Chapter One

THE KINGDOM OF THIS WORLD

One of the inherent paradoxes of religion is that most faiths enjoin a spirit of unworldliness, urging believers to look beyond earthly possessions in their search for ultimate reality, while at the same time all religions exist in the temporal order and can only manifest themselves through material realities. Hence organized religions have usually been quick to secure their property rights, justifying this on the grounds that material assets are necessary in order to witness the reality of the spiritual.

Most civil cases in the American judicial system involve disputes over property, and courts have perhaps been most comfortable when adjudicating issues that can be quantified in terms of wealth. It has been the Supreme Court's consistent policy, almost always followed, to ignore what could be called ideological issues in dealing with internal church disputes and to content itself with applying ecclesiastical rules in the ways such rules were apparently intended. Property cases, while perhaps not the most interesting or significant to arise under the Religion Clauses of the Constitution, were the earliest and have been the most persistent. Religious bodies that claim broad autonomy with respect to their beliefs and practices nonetheless submit to the civil law for the final resolution of otherwise irresolvable disagreements over possessions.

Disputes over church property arguably involve both the Religion Clauses, in that religious freedom is potentially threatened if the government is called upon to intervene in religious disputes, and government thereby risks taking upon itself the improper role of favoring one religious group over another. Property cases have come before the Court in almost every era, however, and almost always at the behest of church members themselves.

Colonial Land Grants

The first religion cases ever to come before the Court, in 1815, were disputes of this kind, arising out of grants of land made by the English Crown in colonial times.

In *Terrett v. Taylor*[1] the churchwardens of a Virginia Episcopal parish attempted to sell some of the parish land but were opposed by the local overseers of the poor, who contended that the land no longer belonged to

the church, under a Virginia statute repealing ecclesiastical land grants made to the Anglican Church by the British Crown.[2]

Justice Joseph Story found that the land in question was in fact not a gift from the Crown but had been purchased by the parish. But even if the Crown had granted it, he continued, the grant could not be revoked unless it was shown that it was originally intended to be revocable.[3]

Later in the same year, the Court heard a case involving a royal grant of land to the Church of England in a town that had been part of the colony of New Hampshire but was now in the state of Vermont.[4]

At the time of the grant (1761) there was no Anglican parish in the town of Pawlet, and not until 1802 did a group of residents organize a parish of the Episcopal Church, which then claimed the land and leased it for the support of the parish. Between 1790 and 1805 the state of Vermont passed and repealed a series of seemingly contradictory laws concerning colonial grants to the Anglican Church, and the latest of these had abolished all claims that churches might make under such grants. The state of Vermont now claimed the land, intending to use the income to support education.[5]

The state argued that, since there was no Anglican church in Pawlet to receive the grant at the time it was made, the grant was void and had reverted to the donor. Since the donor was the English Crown, the land in turn passed to the state of Vermont after the Revolution.

The Church of England as a whole could not receive such grants, Vermont argued, since in English law it was not a corporation but one of the "estates of the realm." Grants to the church could only be made to specific units of the church, such as parishes. Also relevant was the fact that the Church of England was never officially established in the colony of New Hampshire.[6]

Vermont also raised an issue as much ecclesiastical as legal, claiming that, despite "similarities" between the Church of England and the Episcopal Church in the United States, the American church was not identifiable with the English church and could not inherit any rights the Anglican Church might have possessed.[7]

The defense argued that the land in question had been granted to the inhabitants of Pawlet collectively for the support of religion, thus there had been a grantee to receive it. The Crown knew there was no Anglican parish in Pawlet at the time and thus intended the grant to be held in abeyance for future use. The Episcopal Church was the natural recipient of the grant, a fact that for a brief period Vermont law had explicitly recognized.[8]

The case came before the Supreme Court because it involved two separate states—New Hampshire and Vermont—along with the Crown of England. However, Vermont challenged the jurisdiction of the Court, claim-

ing that only one state was involved, since Vermont and New Hampshire had been one at the time of the original grant. Thus the case should simply be tried in Vermont state courts.[9]

