of England: it was estimated that in 2012 there were 79 electors in the whole constituency: 57 in the Province of Canterbury and 22 in the Province of York.[81] Given these numbers, finding an ordained religious willing to stand in the election in the Province of York could be problematic. Happily, at present, there is one elected from each province, so both convocations are enriched.

The elected candidate sits in the convocation of the province in which the mother house of the community is situated,[82] but interestingly 'shall be eligible to appear only in the Lower House of Convocation'.[83] Before the Reformation, abbots and priors – as superiors of religious communities with ordinary jurisdiction – used to sit in the upper houses of the convocations.[84] It was evidently felt necessary to clarify that, were the superior of one of today's religious communities to be elected, they would not be entitled to sit among their fellow prelates.

Including ordained religious in the convocations' membership is arguably significant and appropriate. It indicates the Church of England's commitment to the religious life and the distinctive contribution that religious make to the witness and mission of the Church. Given that religious communities devote much of their time to praying for the Church and the world, it is also fitting that they should be represented in the Church's deliberative and legislative assembly.

The final special electoral area is the 'Universities and Theological Education Institutions' constituency. Before 2015, the universities of Oxford, Cambridge and London and the other universities in the Province of Canterbury formed four separate electoral areas, each electing one proctor to that convocation; the universities of Durham and Newcastle together, and the other universities in the Province of York formed another two areas, each electing one proctor to that convocation. The Bridge Report, unsurprisingly, called for the abolition of the universities' constituencies, arguing that, while 'the General Synod is, and should continue to be, assisted in its deliberations by those with particular theological expertise… [w]e are not persuaded however that this is necessarily

81 'Report of the Revision Committee', GS 1902-57, para 68. This was compared with an estimated 306 in the lay constituency: 244 in Canterbury and 63 in York (ibid).
82 Clergy Representation Rules 1974 to 2014, Rule 19A.
83 Ibid.
84 In 1453, for example, 297 abbots and priors sat with the 18 diocesan bishops in the Upper House of the Convocation of Canterbury. This increased to 337 in 1529, but was of course reduced to nil by 1563, while the bishops had increased to 22. In York, 60 abbots and priors sat with the three bishops in 1376, 50 in 1424, and again none by 1563, while the bishops had increased to five. See Bray, *Convocation Facts and Figures*, pp 105 and 107.

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available only through universities'.[85] The universities escaped reform following the Bridge Report, but modifications made in advance of the 2015 elections took on board some of the arguments set forth in 1997.

The separate electoral areas were combined into one, spanning both provinces, and the number of proctors elected were reduced from six to four, with at least one to be elected from each province.[86] Previously the electorate comprised clergy authorised to officiate in a diocese and employed to teach and research by a university in either province (or a college of such a university), or else a fellow or head of a college of such a university.[87] This was expanded to include authorised clergy employed (on at least a half-time basis[88]) to teach and research by a theological education institution ('TEI') recognised by the House of Bishops as an institution which trains candidates for ordination in the Church of England, in either province.[89] The Revision Committee also considered whether the constituency ought to include lay people teaching and researching in universities and TEIs, but considered this problematic on two main grounds: first, as it would not be possible to limit the subject areas that candidates taught or researched in, a potentially huge electorate would result; and second, even if the electorate were extended, some highly respected lay theologians would still not be eligible if they were self-employed.[90] The Synod agreed with the Revision Committee, and the electorate remains limited to clergy only. However, the dissatisfaction felt among lay theologians disenfranchised by the current provisions – cited in the Bridge Report as a reason for abolition[91] – remains.

The rationale for the universities and TEIs' constituency is somewhat difficult to defend. The convocations and the General Synod more generally clearly require serious theological reflection to inform their deliberations, but there is no reason why this should be expected to be provided by ordained academics, especially when there is no restriction on their area of specialism. Bishops, deans, archdeacons, proctors and lay people may all be capable of theology, so the convocations and Synod would likely be no worse off were the universities and TEIs'

85 Bridge Report, para 8.45.
86 Canon H 2(3)(1) and (2) (as applicable to both Convocations).
87 Clergy Representation Rules 1974 to 2014, Rules 12(4), 12(5)(a) and 12(5)(b). A further condition requires that, where the cleric is employed by the universities of Oxford, Cambridge or Durham, they are a member of Congregation, the Regent House or Convocation respectively, these being the governing bodies of the institutions (Rule 12(6)).
88 Ibid, Rule 12(9).
89 Ibid, Rule 12(5)(c). The Bridge Report, para 8.45, had argued that theological expertise was to be found not only within universities but also in theological colleges. This significant reform was narrowly rejected by the Revision Committee for the draft Synodical Government legislation in 2014 on the grounds that the work of staff at the TEIs 'would not be peer-reviewed in the same way as that of staff teaching in a university' ('Report of the Revision Committee', GS 1902-57, para 64(g)). Members of the Committee voted 6:4 against extending the electorate (ibid, para 64(g)), a decision which was subsequently overturned by the Synod in 2014.
90 'Report of the Revision Committee', GS 1902-57, para 64(h).
91 Bridge Report, para 8.45.

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constituency to be abolished. Even if the constituency is not intended to 'give theological expertise, but to represent the academic community',[92] the fact that it has been enlarged to include clergy teaching at TEIs could be an argument for further reform: there is no corresponding constituency for the House of Laity.

