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Constitutional Law - Freedom of Religion - Judicial Intervention in Disputes Within Independent Church Bodies

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COMMENTS

CONSTITUTIONAL LAW — FREEDOM OF RELIGION — JUDICIAL INTERVENTION IN DISPUTES WITHIN INDEPENDENT CHURCH BODIES —In his letter to the early Christian church at Corinth, the Apostle Paul instructed the brethren to avoid going to law against each other and instead to settle their differences among themselves.[1] But the number of church controversies culminating in court action indicates that church societies have not succeeded in complying with this apostolic admonition. The problem of settling with finality a schismatic dispute is especially severe in autonomous, self-governing congregations.[2] Recognizing no higher ecclesiastical authority, the aggrieved faction resorts to the only available tribunal—the civil court. The divergence of judicial reaction to such disputes is high-lighted by two recent cases arising concurrently in separate jurisdictions. In Illinois the appellate court upheld the power of an independent congregation to change its national affiliation while the North Carolina Supreme Court denied the propriety of similar action by the majority of a local church.[3] It is the purpose of this comment to set forth the several principles applied by courts in determining controversies in independent church groups and to consider the constitutional implications of judicial intervention.

I. *Property Rights Must Be Affected*

American courts consistently decline jurisdiction over ecclesiastical matters where property rights are not involved.[4] Accordingly, the revocation of the privilege of participating in Communion has been held not subject to court review.[5] And whether a complaint alleging wrongful dismissal from church membership will be heard may depend entirely upon the court's finding as to whether or not property rights are affected.[6] However, this initial juris-

1 I Corinthians 6:1-6.

2 Religious organizations may be divided into three general categories as to their form of government: (1) monarchical, authority being centralized in the spiritual leader; (2) associated, with authority vested in a governing body such as an assembly; (3) independent or congregational, the local assembly retaining all control. TORPEY, JUDICIAL DOCTRINES OF RELIGIOUS RIGHTS IN AMERICA 121 (1948); 3 STOKES, CHURCH AND STATE IN THE UNITED STATES 376 (1950). The discussion in this comment is limited to the third type.

3 Ginossi v. Samatos, 3 Ill. App. (2d) 514, 123 N.E. (2d) 104 (1954) and Reid v. Johnston, 241 N.C. 201, 85 S.E. (2d) 114 (1954). Both cases are discussed in detail below.

4 3 STOKES, CHURCH AND STATE IN THE UNITED STATES 386 (1950).

5 Carter v. Papineau, 222 Mass. 464, 111 N.E. 358 (1916).

6 In Clapp v. Krug, 232 Ky. 303, 22 S.W. (2d) 1025 (1929), expulsion proceedings were

dictional requirement is invariably met in suits between contending groups within an independent congregation. When the dispute reaches the litigation stage, the issue before the court is which faction is entitled to the use and possession of the church premises.

II. *The Principle of Majority Rule*

In the leading case of *Watson v. Jones*,[7] there is extensive dictum[8] to the effect that absent an express trust, or unless some other principle of government has been adopted, independent congregations are controlled by a numerical majority, the action of which is not subject to judicial scrutiny. It is not difficult to find cases which, on their facts, support this proposition. For example, the Mississippi court dismissed a petition for an injunction which would have allowed a dismissed pastor and those loyal to him the use of the premises from which they had been excluded.[9] On behalf of the pastor it was alleged that the action of the controlling faction in expelling him and his adherents because he "went Fundamentalist" was unauthorized in that customary procedure was not followed. However, the court observed that in the matter giving rise to the dispute the action of the majority was supreme. The affair was termed "ecclesiastical and not one for the civil courts."[10]

Similarly, a dissident faction claiming to be the "true doctrinaires" of the Primitive Baptist Faith was denied restoration of church property.[11] Relief was sought on the ground that the church departed from its fundamental practices in expelling some members and admitting others while the congregation was "in confusion." The court disclaimed jurisdiction, saying, "In the instant case the church, through it congregation, was the final arbiter. . . ."[12]

But courts do not always follow the hands-off policy in defer-

reviewed and set aside as to a salaried church clerk, but the court refused to consider the question as to other members on the ground that no civil rights had been infringed. But for expressions to the effect that church membership alone does involve justiciable rights, see 20 A.L.R. (2d) 421 at 454 (1951).

