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Constitutional Law--Freedom of Religion--Limitation on Civil Courts in Intra-Church Property Disputes

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COMMENTS

CONSTITUTIONAL LAW—FREEDOM OF RELIGION—LIMITATION ON CIVIL COURTS IN INTRA-CHURCH PROPERTY DISPUTES*

I. INTRODUCTION

Churches, as regularly as any other juristic person, buy, sell, lease and mortgage their property. So long as any litigation which may result from these transactions involves the church and a secular party, civil courts have not hesitated to adjudicate the rights of the respective parties. However, when disputes over church property have arisen within a church, most courts have not been so willing to act.[1] In intra-church property dispute cases the courts are faced with a dilemma. On the one hand, there is the necessity of settling questions of property ownership. On the other hand, there is the desire not to take sides in religious disputes.

> Of the hundreds of reported contests between rival religious groups over church properties, nearly all are, at heart, either controversies over the identity of the authoritative decision-making body or over the purposes for which the decision-making body can validly

* Presbyterian Church in the United States v. Hull Memorial Presbyterian Church, 89 S. Ct. 601 (1969).

1. A typical expression of this reticence—in the language of that day—is found in an early South Carolina case.

> I would not allow myself to believe, that parties professing that religion which, above all others, inculcates peace, humility and forgiveness of injuries, would reject the suggestions of christian friends, proposing terms of reconciliation, or fail to seize with avidity the opportunities so frequently afforded, since the hearing, to accommodate a dispute so dishonoring to the Saviour whom they follow, so disreputable to themselves, and so destructive to the church. Being, now, painfully convinced that there is an unhallowed bitterness in this lamentable controversy . . . which forbids the hope of reconciliation among the litigants, I am reduced to the deplorable necessity of delivering the judgment of a civil tribunal in a case of a spiritual nature.

Harmon v. Dreher, Speers' Eq. 87, 90-91 (S.C. 1843). It has also been suggested that the courts have been too willing to involve themselves in internal church disputes— expressions to the contrary notwithstanding. Chafee, *The Internal Affairs of Associations Not for Profit*, 43 HARV. L. REV. 993, 1023-24 (1930).

> use the properties consistently with principles of the institution. These are really religious questions. They become legal questions only when the law determines that it will support one side or the other. Perhaps the courts must decide these cases one way or the other in order to preserve the rule of law. But it would seem that in doing so they have unwittingly approached the limits of constitutionality.[2]

The question of the constitutional limits on a civil court's power to decide contests over church property between religious groups is a question of national interest and importance. Denominational mergers and increased involvement of churches in current social, economic, and political issues are spawning grounds for intra-church controversies. When these disputes prove to be irreconcilable the question of who is entitled to the church property usually arises.

Church property was the subject matter of the dispute in *Presbyterian Church in the United States v. Hull Memorial Presbyterian Church.*[3] Two local Presbyterian churches in Savannah, Georgia, voted to withdraw from the general church body and to establish themselves as independent organizations.[4] The ministers and a large majority of the Session renounced the authority of the general church. The Presbytery of which the churches were members appointed a commission to seek a reconciliation. This effort being unsuccessful, the commission acknowledged the withdrawal of the ministers and the members of the congregation and "proceeded to take over the local churches' property on behalf of the general church until new local leadership could be appointed."[5] Instead of appealing to the Synod of Georgia or the General Assembly, the dissident

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2. Casad, *The Establishment Clause and the Ecumenical Movement,* 62 MICH. L. REV. 419, 434 (1964).
3. 89 S. Ct. 601 (1969).
4. The Presbyterian Church is an association of local Presbyterian churches. The government of the church is through a system of ascending judicatories. These are the Session, which is composed of Elders elected by the local congregation, the Presbytery, which is composed of a number of local churches, the Synod, which is composed of the Presbyteries within a state as a general rule, and the General Assembly, which is the highest judiciary. *See* 89 S. Ct. 601 (1969); Watson v. Jones, 80 U.S. (13 Wall.) 679 (1872); Bouchelle v. Trustees of the Presbyterian Congregation, 22 Del. Ch. 58, 194 A. 100 (1937); Bramlett v. Young, 229 S.C. 519, 93 S.E.2d 873 (1956).
5. 89 S. Ct. at 603.

members sought an injunction in the civil courts asking that the general church be enjoined from trespassing.

The dissident members argued that the general church had departed from doctrines observed by the Presbyterian Church when the two local churches had associated with that organization; that the general church had violated its own constitution; and, therefore, neither the local churches nor the civil court was bound by a decision of the general church as to the property. The Georgia Supreme Court affirmed the trial court's decision in favor of the local churches[6] on the theory that Georgia law implies a trust of local church property for the benefit of the general church on the sole condition that the general church adhere to its tenets of faith and practice existing at the time of affiliation by the local churches.[7] The United States Supreme Court reversed and remanded, holding that civil courts could not resolve church property disputes by interpreting ecclesiastical decisions.