Story again rendered the verdict of the Court, quickly disposing of the jurisdictional question by finding that, since Vermont and New Hampshire were now separate states, their previous unity was irrelevant.[10]

The royal grant made clear that the land was to be divided among various individuals and the church land was not to be held in common, Story found. The Church of England was indeed an estate of the realm rather than a corporation, and as such could not receive grants. There was no branch of the Church of England in Pawlet at the time of the grant and for some years afterward.[11]

Based on English law, he defined a parish as "a consecrated place having attached to it rights of burial and the administration of the sacraments." The parson of a parish had the "care of souls" only for the duration of his own life, and any grant made to a parish would thus be held in abeyance if there was no parson. Had there been an Anglican parson in Pawlet at the time of the grant, it would have been made to him and to his successors, but officially there could have been no parson until there was first a parish. The charter of colonial New Hampshire explicitly guaranteed liberty of conscience in matters of religion, and the Church of England was not established there.[12]

Since the grant for the church was made to the inhabitants of the town, such land could be alienated only by the joint action of both the Crown and the citizens, with the rights of the Crown passing to the state after the Revolution.[13]

Story characterized the Episcopal Church established in Pawlet as "a mere voluntary association" and held that it could not claim the rights of the Anglican Church merely "on account of their religious tenets."[14]

Justice William Johnson wrote a concurring opinion complaining that Story relied too much on English law and precedents.[15]

These two pioneer religion cases were decided in the same year but in seemingly opposite ways because the Anglican Church had been officially established in Virginia before the Revolution but not in New Hampshire. Thus the Virginia Episcopal parish could show an unbroken history dating to colonial times, while the New Hampshire parish was treated as a recent creation not in continuity with the prerevolutionary Anglican Church.

In 1823 an English group, the Society for the Propagation of the Gospel in Foreign Parts, sued to regain land that, as in the *Pawlet case*, had been granted in the colony of New Hampshire by King George III in 1761. Also as in the *Pawlet* case, there was an appeal against the postrevolution-

ary statute by which Vermont claimed the land and authorized leasing it for the support of schools.[16]

The issue took on a complexity beyond the *Pawlet* case when Vermont cited the fact that in England all religious bodies were subject to the Statute of Mortmain and had to be granted an exemption by the king in order to acquire property. Such exemptions were not granted in the colonies, Vermont insisted. The state also asserted that, since the SPGFP's trustees were in England, they could not be made subject to American courts and thus could not be held accountable for the proper use of the land.[17]

Justice Bushrod Washington ruled that the "dismemberment of empire" following the Revolution had not invalidated English land titles in America, the treaty ending the war (1783) specifically protecting such titles. The purposes of the SPGFP were "benevolent and laudable," and the property could not be alienated to a different kind of use.[18] Unlike in the *Pawlet* case, the SPGFP existed as a part of the Church of England in 1761 and was thus qualified to receive the grant.

In 1824 the *Terrett* issue was again before the Court, in the light of its decision in the *Pawlet* case.[19] The appellant had purchased land from the Alexandria parish following the *Terrett* decision. Now, however, he sued to invalidate the transaction, on the grounds that the *Pawlet* ruling had rendered his title suspect.

His contention was that the rights of the parish had to be exercised through its parson, and for a period of time, there had been none. In addition, the prerevolutionary parish had been designated "Fairfax Parish," whereas the putative owner of the disputed land called itself "Christ's Church Parish, Alexandria." As such it constituted merely a part of the original Fairfax parish and could not claim title to the land.[20]

As in 1815, Story found in favor of the parish, holding that according to the polity of the Episcopal Church, the vestry of Christ's Church was the legal successor of the vestry of Fairfax Parish. New Episcopal parishes could only be founded by authority of the diocesan bishop, and no such authorization was either sought or given for Christ's Church, thus demonstrating that it had long existed.[21]

No other land-grant case then came before the Court for almost seventy years.