PROCEDURE

The archbishop of the province is *ex officio* the president of that convocation and presides over meetings of the full synod and the upper house,[93] or may appoint a deputy. In the Province of Canterbury, the Bishop of London has the right to be appointed deputy or, if unavailable, the Bishop of Winchester. [94] In the absence of both, the chair is taken by 'the bishop who has been a diocesan in the Province for the longest time'.[95] In the Convocation of York, the Bishop of Durham has the right to be appointed deputy[96] and, in their absence, 'the bishop present who has served longest in the Northern Province in one or more Sees'.[97] One consequence of the convocations operating independently and autonomously is that they occasionally have different provisions. In both cases regarding presiding over the convocation, the significance of ministry served in the province is tantamount. The Province of York being smaller, the convocation appears less concerned with which bishop has been a diocesan in the province for longest, but who has served there as a bishop longest. This would, for example, afford a recently appointed diocesan bishop who had served in the Province of York as a suffragan for some considerable time precedence over a longer-serving diocesan whose total episcopal ministry was shorter, or had been exercised largely in the Province of Canterbury. In the Convocation of York, it seems that familiarity with the province counts for more than theoretical seniority.[98]

Each archbishop is also joint president of the General Synod.[99] Once the Royal Assent and Licence to make, promulge and execute a Canon is received,[100]

92 As was suggested in a debate on the Bridge proposals (Revd Canon Bob Baker, General Synod Report of Proceedings July 2001, p 426).
93 Convocation of Canterbury Standing Order 2(a); Convocation of York Standing Order 2(a).
94 Convocation of Canterbury Standing Order 2(b); Canon C 17(4). These are the two senior bishoprics in the province, and their holders are automatically afforded seats as Lords Spiritual in the House of Lords as a result (Bishoprics Act 1878, s 5).
95 Convocation of Canterbury Standing Order 2(c).
96 This is the senior bishopric in the Province of York; like London and Winchester, its holder is also automatically afforded a seat as a Lord Spiritual.
97 Convocation of York Standing Order 2(b).
98 This may, however, be an error: Convocation of York Standing Order 13(a)(i) refers to a 'bishop who has served longest as a diocesan in the Province of York whether in one or more Sees', so there appear not only to be discrepancies between the two convocations, but also within the Standing Orders themselves.
99 Canon C 17(4). This is in keeping with the fact that 'In most respects the two archbishops are of equal and independent position and authority; both are alike subject to the Queen as their immediate superior.' See *Halsbury's Laws*, vol 34, para 146.
100 These are the terms used in s 3 of the Submission of the Clergy Act 1533.

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the archbishops – as presidents of their convocations – sign the instrument of enactment, alongside the prolocutors and the chair and vice-chair of the House of Laity. In making Canons, the convocations continue their ancient, pre-Reformation work, the only differences being that they now require the Assent of the Sovereign and the agreement of the laity.

The lower house of each convocation is presided over by a 'prolocutor',[101] elected to serve for that quinquennium by the members of that house after the elections to the convocations.[102] The role of the prolocutor has been likened to the Speaker of the House of Commons, acting as 'an intermediary between the two Houses'.[103] The Standing Orders of the Convocation of York provide for the prolocutor to be removed by a vote of the lower house;[104] the Convocation of Canterbury has no such provision.[105] The Prolocutor of the Convocation of Canterbury is supported by two pro-prolocutors, who act as deputies, and four other members, all also elected by and from the house's membership, who together form the Standing Committee of the Lower House.[106] The situation is identical in the Convocation of York, save that the deputies are entitled deputy prolocutors, and only two other members are elected to the Standing Committee of the Lower House, known as the Body of Assessors.[107] The Prolocutor of the Convocation of York may also approve up to four other members of the lower house to serve as assessors for that house.[108]

In both convocations, the president may appoint members of the upper house to the Standing Committee of that house. There is no limit on the number the President of the Convocation of Canterbury may appoint, nor indeed on which bishops they may choose.[109] The President of the Convocation of York, however, may appoint only one assessor, in addition to 'the bishop who has served longest as a diocesan in the Province of York whether in one or more Sees', who automatically becomes an assessor.[110] In both convocations, the Standing Committee/Body of Assessors for each house may meet separately but, when

101 Convocation of Canterbury Standing Order 5(a); Convocation of York Standing Order 5(a).
102 Convocation of Canterbury Standing Order 3(a)–(c); Convocation of York Standing Order 3(a)–(c).
103 *Halsbury's Laws*, vol 34, para 161. This analogy can be taken to an extreme, however: Burn, *Ecclesiastical Law*, p 23, suggests that, in the early convocations, 'The archbishop sat as king; his suffragans sat in the upper house, as his peers; the deans, archdeacons, and the proctor for the chapter, represented the burghers; and the two proctors for the clergy, the knights of the shire.' Phillimore, *Ecclesiastical Law*, vol II, para 1544, calls this 'a very loose and inaccurate statement'.
104 Convocation of York Standing Order 3(f).
105 It may be that there was a custom in the Convocation of Canterbury permitting the prolocutor to be removed in a similar way which was not codified in the Standing Orders; alternatively the lower house may not have thought it necessary to include such a provision.
106 Convocation of Canterbury Standing Order 4(a).
107 Convocation of York Standing Order 4(a).
108 Convocation of York Standing Order 13(a)(ii).
109 Convocation of Canterbury Standing Order 12(a).
110 Convocation of York Standing Order 13(a)(i).