II. THE DOCTRINE OF WATSON *v.* JONES

The leading case in this area of constitutional law[8] has been *Watson v. Jones*.[9] It, too, involved a dispute over church doctrine between factions within a local Presbyterian church. The dissident faction sought to withdraw from the general church organization and take the property with it. Another faction of the congregation remained loyal to the general church and was recognized by the general church. The Court said that the trustees of the local church, who held nominal title to the property, "obviously [held] possession for the use of the persons who by the constitution, usages and laws of the Presbyterian body, [were] entitled to that use."[10] The resolution of the question of which faction was entitled to the property was made to turn on the decision of the general church as to which faction constituted the true Presbyterian church.

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6. Presbyterian Church in the United States v. Eastern Heights Presbyterian Church, 224 Ga. 61, 159 S.E.2d 690 (1968).
7. 89 S. Ct. at 603.
8. *See generally* C. ZOLLMAN, AMERICAN CHURCH LAW §§ 330-40 (1933); Casad, *The Establishment Clause and the Ecumenical Movement*, 62 MICH. L. REV. 419 (1964); *Judicial Intervention in Church Property Disputes—Some Constitutional Considerations*, 74 YALE L.J. 1113 (1965); 54 VA. L. REV. 1451 (1968).
9. 80 U.S. (13 Wall.) 679 (1872).
10. *Id.* at 720.

> [W]henever the question of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.[11]

The grounds on which the Court based its decision were three-fold. First, the right of individuals to form religious societies and organize them as they saw fit was well recognized throughout the country. The Court reasoned that this privilege would be a hollow one if the governing authority of the society, as set up by its members, were to be constantly undermined by the civil courts.[12] Second, any persons who chose to join such an organization did so "with an implied consent to this government, and are bound to submit to it."[13] Third, the Court felt that civil courts would not be as competent to answer religious questions concerning the doctrines of the numerous sects as would the appointed bodies within each sect. "It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to the one which is less so."[14] For these reasons the Court held that although the civil courts are obligated to settle property disputes between religious bodies, they may not do so on the basis of resolving questions of religious faith and doctrine.

In addition, the Court in *Watson v. Jones* sought to set up guidelines for civil courts in cases concerning all intra-church property disputes. These cases were separated into three general classifications.

> 1. The first of these is when property which is the subject of the controversy has been by deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support or spread of some specific form of religious doctrine or belief.
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> 2. The second is when the property is held by a religious congregation which by the nature of its organization, is strictly independent of other ecclesiastical

11. *Id.* at 727.
12. *Id.* at 729.
13. *Id.*
14. *Id.*

> associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.
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> 3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole membership of the general organization.[15]

As to the first classification—where the property is subject to express conditions—the Court expressed no doubt that civil courts should see that the terms of the instrument are carried out. To accomplish that end the courts might inquire into matters of religious faith and doctrine.[16]

As to the second classification—where the property is held by a church which adheres to a congregational or independent form of government—the right to the use and control of the property should be determined according to the principles governing voluntary associations. This, in the usual situation, would be according to a majority rule unless some other method were agreed upon. Since there is no express trust of the property in such cases, the courts should not imply one "for the purpose of expelling from its use those who by regular succession and order constitute the church, because they may have changed in some respect their views of religious truth."[17]

It was into the third classification—where the property is held by a church which adheres to a hierarchical form of government—that the case before the Court was placed.[18] As noted above, the civil courts in such a case must accept the decision of the church judiciary which the factions had recognized before their dispute.

Since the dispute before the Court in *Watson* was within the third classification, the Court's guidelines as to the first two classifications were dictum. Also, the principles were based on

15. *Id.* at 722-24.
16. *Id.* at 723-24.
17. *Id.* at 725.
18. Courts sometimes refer to hierarchical churches as associated or connectional in contrast to the congregational or independent churches. *See, e.g.,* Hardin v. Horger, 166 S.E.2d 215 (S.C. 1969).

federal common law rather than on constitutional requirements. The case, moreover, was decided before *Erie Railroad Co. v. Tompkins*[19] and before the first amendment was made applicable to the states via the fourteenth amendment.[20] In spite of these limitations on the decision's authority, the guidelines have been widely accepted and followed.[21]

Because of these limitations, however, and because questions regarding the ownership and use of property are primarily matters of state concern, litigation arising out of intra-church property disputes has been confined largely to the state courts.