In 1882 the Court rejected a claim by a Methodist mission society in Oregon.[22] The organization had received land in an Oregon town in 1847, while the territory was under British rule. When it became a territory of the United States the following year, Congress confirmed land grants made to missionary groups. However, because of Indian wars the mission did not occupy the land until 1850, and the mission was later abandoned. In 1850 the U.S. Army purchased part of the land from the mission, and in 1882 the town claimed the remainder on the grounds that the tract had

originally been transferred "improvidently." Justice William B. Woods ruled that no land claim before 1850 was secure, and, since the missionary group was not occupying the land in 1848, it could not claim title.

In 1894 the Court heard another case arising out of the same situation.[23] In 1838 a Catholic mission in Oregon had been given the use of a tract of land by the Hudson's Bay Company. In 1849 the company sold most of the tract to the army, but in 1894 the church claimed title to all of the land. Justice David Brewer ruled that it was entitled only to that portion of the tract that was in use as a mission in 1849.

In 1907 the Court decided a case from Puerto Rico challenging the fact that two churches had been built with municipal funds. Chief Justice Melville Fuller again issued the ruling, which found that such grants, made in colonial times, were irrevocable.[24]

Capacity to Inherit

In 1819 the Court heard a case involving a complex issue of inheritance. In 1790 a Virginia man willed part of his estate to establish a fund for the education of Baptist youth, especially those inclined toward the ministry. Two years later Virginia repealed the English law of charities, hitherto in force in America, and because of this, the executors refused to implement the bequest. Chief Justice John Marshall ruled that the Philadelphia Baptist Association, never having been incorporated, could not receive the bequest as a legal entity, nor could its individual members obtain the money, since it had not been intended for their personal benefit.[25] (The case came before the Court under Article III, Section 2, of the Constitution—"diversity of citizenship"—because the disputants resided in different states.)

In 1866 the Court upheld a 1786 legacy to a Congregational parish in Hartford. The grant had been made "for the maintenance of the ministry of the Gospel," but in 1852 the parish had been granted permission by the Connecticut legislature to sell the property. Descendants of the original donor then sued for ownership of the land on the grounds that the terms of the grant had been violated. Justice Samuel Nelson found for the Court that the legislature had acted within its authority.[26]

In 1872 the Court upheld the right of a missionary group with headquarters in New York to acquire land in Illinois, the acquisition challenged by the heirs of a man who sold the land to the American and Foreign Christian Union. Justice John Marshall Harlan found that Illinois law did not prohibit a "foreign corporation" from acquiring land, nor did it prevent charitable organizations from doing so.[27]

A similar case, also from Illinois, was decided in the same way in 1887. Heirs sought to invalidate the will of a man who had left the residue of his estate to "the board of foreign and the board of home missions."[28]

Harlan saw no difficulty in the fact that the two mission boards were not more precisely identified, since elsewhere in the will the donor made clear that, having been an active Presbyterian all his life, he was referring to the Presbyterian Church in the United States. If the designation were truly unclear, Harlan thought, the legacy would have to be divided equally among all those groups having the same name. He again rejected the claim that the mission boards constituted "foreign bodies" forbidden to own property in Illinois.[29]

The appellants also pointed out that the law allowed only ten acres of land to groups "formed for the purpose of religious worship." However, Harlan ruled that the mission boards were not set up for "worship" but for "the spread of the Gospel."[30]

In 1879 the Court reached a conclusion similar to that in the 1819 Baptist testamentary case. A woman had made a will providing that, if at the time of her death she belonged to some Catholic religious community, all of her assets were to go to Bishop Richard Wheelan (or Whelan) of Wheeling, for the benefit of the community to which she belonged. When she died in 1861 she in fact did belong to the Sisters of St. Joseph, but the terms of her will were not carried out. In 1879 Bishop John J. Kain, Wheelan's successor, sued to gain possession of the estate. (The donor's surviving relatives did not reside in West Virginia, hence there was diversity of citizenship.)[31]