7 13 Wall. (80 U.S.) 679 (1871).

8 The Supreme Court held in this case that the decision of the General Assembly of the Presbyterian Church U.S.A., constituting the church's highest judicatory, was not subject to judicial review.

9 Grantham v. Humphries, 185 Miss. 496, 188 S. 313 (1939).

10 Id. at 499.

11 Mount Olive Primitive Baptist Church v. Patrick, 252 Ala. 672, 42 S. (2d) 617 (1949).

12 Id. at 675.

ence to majority rule. Although the facts of individual cases multiply the variations, three separate grounds for court intervention are reflected in recent decisions.

III. *Grounds for Judicial Intervention*

A. *Enforcement of a Trust.* Probably the least reluctance to intervene in church disputes is shown by courts when the property affected is held subject to an express trust.[13] The right to possession in such cases will be awarded to the group acting in harmony with the declared trust terms.[14] The operation of this principle is illustrated in a recent Kentucky decision[15] involving a conveyance to the "trustees of the Church of Christ," with the deed further specifying that the property was to be used "for the benefit of the Church of Christ and . . . not for any other purpose." The court granted an injunction preventing a faction within the congregation from using the premises as a "Christian Church." In express trust cases it is immaterial that the group objecting to the diversion constitutes only a small minority.[16]

But the application of trust principles is not limited to instances where a specific trust intent has been declared. By invoking a doctrine of implied trusts, courts will intervene to prevent practices found to be inimical to the purposes stated in the articles of incorporation or implied by the adoption of a denominational name. Accordingly, property acquired by a society incorporated as an Evangelical Lutheran church was said to be impressed with a trust for the advancement of that denomination, so that inviting to the pulpit ministers of the Mission Friends church was an enjoinable diversion.[17]

Where the contending factions represent separate and well-recognized denominations, the implied trust theory achieves what appear to be satisfactory results. However, not every case is that

[13] As to what will suffice as an expression of charitable trust intent see 2 BOGERT, TRUSTS AND TRUSTEES §324 (1935).

[14] ZOLLMANN, AMERICAN CHURCH LAW 254 (1933).

[15] Luttrell v. Potts, (Ky. 1953) 257 S.W. (2d) 542.

[16] 2 BOGERT, TRUSTS AND TRUSTEES 1239-1240 (1935). In Ward v. Crisp, 25 Beeler (189 Tenn.) 513, 226 S.W. (2d) 273 (1949), a minority of three prevented a majority group of sixty members from aligning the church with a general assembly of the denomination in violation of a provision in the original deed of conveyance.

[17] Lindstrom v. Tell, 131 Minn. 203, 154 N.W. 969 (1915). But see Shaeffer v. Klee, 100 Md. 264, 59 A. 850 (1905), where the court refused to halt a plan to discontinue using the German language in church services (a practice provided for in the articles of incorporation), rejecting the argument that such a change violated a "trust" reposed in the church trustees.

clear. If the theory were carried to its logical conclusion, any doctrinal emphasis alleged to constitute a departure from the tenets accepted by the organizers could conceivably be made the basis for judicial intervention.[18] In such cases the position of the original congregation[19] concerning the matter in dispute is often a matter of conjecture. The need for a judicial determination of what the implied trust terms are, in addition to an inquiry as to whether there has been a diversion, compounds the degree of court intervention and constitutes an undesirable feature of this approach.[20]

B. *Prevention of Innovations in Accepted Doctrines, Usages, and Customs.* Apart from any trust concepts, congregational action has been set aside upon a finding that changes in doctrines, customs, or usages constituted a departure from what was accepted before the dispute began. In a North Carolina decision[21] the result is vividly illustrated. Involved was a Baptist church which the court conceded to be independent from any external authority and congregationally controlled. By a vote of a substantial majority of the members present, a resolution favoring the severance of the church's affiliation with the Southern Baptist Convention was adopted. In an action by the minority to restrain the defendants from further use of the premises, the lower court made extensive finding of fact as to the activities of the two factions following the schism. On appeal, the supreme court stressed that whereas the plaintiffs continued to use Convention Sunday School literature and continued to participate in the Convention program, the defendants changed the literature in use, withdrew financial support from Convention activities, discharged officers and teachers opposing the original resolution, and resolved to continue independently of the Convention. Consequently, the court affirmed a decree awarding the control of the church property to the plaintiffs as the "true congregation." This term was defined as including all those ". . . who adhere and submit to the characteristic

18 See, e.g., Mt. Zion Church v. Whitmore, 83 Iowa 138, 49 N.W. 81 (1891), where the majority was prevented from advancing the doctrine of "sinless perfection" in a Baptist church. The court was aided by a decision of an advisory council of ministers, which the divided church had called but whose findings it rejected, to the effect that the doctrine was not in harmony with Baptist teaching.

