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Religious Societies -- Church Property Disputes -- The Implied Trust Doctrine

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Religious Societies—Church Property Disputes—The Implied Trust Doctrine

Every religious society has a right to determine for itself the times for these exercises, and the objects proper for them, according to their own particular tenets; and this right can never be safer than in their own hands, where the Constitution has deposited it.

—Thomas Jefferson[1]

The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.—Justice Samuel F. Miller.[2]

The Christian church has been beset with disagreement and dissent since its establishment. The differences within the early church[3] were only preludes to the bitter disputes that eventually splintered the unified church into hundreds of denominations and sects. Carl Zollmann, one of the foremost authorities on American church law, calls these divisions, or "schisms," within the church "blessings in disguise" and "the process by which the living church continually adapts itself to the living society upon which it operates."[4] While these schisms may be beneficial, they are also painful, often leaving wounds that take centuries to heal and scars that may never be erased.

Most disputes can be resolved within the church structure and do not lead to discernable divisions. Only when the differences become irreconcilable do the disputes overflow the confines of the church and become the concern of society as a whole. Ultimately the problem of who has the right to use and control the church property arises and must be resolved. The parties must either turn to the service of an impartial agency of the community or resort to force as a final arbiter. Society's interest in maintaining settled property titles and social order thus makes the courts the natural forums for church property disputes.

In a recent dispute within the Presbyterian Church in the United States, the Supreme Court of Georgia answered the question of property control in a novel fashion. In *Presbyterian Church in the United States*

[1] Quoted in A. STOKES & L. PFEFFER, CHURCH AND STATE IN THE UNITED STATES 88 (1964).

[2] Watson v. Jones, 80 U.S. (13 Wall.) 679, 728 (1871).

[3] "I appeal to you, brethren, by the name of our Lord Jesus Christ, that all of you agree and that there be no dissensions among you, but that you be united in the same mind and the same judgment." I Corinthians 1:10 (rev. stand. version).

[4] C. ZOLLMANN, AMERICAN CIVIL CHURCH LAW 172 (Colum. ed. 1917).

v. Eastern Heights Presbyterian Church,[5] the general organization of the Presbyterian Church was at odds with two dissident churches in Savannah. Disagreement centered mainly on actions of the General Assembly,[6] which had decided, among other things, that women could hold positions in the church previously reserved for men. The two Savannah churches also disagreed with the positions of the general church in the recent dispute over required Bible reading in public schools,[7] United States involvement in Vietnam, civil disobedience, predestination, and the general church's membership in the National Council of Churches of Christ.[8] In 1966, both local churches "withdrew" from the general church, claiming that the General Assembly's stand violated the original tenets of faith of the Presbyterian Church as set down in 1861.[9] The Presbytery of Savannah[10] thereafter notified the two Savannah churches that it was securing ministers for them and would maintain the church buildings for those who desired to continue their relationship with the general church. The Savannah churches sought judicial relief in the form of temporary and permanent injunctions. A predominantly Baptist jury[11] found that the general church had departed from the original tenets of faith, and the court, accordingly, granted the requested relief.[12] The Georgia Supreme Court affirmed the trial court's decision by overruling well-settled precedent[13] and rejecting the argument that such a decision concerned matters of faith, and was, therefore, an area protected from intrusion by civil courts.[14] The Georgia court explained that under the "implied trust" doctrine, church property is impressed with an "implied trust" for the benefit of the general church. When a local church is dissolved or withdraws from the denomination,[15] the doctrine operates

[5] 224 Ga. 61, 159 S.E.2d 690 (1968), *cert. granted sub nom.* Presbyterian Church in the United States v. Mary Eliz. Blue Hull Mem. Presby. Church, 392 U.S. 903 (1968).

[6] *See generally* PRESBYTERIAN CHURCH IN THE UNITED STATES, BOOK OF CHURCH ORDER § 13-1 (rev. ed. 1964) [hereinafter cited as BOOK OF CHURCH ORDER].

[7] *See* Hanft, *The Prayer Decisions*, 42 N.C.L. REV. 567 (1964).