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assembled together, form the Standing Committee/Body of Assessors of the convocation as a whole.[111]

In the Convocation of York, 'the Assessors shall be responsible for the preparation of the business of Convocation and for drawing up the agenda for each session in consultation with the President and the Prolocutor'.[112] The procedure in the Convocation of Canterbury is more authoritarian in approach: 'In determining the order of business, the President and the Prolocutor shall have regard to the ancient customs of Convocation and may consult the Standing Committee.'[113]

Both convocations have a secretary: in the Convocation of Canterbury known as the 'Synodical Secretary', who is nominated by the president and admitted by the prolocutor;[114] and in the Convocation of York known as the 'Synodal Secretary', appointed in the same way.[115] The Standing Orders are silent concerning the duties of the synodical secretary, but the synodal secretary is tasked with minuting the proceedings of the Convocation of York when meeting in full synod.[116]

Although 'powers to legislate by Canon and other functions of the Convocation[s] …, and the authority, rights and privileges of the said Convocation[s] … vest in the General Synod',[117] the convocations maintain certain powers and privileges under the Canons and the Synod's constitution. They may meet to '[make] provision by appropriate instruments for such matters [concerning the Church of England] in relation to their province or referring such matters to the General Synod'[118] and are required to meet in relation to two particular items of business.[119]

The first – 'discharging their functions under section 3 of [the Synodical Government] Measure'[120] – relates to provisions in the Ecclesiastical Jurisdiction Measure 1963.[121] While none of the prescribed functions are likely

111 Convocation of Canterbury Standing Order 12(c); Convocation of York Standing Order 13(c).
112 Convocation of York Standing Order 13(b).
113 Convocation of Canterbury Standing Order 8. In practice, the Standing Committee is likely to be more involved in the ordering of business than this Standing Order would suggest: Standing Order 9A (a late addition to the collection, evidently) gives the Committee authority to determine 'that an item of business may best be conducted by means of a general discussion' (Convocation of Canterbury Standing Order 9A).
114 Convocation of Canterbury Standing Order 6.
115 Convocation of York Standing Order 6.
116 Convocation of York Standing Order 10(g). In practice, the synodical secretary performs the same task for the Convocation of Canterbury.
117 Canon H 1(1).
118 Canon H 1(2). This provision will be considered in more detail later in relation to 'Acts of Convocation'.
119 Canon H 1(2) uses the word 'shall' rather than 'may' as in the previous example, implying a duty rather than a discretion.
120 Ibid.
121 The 1963 Measure makes various provisions concerning the convocations, including permitting the upper house of a convocation to remove a diocesan chancellor (Ecclesiastical Jurisdiction Measure

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to be exercised, given the complexities of the operation of the processes under the 1963 Measure,[122] it is significant that the convocations maintain such functions after the advent of synodical government, and suggests that in such matters they are best placed to act. The second item (which will also be considered in the next section) relates to a convocation's power under Article 7 of the Synod's constitution to consider a 'provision touching doctrinal formulae or the services or ceremonies of the Church of England or the administration of the sacraments or sacred rites thereof'.[123]

The making and amending of Canons is no longer a responsibility purely of the convocations, but of the Synod as a whole. While the Canons may and do bind the clergy, it has been judicially established that they cannot bind the laity. In coming to his decision in *Middleton v Crofts*, Hardwicke LCJ cited a judgment in an earlier suit: 'that it was the prevailing opinion the canons did not bind the laity without an act of parliament, there being none to represent them in convocation'.[124] Now that the laity are represented in the councils of the Church by the House of Laity of the General Synod, and are fully and equally involved in the making of Canons alongside the bishops and clergy, whether Canons might bind the laity in a way that they could not have done historically is open to debate.

THE BRIDGE REPORT

The Bridge Report was an incredibly ambitious document. It sought to review the 'rationale, effectiveness, style and operation' of synodical government in the Church of England since its foundation in 1970.[125] The review group took four years to complete its assessment and made recommendations on matters related to the principles of synodical government in parishes, deaneries, dioceses and the General Synod, as well as the convocations themselves.

In coming to its conclusion 'that the Convocations should cease to exist',[126] the Report drew attention to what it termed their 'attenuated' functions

1963, s 2(4)(a)), or the Dean of the Arches and Auditor (Ecclesiastical Jurisdiction Measure 1963, s 3(5)(b)) from office if it 'resolves that he is incapable of acting or unfit to act'; and providing for an inquiry into a complaint relating to doctrine, ritual or ceremonial by a 'committee of convocation' (Ecclesiastical Jurisdiction Measure 1963, s 42), and, if not dismissed by such a committee, for the complaint to be promoted in the Court of Ecclesiastical Causes Reserved by a fit person appointed by the upper house of the convocation (Ecclesiastical Jurisdiction Measure 1963, s 43).

122 Perhaps especially the power of an upper house of a convocation to depose a bishop or archbishop from Holy Orders (Ecclesiastical Jurisdiction Measure 1963, s 51).

123 Constitution of the Synod of the Church of England, Article 7(1). This power, too, will be considered later as part of an assessment of the business that the convocations have carried out since 1995.

124 *Middleton v Crofts* (1736) 2 Atkins 650 at 666. The citation in the text to the earlier case – '*Davis's* case, *Mich.* 5 *G.* 1 [1718], *C. B.*' – appears to be inaccurate.