19 A suggested rationale of the implied trust theory is that the power of the majority to govern is derivative, its source being the original organization; this power therefore remains limited by the faith and covenants originally adopted. Mt. Zion Church v. Whitmore, 83 Iowa 138 at 148-149, 49 N.W. 81 (1891).

20 An extended discussion of the implied trust theory is found in ZOLLMAN, AMERICAN CHURCH LAW, c. 7 (1933). See also 2 BOGERT, TRUSTS AND TRUSTEES §400 (1935).

21 Reid v. Johnston, 241 N.C. 201, 85 S.E. (2d) 114 (1954).

doctrines, usages, customs and practices of this particular church, recognized and accepted by both factions of the congregation before the dissension between them arose."[22]

The language used by this and other courts indicates that intervention will follow only in cases of radical or fundamental changes.[23] But these terms can be quite elastic, and a court's opinion of what changes are fundamental will not necessarily coincide with that of the church members involved in a dispute. In a recent Missouri case,[24] for example, the minority sought to exclude the majority from using the church premises because of an alleged departure from the doctrinal teachings of the church. The court in the ensuing litigation compared the "Common Confession" of the Missouri Synod, approved by the majority, with corresponding portions of the Orthodox Lutheran Doctrine adhered to by the defendants. Upon concluding that the differences between the groups amounted to "nothing more than shades of opinion on the same doctrine or dogma . . ."[25] the court denied the minority's contention. By contrast, the Kansas Supreme Court[26] enjoined a defendant group from further use of church premises upon finding that by repudiating the practice of "conventionism" it had departed from the "doctrine, tenets, customs and traditions" of the local church.[27]

Of the several grounds for intervention considered, this approach is the most questionable. Logically, it means that any change abrupt enough to raise a voice of protest could be frustrated by legal action. Certainly courts should leave congregations free to select their Sunday School literature at the pleasure of the majority.[28] And unless the church has adopted special rules governing affiliation with denominational organizations, there seems to be no reason why action related to this matter should not be

22 Id. at 125.

23 Compare Parker v. Harper, 295 Ky. 686, 175 S.W. (2d) 361 (1943) (election of new trustees by group arising within congregation set aside because of doctrinal differences) with Kemp v. Lentz, (Ohio App. 1943) 68 N.E. (2d) 339 (withdrawal of support from denominational seminary held not a departure from the church creed). And see Holt v. Scott, 252 Ala. 579, 42 S. (2d) 258 (1949), where the court apparently agreed that majority rule does not apply if there has been a radical departure from accepted principles, but refused to intervene when the minority contended that the majority had departed from the "Articles of Faith," saying the matter was not one which a court should attempt to resolve.

24 Mertz v. Schaeffer, (Mo. App. 1954) 271 S.W. (2d) 238.

25 Id. at 242.

26 Hughes v. Grossman, 166 Kan. 325, 201 P. (2d) 670 (1949).

27 Id. at 332.

28 In Whipple v. Fehsenfeld, 173 Kan. 427, 249 P. (2d) 638 (1952), a change in Sunday School literature was treated as a departure justifying court intervention.

within the authority of the majority.[29] In any event, it is undesirable to have the courts impose limitations upon congregational church government on the basis of a judicial determination of what is and what is not a fundamental change.