Justice William Strong found that Kain was competent to bring suit, since the bequest had been intended for the diocese of Wheeling, not for Wheelan personally, even though Kain was not a "corporation sole."[32] But the will could not be implemented as written, because of the uncertainty of the identity of the Sisters of St. Joseph. The group was not incorporated, and its membership was fluid, so there was legitimate doubt as to the intended recipients of the gift.[33]

Strong did not think the bequest could be treated as a charity, since the will did not specify that the assets be used for any charitable purpose. Instead, he thought, it seemed to be a "private benevolence," that is, a gift intended for the individuals constituting the Sisters of St. Joseph. They, however, had no corporate identity, hence no ability to inherit.[34]

Communal Property

One manifestation of the self-conscious democratic spirit of America in the nineteenth century was the phenomenon of experimental "utopian" communities that, among other things, commonly abolished rights of pri-

vate property, often for religious reasons, an experiment bound to produce second thoughts on the part of some of those whose right to property had been surrendered. Each of the cases came before the Court because of diversity of citizenship.

In 1852 the heirs of a man who had belonged to a community called the Society of Separatists sued for a share of the group's property on the grounds that their ancestor, who died in 1827, had in effect invested in the community, which in the ensuing quarter century had become quite prosperous.[35]

Justice John McLean found that the ancestor had signed a document surrendering all claims to personal property, and nothing in that contract was against public policy or good morals. On the contrary, it was precisely the religious motivation of the group that had made possible its great prosperity. Although charges were made against the character of the group's leader, John M. Bimeler, the Court found that he performed admirably in a difficult position and that his actions were often misconstrued by "narrow minds."[36]

Over the next half century several cases were brought before the Court involving the Harmony Society, a German group under the leadership of George Rapp, that came to America early in the century and founded communities in Pennsylvania and Indiana. Among other things, the group espoused communal ownership of property and extolled frugality and hard work, so that over the years it became collectively wealthy.[37]

In 1856 a former member claimed that he had been wrongfully excluded from its benefits. Justice John Campbell found, as in the previous case, that the Society had explicitly excluded all claims to private property and that the appellant had signed a document to that effect, in which he acknowledged receiving money from the Society merely as a "donation." Although the appellant made allegations of "extreme tyranny" against the head of the Society, supposedly sufficient to impair its members' freedom, no evidence of this was presented in Court.[38]

In 1887 suit was brought by a man whose parents had joined the Society in Germany and immigrated with Rapp to America. The plaintiff, Elias Speidel, had left the community in 1831 and now claimed a share of the Society's assets as compensation for his and his parents' labor and for the property they had originally given to the Society. Speidel also claimed that Rapp had practiced conscious fraud and had exploited his followers' naïveté about worldly matters.[39]

Justice Horace Gray found that Speidel had no claim in equity because he had allowed more than fifty years to elapse from the time he left the Society. There could be no help for someone who "slept upon his rights." In addition, the terms of the Society's trust explicitly stated that the assets were for the benefit of the community as a whole, not of individuals. A

claim concerning a trust was not strictly governed by the statute of limitations, Gray admitted, but a long delay did invalidate a claim in equity.[40]

In 1902 a descendant of deceased members of the Society sued for a share of its assets, on the grounds that in effect the Society had been dissolved. In 1890, according to the claim, one man, John Duss, had gained control of the assets and had "bought out" eighteen members of the Society. The remaining eight members were aged and infirm women with no understanding of business, and the Society could no longer be said to exist. Instead Duss was operating it as a commercial enterprise.[41]

Justice Joseph McKenna found that the Society had not been dissolved and thus the appellant had no claim to its assets. The historical record showed that "the cardinal principle of the Society was self-abnegation," thus members did not expect to be compensated for their labor or to be allowed to claim its property. The Society's rules provided for a "donation" to those who left the community.[42]

Fuller dissented. Although the property was to be held communally, Fuller noted that the title had in fact been vested in "George Rapp and Associates." A board of elders succeeded him at his death in 1847.[43]