The Court followed the doctrine of *Watson v. Jones* in *Gonzalez v. Roman Catholic Archbishop of Manilla*,[22] a case in which a chaplaincy in the Roman Catholic Church was the subject matter under dispute. The chaplaincy was founded in a will by which the testatrix transferred certain property to the archbishop to maintain the chaplaincy, and made provision for the appointment of the chaplain. The petitioner, Gonzalez, presented himself to the Archbishop for appointment. Although he qualified under the provisions of the will as the nearest living relative of the testatrix, the Archbishop denied him the chaplaincy on the ground that he was unqualified according to the canon law of the church.[23] Justice Brandeis, speaking for the Court, made no mention of the Constitution. He cited *Watson* as authority for the Court's decision not to direct the Archbishop to appoint Gonzalez to the chaplaincy.

19. 304 U.S. 64 (1938). *Watson* originated in a Kentucky District Court. Federal jurisdiction was based on diversity of citizenship.

20. Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 115-16 (1952). Other cases have established that the first amendment privileges are protected from state action. *See, e.g.,* Cantwell v. Connecticut, 310 U.S. 296 (1940); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923).

21. *See* Bouchelle v. Trustees of the Presbyterian Congregation, 22 Del. Ch. 58, 194 A. 100 (1937); First Protestant Reformed Church v. De Wolfe, 344 Mich. 624, 75 N.W.2d 19 (1956); Kelly v. McIntire, 123 N.J. Eq. 351, 197 A. 736 (1938); Turbeville v. Morris, 203 S.C. 287, 26 S.E.2d 821 (1943); Anderson v. Byers, 269 Wis. 93, 69 N.W.2d 227 (1955). Although *Watson* has been widely followed, it would be too great an oversimplification to say that the principles for solving intra-church property disputes are clear and this area of the law is certain. "Like equity of old is said to have differed with the length of the feet of the various chancellors who dispersed it, so justice in this important subject will differ with the sense of right and wrong of the particular judge or judges before whom any particular controversy is decided." C. ZOLLMAN, AMERICAN CHURCH LAW § 320, at 305 (1933).

22. 280 U.S. 1 (1929).

23. *Id.* at 11-12.

> In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.[24]

There being no allegation of fraud, collusion, or arbitrariness, nor any evidence that the controlling canon law was not followed, the Court accepted the Archbishop's decision as to Gonzalez's appointment.[25]

In the 1952 case of *Kedroff v. St. Nicholas Cathedral*[26] the Supreme Court raised the *Watson* decision to constitutional status. The question involved was the right to the use and control of St. Nicholas Cathedral of the Russian Orthodox Greek Catholic Church. The property was claimed by both the American and the Russian branches of the church. The decision turned on which of the two bishops appointed by the respective branches was entitled to occupancy of the Cathedral. The New York Court of Appeals had held that the American bishop was entitled to occupancy, relying on a New York statute which had in effect declared the American branch an independent and autonomous religious organization.[27] The Supreme Court reversed and remanded declaring the statute an unconstitutional prohibition on "the free exercise of an ecclesiastical right, the Church's [the Russian branch's] choice of its hierarchy."[28] The Court quoted extensively from *Watson.*

> The opinion [*Watson v. Jones*] radiates . . . a spirit of freedom for religious organizations, an independence from secular control or manipulations, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection

24. *Id.* at 16.
25. *Id.* at 18.
26. 344 U.S. 94 (1952).
27. St. Nicholas Cathedral v. Kedroff, 302 N.Y. 1, 96 N.E.2d 56 (1950).
28. 344 U.S. 94, 119 (1952).

as a part of the free exercise of religion against state interference.[29]

III. THE FUNDAMENTAL DEVIATION EXCEPTION

An important exception to the *Watson* guidelines has been recognized by some courts. Particularly where congregational church property disputes are involved, courts have allowed the majority to control and use the property only so long as the majority remained faithful to the tenets of faith and doctrine observed in the church before the dispute arose. Where, however, the majority has adopted a fundamental deviation from the church's faith and doctrine, the minority faction has been held entitled to the use and control of the property. These decisions have sometimes been based on an implied trust theory[30] and sometimes on the ground that it is a necessary restraint on the powers of the majority.[31] In these cases the courts have had to deal with and decide religious issues. They have had to decide which doctrines were recognized by the factions before their dispute and whether the doctrinal deviations are fundamental.

As noted above, the fundamental deviation argument has been applied most often in the case of congregational churches. It has sometimes, however, been used in hierarchial church disputes.[32] This was the argument urged on the Court by the two local churches in the *Hull Memorial Presbyterian Church* case. The Court, however, quite clearly struck down this exception to the principle of *Watson*:

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29. *Id.* at 116. On remand, the New York court again awarded the property to the American branch, this time on the basis of the state's common law. St. Nicholas Cathedral v. Kreshik, 7 N.Y.2d 191, 164 N.E.2d 687 (1959). The controversy reached the Supreme Court again in Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960), and again the Court reversed. The action of the New York judiciary was deemed as unconstitutional as that of the New York legislature. For a critical analysis of the St. Nicholas Cathedral decisions, *see* P. KURLAND, RELIGION AND THE LAW 91-96 (1962) *and* 74 YALE L.J. 1113, 1123-28 (1965).