C. *Intervention to Prevent Irregular Procedure.* A dispute as to whether the majority could change the affiliation of the church from one ecclesiastical organization to another was also recently before an Illinois court.[30] In permitting the proposed change, the court illustrated yet another approach to settlement of church schisms; namely, that judicial inquiry is proper to determine whether the congregation has proceeded regularly and in accordance with its own rules and by-laws. In the Illinois case, it had been alleged that those favoring the protested change had brought additional numbers into the church designedly for the purpose of passing the amendment required to change the church affiliation. The regularity of the meeting in which the decisive vote was taken was also questioned. On review the court found that the increase in membership was explainable on other grounds and that the final meeting was proper. The decree as affirmed enjoined the plaintiffs from interfering with the operation of the church as long as the congregation acted in conformity with its constitution.[31] In addition to recognizing that the society was completely self-determining, the court stressed that the church's constitution provided for amendments to be made.[32] This fact was undoubtedly essential to the holding and probably serves to distinguish the case from the otherwise similar North Carolina situation.[33]

Another recent example of judicial intervention to review the regularity of church procedures is *Trett v. Lambeth,*[34] where a minority faction called a special meeting to organize itself and subsequently asserted possession of the church premises to the exclusion of the opposing group. The primary difference between

29 Keith v. First Baptist Church, 243 Iowa 616, 50 N.W. (2d) 803 (1952). See also Manning v. Yeager, 203 Ala. 185, 82 S. 435 (1919).

30 Ginossi v. Samatos, 3 Ill. App. (2d) 514, 123 N.E. (2d) 104 (1954).

31 Another stipulation was that the congregation could not breach state law. The well-recognized proposition that civil authorities may interfere with church practices violating state or federal statutes is not treated separately in this comment.

32 "Part and parcel of the congregation's compact was the right of a majority to amend the constitution and by-laws." Ginossi v. Samatos, 3 Ill. App. (2d) 514 at 524, 123 N.E. (2d) 104 (1954).

33 Reid v. Johnston, 241 N.C. 201, 85 S.E. (2d) 114 (1954), discussed above. The North Carolina court made no mention of the presence or absence of a similar provision.

34 (Mo. App. 1946) 195 S.W. (2d) 524.

the groups concerned whether the congregation should retain its affiliation with the local, state, and Southern Missionary Baptist Conventions. The court regarded the issue in dispute as "ecclesiastical" and not the court's concern, but said ". . . it is our duty to determine whether the meeting. . .was of sufficient legality under the doctrines, rules and practice of the Center Grove congregation to permit the chang[es made]. . . ."[35] Ruling that the meeting of the minority was irregular, the court affirmed a decree enjoining defendants from interfering with the majority's use of the property.[36]

Because the action approved by the Illinois court was by the majority, and the action disapproved by the Missouri court was by the minority, the foregoing cases do not constitute direct authority for the proposition that a court will overrule the decision of a majority if established procedure has been disregarded. But the cases illustrate that review of action alleged to be in violation of adopted rules will be granted by some courts,[37] and the Illinois decision strongly implies that irregular majority action would be set aside. More important, the cases manifest a refusal to place restrictions upon congregational action in the absence of limitations which the group has adopted for itself.

IV. *Constitutional Implications*

It is clear that the guarantees of religious freedom found in the First Amendment[38] are extended to cover state action by the due process clause of the Fourteenth Amendment. In *Everson v. Board of Education* [39] Justice Black for the majority said:

> "The broad meaning given the [First] Amendment. . .has been accepted by this Court in its decisions concerning an individual's religious freedom rendered since the Fourteenth Amendment was interpreted to make the prohibitions of the First applicable to state action abridging religious freedom.

35 Id. at 534.

36 *Accord,* Epperson v. Meyers, (Fla. 1952) 58 S. (2d) 150; Sims v. Green, (D.C. Pa. 1947) 76 F. Supp. 669, affd. (3d Cir. 1948) 166 F. (2d) 1011; Yeary v. White, 268 Ky. 471, 105 S.W. (2d) 609 (1937).

37 But see Grantham v. Humphries, 185 Miss. 496, 188 S. 313 (1939), where a complaint was dismissed as involving an "ecclesiastical" matter even though irregular procedure had been alleged.

38 "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press. . . ." U.S. CONST., amend. I.

39 330 U.S. 1, 67 S.Ct. 504 (1947).