Fuller cited a principle of law that, if a trust was "defeated," it ceased to exist and its assets should go to the heirs of those who originally established it, and he accepted the appellants' claim that the original purpose of the Society had ceased. Its membership had declined from over five hundred in 1827 to merely eight, and the fact that Duss paid some members to abandon their membership indicated that he recognized its dissolution. Duss alone was active in the running of the Society, and one man could not constitute a community.[44]

The majority of the Court noted that the members had not formally dissolved the Society. But Fuller doubted that they had the power to do so and thought it necessary for a court of equity to determine if in fact it had been dissolved, which Fuller thought it had. The current operation of the Society was inconsistent with its original purpose of "renunciation of worldly goods."[45]

In the last of these cases, in 1914, the Court ruled in a dispute involving a Catholic monastic order whose individual members had, over a period of more than eight hundred years, been renouncing all rights to personal property.

Augustin Wirth had for over fifty years belonged to the Order of St. Benedict (Benedictines) and had been stationed in various parts of the United States. He was an author whose writings had earned royalties, and at his death in 1904, the administrator of his estate claimed those royalties as Wirth's private property, while the Order claimed the money on the grounds that Wirth had taken a vow of poverty that precluded his owning property and that he had been allowed to keep his royalties only as a

"concession," and only for works of charity.[46] (Wirth had belonged to a monastery in New Jersey but had died in Minnesota, hence there was diversity of citizenship.)

Justice Charles Evans Hughes found in favor of the Benedictines. Wirth had indeed taken a vow of poverty that forbade him to own property, and his superiors showed that he had merely been allowed to use his royalties, not to treat them as his property. Although Wirth's administrator objected that it was a violation of freedom to forbid monks to hold property, Hughes held that this renunciation had been voluntary and Wirth possessed the legal right to repudiate it if he chose. Hughes also observed that the commercial value of Wirth's writings probably derived largely from the fact of his being a monk.[47]

Internal Church Disputes

Internal religious disputes, usually involving doctrine, have occurred with great regularity in the history of religion and, however much they may turn on seemingly rarified spiritual questions, almost inevitably become disputes over the control of property, hence come before the secular courts.

In 1844, largely because of slavery, the Methodist Episcopal Church split into two parts—north and south—and in 1853 the southern branch brought suit for its share of a fund set up for the relief of needy clergy and their families.[48] The case turned on subtle points of church government and was the first in which the Court was forced to intervene in such a dispute.

The division between the two branches of the church had been authorized by the General Conference, the highest authority within the church. However, the northern church claimed that this approval had been contingent on subsequent approval by "annual conferences" held on a regional basis, and that such approval had been denied. Thus, according to the northern branch of the church, it alone was the true Methodist Episcopal Church and the southern group had seceded without authority. The southern branch alleged that, on the contrary, it had reached an agreement with the northern branch for an amicable separation, in which all assets were to be shared equitably.[49]

Nelson found that, if the 1844 division was unlawful, its unlawfulness affected both sides equally, so that neither could be deemed the official Methodist Episcopal Church. But the constitutions of the church, dating to 1784, showed the General Conference to be its highest governing body. Thus the division was legal, and the agreement to share assets was binding on the northern body.[50]

In a rather bizarre case in 1866 the Court was called upon to adjudicate a dispute over insurance, a dispute that turned on the polity of the Congregational Church.[51] (The case involved diversity of citizenship, the church and the insurance company being in different states.)

The trustees of a parish in Maine had insured its property with themselves as the beneficiaries, an arrangement made by one of the trustees who was an insurance agent. The congregation owed $15,000 to one of the trustees, William Chase, who in turn was indebted to his brother, also a trustee. William Chase used his share of the policy as security for the loan from his brother.[52]

In 1862 the church building burned down, but the insurers refused to pay William Chase's claim on the grounds that, as one of five trustees, he had only a partial claim and that he had no "insurable interest" in the church building.[53] (During the proceedings before the Court no one raised the possibility of arson or insurance fraud.)