[8] 224 Ga. at —, 159 S.E.2d at 692.

[9] The year of the formation of the Presbyterian Church of the Confederate States of America. J. LESLIE, PRESBYTERIAN LAW AND PROCEDURE 24 (1930).

[10] The Presbytery is the second highest church court. BOOK OF CHURCH ORDER §§ 13-1, 14-5.

[11] The Washington Post, May 4, 1968, § D, at 11, col. 5.

[12] 224 Ga. at ——, 159 S.E.2d at 692-95.

[13] See Mack v. Kime, 129 Ga. 1, 58 S.E. 184 (1907).

[14] 224 Ga. at ——, 159 S.E.2d at 695-96.

[15] The Georgia court reasoned that the two local churches were already out of the general church's jurisdiction and, therefore, did not need to press an appeal within the church structure to validate that separation. 224 Ga. at —, 159 S.E.2d

to give the local church property to the general church. However, the doctrine allows the local church to retain control of the church property by proving that the general church departed from the original tenets of faith. The court, in awarding the property to the two local churches, claimed "virtually unanimous"[16] support for the rule's application to the Savannah church property.[17]

The "implied trust" doctrine invoked by the court in *Eastern Heights* first appeared in England during the early nineteenth century.[18] The English courts assumed that property obtained by a local church without any express limitations as to its use was given with the intention that it should be used for the promulgation of the church's faith as it existed at the time of the conveyance. If the grantor of the property, or the donor of the funds used for its purchase, had not specified these conditions, the courts would imply them—hence the "implied trust." In case of a schism, the property would go to the faction adhering to the tenets of faith as they existed when the property was acquired.[19]

The English rule made little headway in the United States; in 1871 it was expressly rejected by the Supreme Court in the landmark decision of *Watson v. Jones*.[20] Mr. Justice Miller, speaking for the court, recognized that different forms of church government exist in this country. Some churches operate as independent self-governing congregations, such as the Congregational and Baptist denominations. These are labeled "congregational" since matters of religious concern are settled by majority vote of the church membership. Others, like the Presbyterians and Meth-

at 696. *Contra*, Evangelical Luth. Synod v. First English Luth. Church, 47 F. Supp. 954, 962 (W.D. Okla. 1942).

[16] 224 Ga. at —, 159 S.E.2d at 695.

[17] The court based its authority on a Georgia statute which appears to refer only to "express trusts": "Courts are reluctant to interpose in questions affecting the management of the temporalities of a church; but when property is devoted to a *specific* doctrine or purpose, the courts will prevent it from being diverted from the trust." GA. CODE ANN. § 22-408 (emphasis added). A careful reading of the court's supporting cases reveals that they do not support the conclusions of the court, and in many instances demand a contrary holding. See Watson v. Jones, 80 U.S. (13 Wall.) 679 (1871); Saint John's Presbytery v. Central Presby. Church, 102 So. 2d 714 (Fla. 1958); Presbytery of the Everglades v. Morgan, 125 So. 2d 762 (Fla. Ct. App. 1961); Sapp v. Callaway, 208 Ga. 805, 69 S.E.2d 734 (1952); Tucker v. Paulk, 148 Ga. 228, 96 S.E. 339 (1918).

[18] Craigdallie v. Aikman, 1 Dow 1, 3 Eng. Rep. 601 (H.L. 1813) (Scot.).

[19] Attorney General *ex rel.* Mander v. Pearson, 3 Mer. 353, 418, 36 Eng. Rep. 135, 157 (Ch. 1817). For a thorough treatment of the history of the "implied trust" doctrine, see Note, *Judicial Intervention in Disputes Over the Use of Church Property*, 75 HARV. L. REV. 1142, 1149-54 (1962).

[20] 80 U.S. (13 Wall.) 679 (1871). A minority faction of the Walnut Street Presbyterian Church of Louisville sought control of the local church in defiance of the general church. The dispute centered on the church's stand on slavery.

odists, are governed by a series of church tribunals arranged in hierarchical order.[21] The decisions of these representative bodies are held to be binding upon every congregation within the denomination.