> There is every reason to give the same application and broad interpretation to the 'establishment of religion' clause."[40]

That the function of state courts and judicial officers is to be regarded as state action within the meaning of the Fourteenth Amendment was forcefully affirmed in *Shelley v. Kraemer*.[41]

Together these Supreme Court decisions point up the fact that the propriety of judicial intervention in church affairs is not to be tested by state constitutional provisions regarding religious freedom and the due process clause of the Fourteenth Amendment alone. One must also consider whether the interference constitutes the establishment of religion or prohibits its free exercise.[42]

Until the Supreme Court reviews instances of state judicial intervention in the affairs of independent church bodies and interprets the limitations required by the First Amendment, the propriety of such intervention is open to some speculation. At the outset it might be observed that those ascribing to the "wall of separation" concept, espoused by Justice Black in the *Everson* case,[43] should, if the metaphor is to be applied as a doctrine, treat all judicial intervention as a breach in the wall. However, the practical effect of such a policy would not always serve the cause of religious freedom. Religious rights do not necessarily thrive by being walled off. That the protection of temporal rights is necessary to spiritual expression has been recognized by an authority who generally favors a strong separation theory:

> "Both the separation and freedom clauses of the First Amendment require the avoidance of court intervention in ecclesiastical disputes. Intervention frequently is unavoidable, as where the ownership and control of property depends on the determination of an ecclesiastical dispute."[44]

[40] Id. at 15. See also McCollum v. Board of Education, 333 U.S. 203, 68 S.Ct. 461 (1948); Zorach v. Clauson, 343 U.S. 306, 72 S.Ct. 679 (1952).

[41] 334 U.S. 1, 68 S.Ct. 836 (1948). The case held that judicial enforcement of restrictive covenants preventing use of land by a particular race constituted state action in violation of the equal protection clause of the Fourteenth Amendment. For an example of court action violating religious freedom, see Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900 (1940).

[42] Whether the phrases of the First Amendment referring separately to the non-establishment and the free exercise of religion should be treated as two distinct limitations, or whether they express primarily a unitary guarantee of separation of church and state is a matter of some controversy. See, e.g., PFEFFER, CHURCH, STATE, AND FREEDOM 118-124 (1953).

[43] "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. . . ." Everson v. Board of Education, 330 U.S. 1 at 18, 67 S.Ct. 504 (1952).

[44] PFEFFER, CHURCH, STATE, AND FREEDOM 256-257 (1953).

But to avoid excessive judicial interference, a civil court might extend relief in one situation and withhold it in another although property rights are at issue in both. For example, the enforcement of express trusts is quite consistent with the guarantee of religious freedom even though it might require inquiry into theological questions. A policy of non-intervention in such cases would eliminate the trust device as a means of furthering religious purposes. Also, the settlement of disputes with inquiry limited to whether adopted rules of procedure have been followed is both defensible and desirable. The holding of church property by an independent congregation would be most precarious if the society could not resort to judicial redress should its own rules as to the control and disposition of the property be violated. However, for a court to enforce an implied trust, both defining its terms and deciding whether it has been violated, can impose severe limitations upon the autonomy of the society. This is even more true where congregational action is set aside on the ground of a doctrinal departure or a deviation from customs, usages, and traditions. Considerations such as these should assist in drawing the line between constitutional and unconstitutional judicial intervention.

V. *Conclusions*

By choosing a form of government which leaves the congregation free of an ecclesiastical hierarchy, independent churches incur some hazards. The influence of the pastor, an influx of a new element in the membership, apathy of some until decisions are made — causes such as these may result in precipitate action or other consequences objectionable to some members. But it would seem far better to leave these problems in the hands of the congregation than for the civil courts to convert themselves into ecclesiastical tribunals whenever a faction feels aggrieved.

Much litigation could be avoided if internal rules of organization were formulated in anticipation of problems which arise in congregationally controlled churches. One very desirable effect of a policy limiting judicial inquiry to whether prescribed rules have been followed would be to encourage religious groups to formalize their procedures and to define clearly the extent of the majority's authority.[45] Court action limited to the enforcement

[45] Such clarification is aided by state laws providing for ecclesiastical corporations. For example, Mich. Comp. Laws (1948) §450.182 provides that the articles of incorporation may be amended by a majority vote unless the church rules stipulate otherwise and provided

of express trusts and to the prevention of irregular procedure appears the most consistent with the principles of non-establishment and free exercise of religion.

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that the polity of the denomination does not require action by a superior church body. Under the special sections providing separately for the incorporation of churches belonging to some of the leading denominations, other amendment procedures are specified. See Mich. Comp. Laws (1948) §458.21 et seq.