125 Bridge Report, back cover.

126 Ibid, para 7.14.

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following the formation of the General Synod, and the presence of formally comprised Houses of Bishops and Clergy within that body.[127] This led the reviewers to question 'whether they continue to perform any role of sufficient importance and value in the life of the Church to justify their continued existence as distinct institutions'.[128] The Report also criticised the fact that, while the convocations were empowered by Canon to make 'provision by appropriate instruments for such matters in relation to their province',[129] 'No significant use of this power has been made since the General Synod came into being'.[130]

Responses to the Report highlighted what might have been unintended consequences of abolition, particularly focused on the impact on the Convocation of York. The Revd Canon Hugh Wilcox argued in the Synod debate:

> if John Stanley and I are to be the last two prolocutors after some seven hundred years of history we will not be the only casualties. For not only the northern convocation but also the northern province and its archbishop will follow in this [G]adarene rush to turn the Church of England into the religious division of McDonald's or the National Health Service ... We must reject these destructive impulses which are so out of touch with feeling in both Church and nation about the need to hear and respect regional sensitivities, to give place to minorities, to be faithful to tradition while moving forward ... to face challenges of the future.[131]

As has been suggested, there has always been an issue over the division of the Church of England into two provinces. When the convocations first began to meet as representative bodies, the Province of York sent two proctors per archdeaconry, whereas the Province of Canterbury sent two per diocese, to ensure that the northern voice was not lost. There were similar concerns about the persons of the two archbishops. The 1962 Convocation of Canterbury Report No 708 stated:

> the Northern Convocation is an important element in maintaining the status of the Archbishop of York, and that it is for the well-being of the Anglican Communion as a whole as well as the Church of England in

127 Ibid, para 7.4.
128 Ibid, para 7.4. The Revd Canon Bob Baker, a member of the review team, argued in the Synod debate on the Report: 'the elaborate and extremely complex procedure under Article 7 of the Constitution to frustrate or delay business which has been accepted by the three Houses of the General Synod lacks a certain logic' (Revd Canon Bob Baker, General Synod Report of Proceedings November 1997, p 667). While not wishing to put the case too strongly, it would appear to the casual observer that any argument based on an attempt to introduce logic to the Church of England and its processes would be doomed to failure and, in its own way, illogical, given the inherent illogicalness of the body.
129 Canon H 1(2).
130 Bridge Report, para 7.1.
131 Revd Canon Hugh Wilcox, General Synod Report of Proceedings November 1997, pp 668–669.

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> particular, that the two English primates should complement and balance one another, and that the see of Canterbury should not be allowed to develop into a patriarchate or papacy.[132]

Michael Ramsey, while Archbishop of Canterbury, stated during a debate in the Convocation of Canterbury in 1962:

> I believe that the dual Archiepiscopate in this country is something providentially given to us to prevent the See of Canterbury ever becoming a sort of administrative papacy . . . If there is to be an Archbishop of York and he is to be effectively a Primate he must be able to summon a Synod of bishops and clergy, otherwise he has a *cathedra* with no *corpus* around him.[133]

Some northern members understandably felt that the abolition of the convocations would sound the death knell for the Province of York itself. David Hope, when Archbishop of York, urged the Synod to 'think much more imaginatively about ways in which the Provincial structures with which our Church of England is blessed might be developed to serve it all the more effectively, not only in the present, but also for the future'.[134] This appears to be a challenge that the convocations have started to work towards meeting, as will shortly be seen from an analysis of their business in the period 1995–2015.

A follow-up group was appointed later in 1997 to consider the responses to the Bridge Report's proposals. The group reported in 1999 that:

> One of the most heavily criticised recommendations of the Bridge Report was that for the abolition of the Convocations . . . we have concluded that their historic role should continue. . . Nevertheless the provincial basis of their consultative role would be made more consistent with synodical principles if representatives of the laity were to be involved in their meetings.[135]

Provision already exists for such hybrid meetings to be held, permitting the laity of the relevant province to join the convocations.[136] To date neither convocation has made use of this provision – perhaps because it would result in two

132 *Government by Synod*, p 98.
133 Ibid, p 15.
134 Archbishop of York, General Synod Report of Proceedings November 1997, p 674.
135 'Review of synodical government in the Church of England: first report to the General Synod by the follow-up group', GS 1354 (1999), paras 4.8–4.9.
136 Canon H 1(3). However, the Canon expressly forbids the laity from voting on any matter referred to the convocation under Article 7 of the Synod's constitution, or any matter under which the convocation maintains a discretion relating to the provisions of the Ecclesiastical Jurisdiction Measure (Canon H 1(3)(c) proviso).

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'mini-synods' and thus a degree of duplication – but the possibility remains open to either convocation to make provision in their Standing Orders to do so.

An analysis of the meetings of the Convocations of Canterbury and York from 1995 until 2015 reveals that, while just over half of each convocation's business may be said to be concerned with 'formal' business,[137] the remainder in each case is related to deliberation on various reports, draft liturgical revision and legislative business referred under Article 7 of the Synod's constitution.[138] The quality and utility of these debates is more difficult to assess than their quantity; indeed, it has been the subject of some disagreement within the convocations themselves.[139] Most meetings of both convocations during the period 1995–2015 took place within the margins of meetings of the General Synod: a convenient time, as members of both houses are likely to be in Westminster or York for the Synod sessions, so scheduling meetings in the evenings after Synod business ends, over lunch or occasionally in the mornings before it begins, is both convenient and effective.[140]

During this period (as far as records show) the Convocation of Canterbury met only once expressly outside the margins of Synod, in February 1998, when there was no February group of sessions, to discuss the reports *Under Authority*, dealing with clergy discipline, and *Synodical Government in the Church of England: a review* – the Bridge Report. Both had a distinct relevance to the clergy, so it seems appropriate that they were discussed in convocation in addition to on the floor of the General Synod. The Convocation of York

137 By which is meant that relating to internal matters, associated with the convocations' membership, processes and so on.

138 The data was drawn from the minutes of the convocations' meetings, as well as the *Chronicle of Convocation* of Canterbury and the *Journal of Convocation* of York. I am extremely grateful to the Revd Canon Stephen Trott, Synodical Secretary of the Convocation of Canterbury, and the Revd Paul Benfield, Synodal Secretary of the Convocation of York, for furnishing me with these vital resources. Unfortunately the data for the meetings of the Convocation of Canterbury in the 2005 quinquennium are not available.