When disputes arise in churches of the first type, Mr. Justice Miller explained, the courts must look to the decision of the majority of the congregation for the determination of matters involving religion.[22] The court would make no inquiry into the theological dispute. Likewise, in decisions involving religious matters within a hierarchical church structure, the courts look to the proper church tribunal. The decision of the church's highest tribunal is held binding upon the courts on matters of doctrine and faith.[23] Only in cases of an express trust for the support of a specific religious doctrine would there be an inquiry by the courts into the religious tenets of the church. This was the only circumstance in which the Court found justification for making such an intrusion.[24]

The Supreme Court further pointed out that the "implied trust" doctrine violates a basic principle of our government, that of the separation of church and state.[25] By voluntarily uniting with a church, the member thereby bound himself to the church's rulings on religious matters.[26] If the courts interfered by inquiring into doctrine, it would undermine the governmental structure of the church.[27]

The great majority of American jurisdictions[28] professed allegience to the *Watson* rule,[29] but in practical application one modification became

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[21] *See, e.g.*, BOOK OF CHURCH ORDER §§ 13-1, 14-5.

[22] 80 U.S. (13 Wall.) at 725.

[23] *Id.* at 727. Sometimes determining into which category a church government falls presents difficulty. *See, e.g.*, Ginossi v. Samatos, 3 Ill. App. 2d 514, 123 N.E.2d 104 (1954); Maryland and Va. Eldership of the Churches of God v. Church of God,—— Md. ——, 241 A.2d 691 (1968).

[24] 80 U.S. (13 Wall.) at 722-23. *See, e.g.*, Chatfield v. Dennington, 206 Ga. 762, 58 S.E.2d 842 (1950).

[25] 80 U.S. (13 Wall.) at 727. For a modern statement of the rule, see Maryland and Va. Eldership of the Churches of God v. Church of God, — Md. —, —, 241 A.2d 691, 697 (1968).

[26] 80 U.S. (13 Wall.) at 728.

[27] *Id.* at 733.

[28] The case was decided before Erie R.R. v. Tompkins, 304 U.S. 64 (1938), and was therefore based on federal common law. Kedroff v. Saint Nicholas Cath., 344 U.S. 94, 116 (1952).

[29] Goodson v. Northside Bible Church, 261 F. Supp. 99 (S.D. Ala. 1966); Evangelical Luth. Synod v. First English Luth. Church, 47 F. Supp. 954 (W.D. Okla. 1942); Barkley v. Hayes, 208 F. 319 (W.D. Mo. 1913); Bouchelle v. Trustees of the Presby. Congreg., 22 Del. Ch. 58, 194 A. 100 (1937); Stewart v. Jarriel, 206 Ga. 855, 59 S.E.2d 368 (1950); Mack v. Kime, 129 Ga. 1, 58 S.E. 184 (1907) (see note 13 *supra*); First Protest. Ref. Church v. DeWolf, 344 Mich. 624, 75 N.W.2d 19 (1956); Kelly v. McIntire, 123 N.J. Eq. 351, 197 A. 736 (1938); True Ref. Dutch Church v. Iserman, 64 N.J.L. 506, 45 A. 771 (1900); Tubreville v. Morris, 203 S.C. 287, 26 S.E.2d 821 (1943). Two jurisdictions appear not to

necessary. It was obvious that the decisions of ecclesiastical authorities must be legitimate and derived by proper methods of procedure if they were to be accepted at face value by the courts. An ecclesiastical due process rule evolved which, when added to the original *Watson* rule, meant that the decisions of the church would be accepted as final by the courts provided there was fair play and substantial justice rendered in the process.[30] The resulting rule provided a workable formula for the courts[31] by keeping judicial inquiries into matters of religious doctrine to a minimum, while allowing suitable recourse for parties in the face of mismanagement.[32]

While rendering allegiance to *Watson*[33] with one hand, however, the state courts modified portions of the rule with the other. Despite the Supreme Court's express rejection of the "implied trust" doctrine,[34] it

have accepted the rule. *See, e.g.*, Boyles v. Roberts, 222 Mo. 613, 121 S.W. 805 (1909); Bonham v. Harris, 125 Tenn. 452, 145 S.W. 169 (1911); *but see* Hayes v. Manning, 263 Mo. 1, 172 S.W. 897 (1914).