30. Ashman v. Studebaker, 115 Ind. App. 73, 56 N.E.2d 674 (1944); Hall v. Deskins, 252 S.W.2d 417 (Ky. Ct. App. 1952); Annot., 70 A.L.R. 75 (1931); Annot., 8 A.L.R. 105 (1920).

31. Huber v. Thorn, 189 Kan. 631, 371 P.2d 143 (1962); Reid v. Johnston, 241 N.C. 201, 85 S.E.2d 114 (1954).

32. More often that not the argument, when applied in a hierarchical church situation, has been unsuccessful. *See, e.g.,* Bouchelle v. Trustees of the Presbyterian Congregation, 22 Del. Ch. 58, 194 A. 100 (1937); First Protestant Reformed Church v. DeWolfe, 344 Mich. 624, 75 N.W.2d 19 (1956); Kelly v. McIntire, 123 N.J. Eq. 351, 197 A. 736 (1938). The argument was adopted, however, in Landrith v. Hudgins, 121 Tenn. 556, 120 S.W. 783 (1907).

> [T]he departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role.[33]

IV. CONCLUSION

Although in the *Hull Memorial Presbyterian Church* decision the Supreme Court has again affirmed *Watson*, as modified by *Gongalez*, and given it constitutional standing, there are questions which remain unanswered and which will need to be determined by future litigation in this area of the law. That there is still some doubt as to how much of the guidelines set out in *Watson* is required by the Constitution, is evident in Justice Harlan's concurring opinion. He agrees with the rejection of the fundamental deviation principle, but he questions whether the Constitution prohibits the courts from deciding religious questions in order to carry out the terms of a conveyance where church property is subject to express conditions that the property be held only so long as certain religious doctrines are observed. He answers this query in the negative.[34] This issue, however, was not before the Court, and Justice Brennan, writing for the majority, did not deal with it. It would seem that a church which accepted property subject to express conditions would, by its acceptance, imply its consent to have any questions regarding a breach of those conditions settled by the civil courts. On the other hand, it is arguable that where there is no expression to the contrary, the person creating the conditions involving the religious may have "preferred to abide by a final decision from the theologians of his church rather than from a court which would very likely include members of entirely different faiths or no faith at all."[35]

In refusing to broaden the doctrine of *Watson*—except as modified by *Gonzalez*—the Supreme Court has set rather narrow constitutional limits on the civil courts in intra-church property disputes. The civil courts can review ecclesiastical decisions

33. 89 S. Ct. at 607.
34. *Id.* at 608.
35. Chaffee, *The Internal Affairs of Associations Not for Profit*, 43 HARV. L. REV. 993, 1024 (1930).

which affect rights to property only to determine whether those decisions "resulted from fraud, collusion, or arbitrariness."[36] The Court chose not to explain the limits of this right of review which was adopted from the *Gonzalez* decisions.[37] Unfortunately, Justice Brandeis' opinion in *Gonzalez* sheds little additional light.[38] These terms—fraud, collusion, and arbitrariness—suggest a review of the manner or procedures by which a church, whether congregational or hierarchical, decides a religious question rather than a review of the substance of the decision. However, a church's procedure for deciding religious questions is a part of its form of government to which a member agrees, either expressly or implicitly, to submit upon association with the church. The form of church government, *i.e.*, the procedure by which a church reaches ecclesiastical decisions, is protected by the first and fourteenth amendments from interference by the state. This is the essence of the *Watson*, *Gonzalez*, *Kedroff*, and *Hull Memorial Presbyterian Church* decisions. If, therefore, a church follows its own appropriate rules in reaching ecclesiastical decisions which affect church property, it will be difficult to prove fraud, collusion, or arbitrariness.

Finally, there is the question of whether states, religious organizations and individuals can "structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions,"[39] as the Court's opinion suggests they should do, so that "neutral principles of law . . . can be applied without 'establishing' churches to which property is awarded."[40] This also will be difficult to do. As Justice Frankfurter pointed out in his concurring opinion in *Kedroff v. St. Nicholas Cathedral*: "St. Nicholas Cathedral is not just a piece of real estate. . . . A cathedral is the seat and center of ecclesiastical authority. . . . What is at stake here is the power to exercise religious authority. That is the essence of this controversy."[41] And that is an ecclesiastical question.

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36. 89 S. Ct. at 607.
37. *Id.* n.7.
38. See text accompanying note 25 *supra.*
39. 89 S. Ct. at 606.
40. *Id.*
41. 344 U.S. 94, 121 (1952).