139 In a debate on the Bridge Report in February 1998, the Venerable Barney Hopkinson, Archdeacon of Sarum, said: 'We gathered at four o'clock this afternoon as the sacred members of Synod in Convocation to discuss a union matter, *Under Authority*. We managed just to fill one-third of the time available before going off to see if tea was available anywhere in this part of London. We are spending the rest of the evening discussing whether we should exist or not. If there is reason for us to gather together – I do take all that is said about Convocation – then surely it is not us who have been elected for a legislative purpose, but all of us with our fellow clergy as we do in our chapters and in our dioceses' (*Chronicle of Convocation*, February 1998, p 43). In a debate on draft advice from the House of Bishops to clergy on 'Marriage in church after divorce', Prebendary David Houlding, one of the pro-prolocutors of the Convocation of Canterbury, said: 'I feel that if we can use Convocation for a more informal discussion like this from time to time, we can avoid getting ourselves into a mess on the floor of Synod. We do not have to vote this evening; we can have a discussion. It is a way of making sense of Convocation' (*Chronicle of Convocation*, July 2002, p 13).

140 The Convocation of York met in Full Synod at 9.15 am in July 2000 in order to transact the formal business of amending its Standing Orders in relation to the election of its prolocutor. The Archbishop of York, from the chair, said: 'I apologise for having to call the Convocation this morning for this very brief piece of business', suggesting that this was not a regular occurrence (*Journal of Convocation*, July 2000, p 3).

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met twice outside the margins of Synod: in October 1997 to discuss the same two reports; and again in October 2006. On this second occasion the convocation received presentations on the operation of the Clergy Discipline Measure 2003[141] from its own legal adviser – the Provincial Registrar – and the designated officer under the Measure, responsible for formally investigating complaints against clergy.[142] The convocation then divided into groups to discuss the presentations and carry out workshop activities, including case studies.[143] Again, it appears entirely appropriate for the convocation to have met in this way, given that the subject matter under discussion was so directly related to the ministry of, and impact upon, clergy.[144] Whether such infrequent meetings justify the existence of the convocations is not easy to say, however.

Apart from considering reports from a clerical point of view – valuable in informing later debate at Synod – and attempting to reach a consensus (which, arguably, is one purpose or benefit of convocation debates;[145] the real possibility of the consensuses reached by the two houses, or indeed by the two convocations, being different, however, mitigates against this view), the convocations have also in the period 1995–2015 discussed matters such as the review of the terms of service under which clergy serve[146] and proposed changes to the services of ordination[147] – two items in which the clergy have a vested interest.

One disadvantage of discussing matters in convocation and subsequently at Synod, in the company of the other convocation and the House of Laity, is the possibility of repetition. The Venerable David Jennings, Archdeacon of Southend, commented in a Convocation of Canterbury debate on the Bridge Report in February 2000:

> We need to be careful that we are not . . . trampling over the business that is going to be dealt with later [i.e. during a Synod session]. [However, i]t does

141 Which had only been brought fully into force in January 2006 (Clergy Discipline Measure 2003 (Appointed Day Instrument 2005) (Church Instruments, 2005 No 6)).

142 Clergy Discipline Measure 2003, s 17.

143 *Journal of Convocation*, October 2006, p 14.

144 Sadly the transcript for this session has been lost, so it is not possible to assess what the members of convocation themselves felt about it. One hopes, rather than assumes, that on the whole they did not agree with the Archdeacon of Sarum, who claimed in a Convocation of Canterbury debate on the Bridge Report in February 1998: 'I have seen nothing in admittedly a short time on Synod that could possibly justify the expense and the time of Convocation. *('Hear, hear' and applause)*' (*Chronicle of Convocation*, February 1998, p 43).

145 In a debate on the Bridge Report in the Convocation of Canterbury in February 2000, Prebendary Horace Harper expressed the view that: 'the kind of meeting we want, [is] where we prefer to talk ourselves into a consensus rather than having 'for' and 'against' and then fighting it out on a Parliamentary model' (*Chronicle of Convocation* February 2000, p 92).

146 *Chronicle of Convocation*, July 2003, pp 64–70; *Journal of Convocation*, July 2003, pp 9–28.

147 *Chronicle of Convocation*, February 2005, pp 77–85; *Journal of Convocation*, February 2005, pp 5–29.

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> seem to me that the opportunity to meet in a rather more intimate way is much to be welcomed . . .[148]

While there is nothing to prevent a member raising the same points in convocation as in Synod (indeed, this may be necessary and welcome), members of both houses appear aware of the privilege of discussing certain matters in different fora, and keen not to abuse that freedom by boring their fellow members. As Prebendary Houlding, a doyen of both convocation and Synod, remarked in the same debate:

> If we could use Convocation therefore to feed our debates and to give us some preliminary discussion we could have done that very effectively for this debate on the Creed which might have saved a lot of the to-ing and fro-ing which is still in fact going on.[149]

As the convocations have not met at all in the current quinquennium, and only four times in 2010–2015, there is perhaps rather less risk of such 'to-ing and fro-ing' than might have been the case previously.

The convocations maintain a right to 'claim a reference' under Article 7(2) of the Constitution of the General Synod, permitting them to consider and elect whether to approve business concerning changes to the doctrine, ritual or ceremonial of the Church. Between 1995 and 2015 the convocations claimed references on proposals to: amend the Marriage Resolutions of the convocations in line with a resolution of the Synod to permit remarriage of divorced people in Church in exceptional circumstances;[150] amend the Church's services of ordination;[151] permit baptised but unconfirmed children to receive Holy Communion;[152] and permit women to be ordained and consecrated as bishops.[153] This last piece of business,[154] while approved by all four houses of the convocations, and by the House of Laity, was dramatically not approved by Synod in November 2012, the final approval motion being lost in the House of Laity: perhaps debates in that house when sitting separately are not as successful in establishing a consensus before Synod debates as those in the convocations.