Justice David Davis ruled that under Congregational polity the five trustees could designate William Chase to act in their name. The trustees had approved the insurance policy, hence the company was required to pay.[54]

The first Supreme Court case involving a theological dispute was decided in 1861,[55] when Presbyterian groups in New York and elsewhere sued to gain control of the Federal Street Meeting House in Boston. Established in 1735 as "Calvinist and Trinitarian," it had become Unitarian in 1815. Thus, the Presbyterians argued, "the trust is wholly perverted and abused." Justice Robert Grier ruled that the only relevant question was who controlled the property at the time of its civil incorporation in 1805, and he found that the group that did so was in legal continuity with those who adopted Unitarianism a decade later.

As early as the *Mason* case (1824), the Court had begun following the practice of scrutinizing the governing documents of religious groups in order to decide issues of property ownership or other forms of legal control, and in the *Meeting House* case it conspicuously declined an invitation to settle such disputes on theological grounds. Those principles were finally made explicit and general in *Watson v. Jones* (1872).[56]

The Presbyterian Church in the United States enacted a requirement that former slaveholders and former supporters of the Confederacy repudiate those loyalties in order to continue as church members in good standing. A Louisville congregation split over this rule, as did both the Louisville Presbytery and the Kentucky State Synod, thus giving rise to a property dispute. (Since some of the parishioners lived in Indiana, the case involved diversity of citizenship.)

Justice Samuel Miller defined the Court's duty as that of enforcing the established rules of the Presbyterian Church itself, which the bitter internal dispute could not alter, and he laid down a principle that would prove

so useful that the Court would employ it ever afterward—it was the Court's duty to scrutinize the established governing documents of a church in order to decide who had final authority to make decisions.[57]

The Court was not to involve itself in religious issues as such, and in an often-quoted epigram, Miller proclaimed that, "The law knows no heresy and is committed to no dogma."[58] In the case at hand the Court found that the national body of the church had authority under established Presbyterian polity.[59]

However, Miller also allowed for an exception by which the courts might inquire into doctrine—in the case of property given to a church for a specific purpose, the courts could decide if it was being used in accord with the donor's specifications. Thus a church building dedicated to "the Holy Trinity" could not later be made into a Unitarian church,[60] a dictum that seemed to go against the Court's decision in the *Meeting House* case eleven years before. Miller's exception was an invitation to the Court to involve itself in theological disputes, an invitation that in fact it would never choose to accept.

In the same year as the *Watson* case, the Court also disposed of a case arising in a Congregationalist church, where two factions clashed over property and one "excommunicated" the other. The Court found that, according to Congregationalist polity, the majority should rule and the excommunication did not affect title to the property, which was still vested in the duly elected trustees.[61]

It was appropriate that the Court's governing principles for internal church disputes should have been formulated in a case involving Presbyterians, since the latter denomination would, over the years, bring the largest number of such disputes to the Court's attention.

In 1911 the Presbyterian Church in the United States sued the Cumberland Presbyterian Church for control of a publishing house.[62] The issue before the Court was the narrow and technical one—whether the trustees of the publishing house should properly be defendants in the suit. Hughes ruled that they should and in effect also ruled for the PCUSA, in finding that the publishing house was "an agent of denominational service." The following year, the Court settled a similarly narrow and technical suit involving the Cumberland Presbyterians and the PCUSA,[63] in which Hughes once again found in favor of PCUSA.

In 1917 the Court settled yet another Presbyterian dispute, this time without scrutinizing the issues.[64] Chief Justice Edward Douglass White merely issued a very brief opinion in favor of the national body of the church, noting that, although not all the justices agreed, the majority thought the dispute was clearly governed by the principles in the *Watson* case.

Two internal Catholic disputes were settled by the Court during the earlier twentieth century.