[30] Mr. Justice Brandeis speaking for the Court: "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." Gonzalez v. Roman Cath. Arch., 280 U.S. 1, 16 (1929). *See, e.g.*, Brundage v. Deardorf, 55 F. 839 (C.C.N.D. Ohio 1893); Tubreville v. Morris, 203 S.C. 287, 26 S.E.2d 821 (1943).

[31] There have been some exceptions. *See, e.g.*, Master v. Second Parish, 124 F.2d 622 (1st Cir. 1941).

[32] A similar rule is applied to other non-profit corporations such as fraternal organizations. *See, e.g.*, Johnson v. Prince Hall Grand Lodge, 183 Kan. 141, 325 P.2d 45 (1958).

[33] *Watson* may have been given constitutional status by the Supreme Court in Kedroff v. Saint Nicholas Cath., 344 U.S. 94 (1952). This decision strongly implies that the "freedom of religion" concept applies not only to individuals, but also to church organizations. In this case, the Supreme Court struck down a New York statute that prevented the Soviet-influenced hierarchy of the Russian Orthodox Church from asserting control over its subordinate bodies within the state. Mr. Justice Reed for the court concluded:

> "Ours is a government which by the 'law of its being' allows no statute, state or national, that prohibits the free exercise of religion. There are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition or use of property. . . . Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. . . . This under our Constitution necessarily follows in order that there may be free exercise of religion."

Id. at 120-21. (Citations omitted) *See* Goodson v. Northside Bible Church, 261 F. Supp. 99 (S.D. Ala. 1966); Comment, *Judicial Intervention in Church Property Disputes—Some Constitutional Considerations*, 74 YALE L.J. 1113, 1123-39 (1965). *See generally* Duesenberg, *Jurisdiction of Civil Courts Over Religious Issues*, 20 OHIO ST. L.J. 508 (1959).

[34] 80 U.S. (13 Wall.) at 725.

re-emerged under the cloak of the "fundamental change" doctrine.[35] Its application, however, was limited to those disputes involving congregational polities where there was no forum of appeal except the civil courts.[36] In a split involving a Baptist church, for example, the church property would be awarded to that faction adhering to the original beliefs of the church regardless of how many persons took the opposite view. If a majority did not adhere to those beliefs, they were said to have forced a "fundamental change" in the use of the church's property in disregard of the wishes of those members who remained loyal to the faith.[37] The result was that of the "implied trust."

After *Watson*, the use of the term "trust" also emerged in cases involving hierarchical polities. The term, however, was not employed in the same sense as in the "implied trust" doctrine.[38] Principally, its use came from the lack of a better word to describe the *Watson* rule as applied to disputes in hierarchical polities. It was a label used to denote the particular concept of property ownership that allowed a local church to use and hold property in its own name—property that would, without exception, revert to the general church's control if the local church withdrew from the general denomination. The Georgia court in *Eastern Heights* apparently took the invasion of the term "trust" into disputes of hierarchical church polities to mean that it should be employed in the same way that the "implied trust" was applied to congregational polities under the "fundamental change" doctrine.[39] The decisions, however, reveal a contrary conclusion, for the only thing that the two procedures have in

[35] Specific guidelines for the rule have been almost impossible to formulate. *See, e.g.*, Ragsdall v. Church of Christ, 244 Iowa 474, 55 N.W.2d 539 (1952); Parker v. Harper, 295 Ky. 686, 175 S.W.2d 361 (1943); Reid v. Johnston, 241 N.C. 201, 85 S.E.2d 114 (1954). Until *Eastern Heights*, the Georgia courts rejected any form of the "implied trust" doctrine. *See, e.g.*, Sapp v. Callaway, 208 Ga. 805, 69 S.E.2d 734 (1952); Stewart v. Jarriel, 206 Ga. 855, 59 S.E.2d 368 (1950).