148 *Chronicle of Convocation*, February 2000, p 92.
149 Ibid.
150 *Chronicle of Convocation*, November 2002, pp 29–47; *Journal of Convocation*, November 2002, pp 4–15.
151 *Chronicle of Convocation*, July 2005, pp 109–117; *Journal of Convocation*, July 2005, pp 3–9.
152 *Journal of Convocation*, February 2006, pp 3–9. Unfortunately the *Chronicle of Convocation* for this session is missing.
153 *Chronicle of Convocation*, July 2012, pp 6–9 (Upper House), pp 10–30 (Lower House); *Journal of Convocation*, July 2012, pp 4–23.
154 The draft Bishops and Priests (Consecration of Women) Measure.

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The convocations have also, during this period, taken the initiative and produced of their own volition *Guidelines for the Professional Conduct of the Clergy*, being 'an elaboration of the text of the Ordinal . . . offer[ing] a spiritual and pastoral framework for a lifetime's vocation and ministry as servants of Jesus Christ'.[155] The *Guidelines* are emphatically 'not a legal code but . . . the fruit of shared experience and wisdom offered by clergy to clergy and set within the framework and principles of Canon and Ecclesiastical law'.[156]

It may be queried why the convocations took it upon themselves to draft and publish the *Guidelines*, rather than the House of Clergy.[157] The answer appears to be twofold. First, as a product of the convocations operating together via a working group, rather than the House of Clergy, bishops could be (and indeed were) involved alongside the clergy.[158] As the *Guidelines* apply to clergy in all three orders of ministry, not just deacons and priests, this seems an appropriate rationale. Second, as the *Guidelines* were a product of the convocations, after their approval they could be declared an 'Act of Convocation' – that is, a 'resolution passed by both Houses of the Convocation' expressing their opinion on a particular issue.[159]

Such Acts have been described as a form of 'quasi-legislation',[160] not having 'the force of statute law but . . . great moral force as the considered judgment of the highest and most ancient synod of the province'.[161] Hill contends that 'the principle is of general application',[162] and so also applies to Acts of Synod,[163] which, since 1970, have replaced Acts of Convocation in the Church of England's (pseudo-)legislative perambulations.[164] In the Convocation of Canterbury debate on the *Guidelines* being declared an Act, the prolocutor stated: 'I understand from Stephen Slack [Registrar and Chief Legal Adviser to the General Synod] that the most recent Act of Convocation was in 1968.'[165] The fact that the convocations chose to declare the *Guidelines* an Act

155 *Guidelines for the Professional Conduct of the Clergy* (London, 2015), p ix.
156 Venerable Cherry Vann, Archdeacon of Rochdale, Prolocutor, *Journal of Convocation*, July 2015, p 10.
157 The House of Clergy has, itself, recently begun work on drafting a 'Covenant for Clergy Wellbeing': 'Clergy Wellbeing', GS 2072.
158 Two bishops served on the Joint Convocations Working Party (*Guidelines for the Professional Conduct of the Clergy*, p x), as, it appears, did one lay person.
159 Doe, *Legal Framework*, p 21.
160 See M Hill, *Ecclesiastical Law* (third edition, Oxford, 2007), para 1.35.
161 *Bland v Archdeacon of Cheltenham* [1972] Fam 157 at 166.
162 M Hill, *Ecclesiastical Law* (fourth edition, Oxford, 2018), para 1.34, n 104.
163 Made under Article 6(a)(iv) of the Synod's constitution.
164 The best-known Act of Synod was the Episcopal Ministry Act of Synod 1993, which made provision for alternative episcopal oversight of parishes which could not accept the ministry of their diocesan bishop due to his having ordained women as priests. This was rescinded by another Act of Synod, the 'Act of Synod Rescinding the Episcopal Ministry Act of Synod 1993', in 2014 and replaced with the House of Bishops' *Declaration on the Ministry of Bishops and Priests*, another form of quasi-legislation. See N Doe, 'Ecclesiastical quasi-legislation' in N Doe, M Hill and R Ombres (eds), *English Canon Law* (Cardiff, 1998), p 95.
165 Revd Canon Simon Butler, Prolocutor, *Chronicle of Convocation*, July 2015, p 8.

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is therefore significant. It indicates the importance that the clergy of both provinces attach to the *Guidelines* as the 'collective and formal expression'[166] of their will, and to the convocations as their ancient representative bodies, historically empowered to make such pseudo-legislation.

The status of Acts of Convocation – particularly their justiciability – is a complex issue. Slack contends that, as such Acts judicially have only moral and not statutory force on account of the judgment in *Bland v Archdeacon of Cheltenham*,[167] they are not capable of creating 'legally enforceable rights or duties'.[168] Doe, however, suggests that, if a bishop were to issue a direction to do (or, feasibly, refrain from doing) something to comply with a matter contained within an Act of Convocation, and a cleric refused or otherwise failed to submit to that direction, this 'may give rise to legal proceedings and thus indirectly render the terms of the Act judicially enforceable',[169] given the cleric's obligation to 'pay true and canonical obedience ... in all things lawful and honest' to their diocesan bishop.[170] It is hard to imagine a case where this might be tested in relation to the *Guidelines*, given their declaratory and innocuous content. But the Episcopal Ministry Act of Synod 1993, before it was rescinded, stated:

> Except as provided by the Measure and this Act no person or body shall discriminate against candidates either for ordination or for appointment to senior office in the Church of England on the grounds of their view or positions about the ordination of women to the priesthood.[171]

Thus theoretically, had an archbishop instructed their diocesan bishops to abide by the terms of the Act and a diocesan bishop had elected not to, refusing to sponsor a candidate because they could not in conscience accept the ministry of women priests, it appears that that bishop would have breached their oath of obedience to the archbishop.[172] Consequently, while Acts of Convocation may never require judicial enforcement, it seems that they could be capable of such.[173]

Historically there were divergences between the Acts passed by each convocation, given the independence of each convocation to 'legislate' in this way. Doe gives the example of the admission to baptism or Holy Communion of a person who has remarried after divorce (or their spouse), the former spouse still being

166 S Slack, 'Synodical government and the legislative process', (2012) 14 Ecc LJ 43–81 at 51.
167 *Bland v Archdeacon of Cheltenham* [1972] Fam 157.
168 Slack, 'Synodical government and the legislative process', p 52.
169 Doe, *Legal Framework*, p 21. See also Doe, 'Ecclesiastical quasi-legislation', p 99.
170 Oath of Canonical Obedience, contained in Canon C 14(3).
171 Episcopal Ministry Act of Synod 1993, s 1.
172 See Canon C 14(4).
173 The principle being the same, *per* Hill (Hill, *Ecclesiastical Law* (third edition), para 1.35, n 135).

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alive.[174] Both convocations passed resolutions in June 1938 relating to 'Divorce and nullity'.[175] York's contained a provision that, should the previously married person or their new spouse desire baptism or to receive Holy Communion, the curate must refer the matter to the bishop.[176] If the bishop considered that admitting the person to the sacrament 'ought not to give grave offence to the Church nor would be to the hurt of their own souls, he shall direct that they be not excluded therefrom by reason of the marriage so contracted'.[177] Owing to dispute between the houses of the Convocation of Canterbury, no corresponding provision was affirmed until 1957,[178] resulting in a period where the law regarding admission to the sacraments was different between the two provinces. This occurred again in 1982, when the General Synod revoked the Convocation of Canterbury's resolution: 'The equivalent Resolutions made by the York Convocation may still be operative in the York province, as the General Synod did not expressly revoke these.'[179] Doe speculates, however – reassuringly – that *per* Canon H 1(2):

> in the event of any inconsistency [between a Convocation instrument and one of Synod], the provision made by the General Synod shall prevail . . . it is arguable that General Synod's Resolutions (1982–5), revoking the Canterbury Convocation Resolutions 2A–B of 1957, prevail over the York Convocation Resolutions of 1938.[180]

Either way, such situations would suggest that the two convocations legislating differently, while symbolic of their independence and heritage, could be a distinct disadvantage of the previous system before the advent of the General Synod.[181] For this reason the General Synod is in the process of amending the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 to provide that: 'A decision of the Arches Court of Canterbury or the Chancery Court of York is binding on the other Court to the same extent as it is binding on the Court itself.'[182] Until then,

174 Doe, *Legal Framework*, p 345.
175 Resolution VII(a), contained in H Riley and R J Graham (eds), *Acts of the Convocations of Canterbury and York* (London, 1971), pp 117–124.
176 Resolution VII(a)5(a), contained in ibid, p 118.
177 Resolution VII(a)5(b), contained in ibid, p 118.
178 Resolution VII(a)2(a), contained in ibid, p 123.
179 Doe, *Legal Framework*, p 377.
180 Ibid, p 377, n 137.
181 Historically this had also occurred with Canons: in 1865 the Convocation of Canterbury made a new Canon removing the prohibition on parents acting as godparents to their own offspring. The Convocation of York did not make a similar Canon. As the Canon was never ratified by the Crown, however, it is unlikely to have caused much upset (Phillimore, *Ecclesiastical Law*, vol I, paras 487–488).
182 Draft Church of England (Miscellaneous Provisions) Measure, GS 2064.

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> A judgment of the Court of Arches of Canterbury is not a binding authority in the Province of York, but is naturally treated with the greatest respect, in particular because the judge of the two provincial courts is required by statute to be the same person.[183]

Again, this is a consequence of the autonomy of the two provinces which, while charming, can prove to be administratively and logistically problematic.

Another issue arises in relation to Acts of Convocation. While the Canons state that, 'By ancient custom, no Act is held to be an Act of the Convocation of the province unless it shall have received the assent of the archbishop',[184] there is no express provision for the declaration of such an Act in the Standing Orders of either Convocation. This fact was raised in the Convocation of York during the debate on the proposal that the *Guidelines* be declared an Act of Convocation. The Archbishop of York, from the chair, attempted to mollify the consciences of his members:

> You are following in the footsteps of your predecessors who passed Acts way back without Standing Orders allowing them but, nevertheless, once you pass a resolution and you send it out that becomes an Act. You have got the powers without a Standing Order to do so. You are not doing anything contrary to common law.[185]

While this may be technically accurate, it seems perverse that there should be provisions restricting what may be considered an Act of Convocation but not how to actually make one. The necessity to rely on historic precedent ('custom *praeter legem*'[186]) rather than definitive provision seems not to have worried members of the convocations overly much, and appears to have resulted in a new subspecies of quasi-legislation: post-Synodical Acts of Convocation. It will be interesting to see whether the convocations declare any more such Acts: such an action may, in time, have 'its sole justification in the sanction of long custom', and its enforceability require testing.[187] Indeed, as Podmore exhorts: 'it is worth studying [the *Guidelines*], because Clergy Discipline tribunals do

183 *Re St Mary, Tyne Dock No 2* [1958] P 156 at 169.
184 Canon C 17(5).
185 Archbishop of York, *Journal of Convocation*, July 2015, p 12.
186 Doe, *Legal Framework*, p 87.
187 Sir Lewis Dibdin, Dean, in *Marson v Unmack* [1923] P 163 at 168. The case related to the tradition, in a parish, of taking a collection during matins or evensong, as well as at Holy Communion.