In 1909 it rejected a property claim by a dissident group in the Philippines, which was then an American protectorate.[65] Justice Oliver Wendell Holmes ruled that the property had been intended for the use of the Roman Catholic Church, whose representatives had been "ejected without right."

In 1929 the Court heard an appeal from a Catholic priest claiming an endowed chaplaincy that had been denied him by the archbishop of Manila.[66] Justice Louis Brandeis ruled against the appellant on the grounds that the archbishop had correctly applied the Canon Law of the Catholic Church, but Brandeis also held that the appeal to civil law was itself valid as a way of ascertaining the provisions of church law,[67] an important principle in that it gave the civil courts entry into religious disputes.

Almost a quarter century then elapsed before the Court heard another church-property dispute, this one raising a unique issue. The Russian Orthodox Church in New York had divided, one group accepting the authority of the mother church in the Soviet Union, the other group remaining faithful to the memory of the czar and rejecting the Moscow church as merely the mouthpiece of the atheistic Soviet government. The former group had made itself independent of Moscow in the years following the 1917 revolution, and in 1945 the State of New York amended its law regulating religious corporations in order to give the anti-Soviet group title to the diocesan cathedral. Their opponents sued on the grounds that the law represented undue interference in the internal affairs of the church.[68]

The Court overturned the New York law and, on the basis of its reading of the Orthodox Church's own polity, awarded the cathedral to the group that retained ties with Moscow, Justice Stanley Reed's majority opinion arguing that the New York law was a violation of the church's autonomy and that the church's own laws were clear as to the proper chain of ecclesiastical authority.[69]

Justice Felix Frankfurter concurred, holding that there was no evidence of political interference by the Soviet Union in the affairs of the church in America and warning that permitting the American government to decide such questions could easily be the entering wedge for governmental control.[70]

Justice Robert H. Jackson dissented, arguing that there was in fact evidence of political interference, since the Soviet government insisted that the Orthodox in the United States refrain from any anti-Soviet activity. New York's laws concerning religious corporations were designed to protect the churches, which were not required to avail themselves of that protection but, if they did, had to adhere to its requirements. Disputes over the real property of churches should not be approached any differently

from disputes over bank accounts and other assets, he insisted. In the last of his numerous memorable utterances about religion, Jackson proclaimed, "I do not think that New York State must yield to the authority of a foreign and unfriendly state masquerading as a spiritual institution."[71]

But the issue proved tenacious, and almost a decade later, it was again before the justices, after a New York court ruled that as a matter of fact the Patriarch of Moscow was under the domination of the Soviet government and should thus not be allowed to exercise authority over the church in America. The Supreme Court ruled that this decision repeated the same error as the 1952 case, and it was overturned.[72]

In 1969 two Presbyterian churches in Georgia withdrew from their national body, charging that the national church had departed from historic Presbyterian doctrine. A Georgia law recognized this as a legitimate basis for secession, and a state court authorized the dissenters to retain title to parish property. Justice William Brennan wrote a unanimous opinion overturning the award on the grounds that the state could not attempt to determine correct doctrine and the law was therefore fatally flawed.[73]

The following year the Court ruled similarly in a case involving a group called the Churches of God, holding that property disputes could be disposed of by the courts in various ways, so long as questions of doctrine were not addressed by the judiciary. It was also wrong for the courts to probe too deeply into the exercise of power in a church. Rather the courts should seek to identify the legal governing body in each dispute and defer to it.[74]

A more complex case in 1976 involved the governance of the Serbian Orthodox Church. The mother church in Yugoslavia had deposed an American bishop and divided his diocese into three parts. The deposed bishop and his followers disputed the action, partly on the grounds that the church in Yugoslavia was Communist dominated. The Illinois Supreme Court overturned the Yugoslavian church's proceedings, terming them arbitrary and invalid. The U.S. Supreme Court now overturned that decision, as constituting undue interference in the church's internal governance.[75]

Brennan, writing for a majority, found some apparent contradictions in the governing documents of the church but overturned the Illinois judgment because it failed to respect the decision of the highest governing authority of the church, which was the mother church in Yugoslavia.[76]