[36] *See, e.g.*, Saint John's Presby. v. Central Presby. Church, 102 So. 2d 714 (Fla. 1958); Tucker v. Paulk, 148 Ga. 228, 96 S.E. 339 (1918); Ragsdall v. Church of Christ, 244 Iowa 474, 55 N.W.2d 539 (1952); Parker v. Harper, 295 Ky. 686, 175 S.W.2d 361 (1943); Protestant Ref. Church v. Tempelman, 249 Minn. 182, 81 N.W.2d 839 (1957); Reid v. Johnston, 241 N.C. 201, 85 S.E.2d 114 (1954).

[37] Parker v. Harper, 295 Ky. 686, 175 S.W.2d 361 (1943).

[38] *See, e.g.*, Presbytery of the Everglades v. Morgan, 125 So. 2d 762 (Fla. Ct. App. 1961); Presbytery of Indianapolis v. First United Presby. Church, —— Ind. ——, 238 N.E.2d 479 (Ind. Ct. App. 1968); Presbytery of Bismark v. Allen, 74 N.D. 400, 22 N.W.2d 625 (1946); Kelly v. McIntire, 123 N.J. Eq. 351, 197 A. 736 (1938). *Cf.* Protestant Ref. Church v. Tempelman, 249 Minn. 182, 192-93, 81 N.W.2d 839, 847-48 (1957).

[39] 224 Ga. at —, 159 S.E.2d at 625.

common is the use of the word "trust." The cases involving hierarchial polities still cling strongly to the *Watson* rule.[40]

The Supreme Court will soon review the *Eastern Heights* decision.[41] It is timely, therefore, to examine the practical as well as the legal effect of applying the "implied trust" doctrine to property disputes within a hierarchical church.

First, the doctrine hinders the operation of the general church as it seeks to adapt itself to the times. The general church makes statements of doctrine and faith at the peril of being declared in error and losing those churches whose congregations disagree. One or two such instances would not appreciably affect the operation of the general church, but a series of differences could be catastrophic.[42] By making innovations so costly, the courts actually impose the status quo upon hierarchical religious bodies.[43]

Second, as in *Eastern Heights*, any dissatisfied congregation could claim a departure from the original tenets of faith by its church hierarchy and by majority vote effectively operate contrary to the directives of the general church. The result is not unlike that system of government in congregational polities. It eliminates the binding nature of the general church's decisions, a fundamental characteristic of hierarchical church bodies. The use of the "implied trust" doctrine, therefore, imposes a different form of government upon the general church. Yet this by no means classifies the church government as "congregational" since the organization still operates under a representative system. Hierarchical polities are by court decree forced into a type of limbo, suspended between the congregational form on the one hand, and the hierarchical form on the other. The process disregards the system of government agreed upon in the church's constitution.[44]

[40] *See, e.g.*, Saint John's Presby. v. Central Presby. Church, 102 So. 2d 714 (Fla. 1958); Knight v. Presbytery of Western New York, 26 App. Div. 2d 19, 270 N.Y.2d 218 (1966).

[41] See note 5 *supra*.

[42] An unusual situation occurred in Scotland. In 1900, two major Presbyterian denominations, the Free Church of Scotland and the United Presbyterian Church of Scotland, merged to form the United Free Church of Scotland. A very small minority of the former Free Church, represented by 24 out of a total of approximately 1100 ministers, contended that the merger violated the basic tenets of faith. They were awarded the entire property holdings of the former Free Church. General Ass. of Free Church of Scotland v. Overtoun, [1904] A.C. 515 (Scot.). Parliament could not accept such a result and ordered the property divided equitably between the dissident faction and the United Free Church. Churches (Scot.) Act, 5 Edw. 7, c. 12 (1905).

[43] *See* Casad, *The Establishment Clause and the Ecumenical Movement*, 62 MICH. L. REV. 419, 452 (1964).