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take them into account in considering whether a cleric has engaged in conduct unbecoming'.[188] The day may be near at hand.[189]

CONCLUSION

The convocations have a rich and varied history. They have changed form and responsibility numerous times, from being deliberative bodies where 'the role of the Lower House … was to offer the Upper House … their counsel and to consent (or not) to the bishops' proposals',[190] to gatherings concerned solely with levying taxes on themselves to be paid to the Crown, only to transform back into representational assemblies for their provinces tasked with the weighty responsibility of discussing doctrine, faith and liturgy on behalf of the whole Church in England. They possessed supreme legislative competence for centuries, only to have it removed at a stroke by the Submission of the Clergy Act 1533, which also prevented them from meeting without royal permission. Working within those parameters, they played a large part in revising and approving one of the most recognised publications in the world – the 1662 *Book of Common Prayer*. Since the advent of synodical government, their members have served alongside the lay faithful in deliberating and legislating on matters concerning the Church of England, sharing their legislative capability in making Canons equally since 1970. As the major constituent part of the Church Assembly and later the General Synod, the convocations have played a vital role in all of the Church's activities and reforms since it was permitted to legislate for itself by virtue of the Church of England Assembly (Powers) Act 1919.

Their membership is broad-based, and has adapted over the years to take account of changing circumstances and requirements. It represents many classes and categories of cleric, ensuring representation in the Church's councils of many groups, as well as ensuring that those same councils are imbued with a breadth and depth of knowledge and understanding. Other groups of

188 C Podmore, 'The seal of the confessional in the Church of England: historical, legal and liturgical perspectives', lecture for the Bishop of Richborough's Initial Ministerial Education Session, 14 November 2016, p 10, available at: <https://www.forwardinfaith.com/uploads/16_11_The_Seal_of_the_Confessional_in_the_Church_of_England.pdf>, accessed 1 January 2018.

189 There is another instance of custom related to the Convocations. As was observed earlier, the Queen may summon and dissolve the convocations at whatever times she wishes, but this must be 'Notwithstanding any custom or rule of law to the contrary' (Church of England Convocations Act 1966, s 1(1).). As there no longer seems to be any such custom or law, the provision would appear to be spent (see judgment of Lord Dunboyne CG in *Re St Mary's, Westwell* [1968] 1 WLR 513 at 514: 'that no directive, rule or usage of pre-Reformation canon law was any longer binding on the court unless pleaded and proved to have been recognised, continued and acted upon since the Reformation').

190 C Podmore, 'A tale of two churches: the ecclesiologies of the Episcopal Church and the Church of England compared' (2008), 10 Ecc LJ 34–70 at 66.

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individuals might also be deserving of particular representation, ministering somewhat outside the traditional diocesan structures, in non-parochial ministry, or who are otherwise not well represented among the convocations' membership – school, hospital and workplace chaplains, leaders of Fresh Expressions and pioneer ministers, retired clergy, permanent deacons, bishops' chaplains, self-supporting/non-stipendiary ministers and so on – should there be a desire for any further reform.

While, apart from their activity as constituent parts of the Synod, the convocations tend to meet only to transact formal business, they have the ability – indeed are occasionally required – to meet to discuss and agree certain matters. Under Article 7 of the Synod's constitution they maintain a form of legislative competence, in that they are able – by claiming a reference of business relating to doctrine, ritual or ceremonial – to vote (by house) either to approve that business or not. Nothing prohibits them from making their choice, and if one house of either convocation elects not to approve an item, they have exercised a temporary veto – the business is required to be referred a second time.[191]

The convocations also possess an admittedly weak form of legislative competence all their own, through Acts of Convocation. While the use of these instruments in the convocations' history is plentiful, their employment following the arrival of the General Synod is still in its infancy, the *Guidelines for the Professional Conduct of the Clergy* being the only instance thus far. It may be that on future occasions where the clerical members of the Synod wish formally to express their combined considered judgement on a matter, or else imbue a statement, document or publication with a degree of authority of their own making, this is the course they will take. Any distinctly clergy-owned document relating to safeguarding, clergy wellbeing or the exercise of the ministry of reconciliation would be a likely candidate for treatment in this way.

The convocations have survived several attempts, in their long existence, at eradication. Briden suggests that part of the reason for their survival is their longevity:

> They have, however, survived, partly because of a reluctance to abolish institutions which are older than Parliament, partly from a fear lest, if they went, the larger southern province would by force of numbers swamp the smaller northern province, and partly from recognition of the fact that the clergy, like every professional body, needs a purely professional forum in which to exchange views.[192]

191 Constitution of the General Synod, Article 7(5).
192 Briden, *Moore's Introduction*, p 32.

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His second point, regarding the possibility of the Province of York's demise in a Church with no convocations, is certainly pertinent. The two provinces are by their nature distinct – not only in practice and tradition but in their contexts. The north of England is, on the whole, less populated, less affluent and (as a result, it sadly seems) less popular as a place for clergy to serve. There is therefore all the more need for that province to be involved at the heart of the Church's councils and for its voices to be heard. The Province of Canterbury would certainly be the worse off for their absence, as – it is respectfully submitted – would the Church of England.

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