No government intervention could be permitted that required excessive inquiries into the operation of the church, he ruled. There was contradictory testimony as to whether proper procedures were followed, and the Illinois court accepted some of this testimony and rejected others. The lower court also overlooked some violations of procedure by the complaining bishop, as well as overlooking the fact that the church in Yugoslavia was the final governing authority.[77]

Following allegedly neutral principles, the Illinois court had substituted its own interpretation of church law for that of the highest ecclesiastical authority, Brennan ruled.[78]

Justice Byron White concurred in the decision, although cautioning that he did not hold that the courts were barred from reaching a judgment as to where and when ecclesiastical authority was properly exercised.[79]

Justice William Rehnquist dissented, observing drily that the case concerned property and asking satirically, "Will the real bishops of the Serbian Eastern Orthodox Church please stand up?" The courts had not involved themselves in doctrine but had merely settled an internal dispute in the same way they might for any voluntary organization. Alternatively, he warned, disputes over property would be settled by brute force. At a minimum, secular courts must get involved, in the sense of accepting one interpretation of church law over another, and he warned that: "If the civil courts are to be bound by any sheet of parchment bearing the ecclesiastical seal and purporting to be a decree of a church court, they can easily be converted into a handmaiden of arbitrary lawlessness."[80]

Rehnquist understood the 1872 *Watson* case as turning not on the Free Exercise Clause but on the more general question of how far the courts could become involved in the internal disputes of private organizations. In the *Kedroff* case the state had thwarted the decision of a particular religious group. Here, however, there was no issue of doctrine, and religious groups should not be exempt from the kinds of legal jurisdiction to which other voluntary groups were required to submit.[81] In some ways Rehnquist seemed prepared to jettison the principle that had governed such cases since the *Watson* decision of 1872.

A 1979 case again involved a Presbyterian congregation in Georgia that had broken away from the national body. The national church determined that the minority in the congregation constituted the true parish, a judgment that was overturned by the Georgia courts on the grounds that legal title to the property was vested in the local congregation, understood as the majority.[82]

Justice Harry Blackmun held for a majority of the Court that the Constitution did not require the state to defer to church bodies on questions of property, so long as disputes over doctrine were not at stake. However, he warned that, in some cases, for the courts even to determine which was the appropriate governing body of the church would itself require impermissible intrusion into the church's internal life.[83]

The Georgia courts assumed that the majority constituted the local congregation, whereas the minority contended that this was a question for church law. The question had not been settled, and the Supreme Court therefore remanded the case to Georgia for rehearing.[84]

Justice Lewis Powell dissented, finding that in effect Georgia had imposed a congregational form of government on a Presbyterian Church, thereby involving itself in a doctrinal dispute over the exact nature of the church. The *Watson* principle required that the polity of each church be accepted on its own terms, and it seemed to Powell that the polity of the Presbyterian Church in the United States clearly favored the minority group within the congregation.[85]

A unique issue was raised before the Court and rejected in 1978, when the Methodist Church in California sought to obtain an injunction forbidding the California courts from proceeding with a case in which Methodist officials were accused of complicity in fraud, in connection with the bankruptcy of a chain of nursing homes.[86]

The church argued that, in determining whether Methodist officials could be held legally responsible, the California court had failed to make use of the church's own constitutional documents, as required by the *Watson* principle, and had instead relied on the testimony of external witnesses to establish responsibility. The church also claimed that it had only an "attenuated" relationship with the state of California and should not be brought to trial there.[87]

Rehnquist, sitting as a "circuit justice," rejected the appeal. Only in rare instances, he thought, should the Supreme Court interfere with state cases still in process. Furthermore, state courts could make an independent judgment about the governing structure of a church, since the requirement to rely on the church's own constitutions applied only to internal disputes. The claim that it applied also to external disputes was, Rehnquist, thought, quite novel. He also found the church's connection to the State of California substantial.[88]