[44] *See* Goodson v. Northside Bible Church, 261 F. Supp. 99 (S.D. Ala. 1966),

Finally, the courts, as arms of the state, are forced to intrude into the religious affairs of the church.[45] The "implied trust" doctrine removes disputes over theological matters from ecclesiastical authorities and forces them into secular courts. This result has questionable constitutional validity[46] and was one of the primary reasons for the doctrine's rejection in *Watson*.[47] The doctrine removes decisions on ecclesiastical matters from the agencies[48] of the church that are most qualified to handle such cases,[49] thereby requiring judges and juries to delve into the "theological thicket."[50] The courts are not trained for such a function. It is absurd that a jury of laymen be given the task of deciding whether the highest constituted church court of a major religious denomination is in error on matters of doctrine and faith.[51]

The inevitable conclusion is that the "implied trust" doctrine demands a most undesirable result. But does the *Watson* rule present a suitable solution to the problem? The answer lies in the determination of how hierarchical church bodies actually hold property.

Most local churches are incorporated bodies and hold their property through trustees. But holding formal title does not give the congregation or the trustees absolute control. The *Watson* rule necessarily gives the general church the power to define those persons belonging to its member congregations. If certain members of the congregation deny the authority of the general church, excluding this dissident faction from membership in the congregation effectively eliminates the threat to the general church's

aff'd 387 F.2d 534 (5th Cir. 1967); Presbytery of Indianapolis v. First United Presby. Church, — Ind. —, 238 N.E.2d 479 (Ind. Ct. App. 1968); BOOK OF CHURCH ORDER § 6-3. *Cf.* Kedroff v. Saint Nicholas Cath., 344 U.S. 94 (1952). For criticism of such a result as a court imposed system of uniform land tenure on churches, see Comment, *Judicial Intervention in Church Property Disputes—Some Constitutional Considerations*, 74 YALE L.J. 1113, 1132-33 (1965).

[45] Northside Bible Church v. Goodson, 387 F.2d 534, 537 (5th Cir. 1967).

[46] Kedroff v. Saint Nicholas Cath., 344 U.S. 94 (1952). *Cf.* School District v. Schempp, 374 U.S. 203 (1963); Everson v. Board of Education, 330 U.S. 1 (1947). *See also* W. O. DOUGLAS, THE RIGHT OF THE PEOPLE 138 (1948). For a treatment of the complexities of the constitutional question, see Comment, *Judicial Intervention in Church Property Disputes—Some Constitutional Considerations*, 74 YALE L.J. 1113 (1965).

[47] 80 U.S. (13 Wall.) at 733-34.

[48] The constitution of the Presbyterian Church in the United States actually refers to these bodies as courts. BOOK OF CHURCH ORDER, §§ 13-1, 14-5.

[49] Watson v. Jones, 80 U.S. (13 Wall.) 679, 725 (1871); Bouchelle v. Trustees of the Presby. Congreg., 22 Del. Ch. 58, 64, 194 A. 100, 103 (1937); Sapp v. Callaway, 208 Ga. 805, 811, 69 S.E.2d 734, 739 (1952).

[50] Maryland and Va. Eldership of the Churches of God v. Church of God, — Md. —, —, 241 A.2d 691, 697 (1968).

[51] *See* Bouchelle v. Trustees of the Presby. Congreg., 22 Del. Ch. 58, 194 A. 100 (1937).

authority.[52] In *Eastern Heights*, the Savannah Presbytery attempted to exercise this prerogative by declaring that those who had disaffiliated from the church were no longer members, and that those who desired to maintain their general church connection would be allowed to use the church.[53]

At first glance this would appear to give excessive power to the ecclesiastical tribunals, but it does not appear so in the light of the *Watson* rule. First, as has been mentioned, the application of the doctrine demands fairness in procedure.[54] The court may inquire into the process used and the legitimacy of the source. Second, in hierarchical polities power is wielded by representative bodies whose authority comes from the members of the general church as a whole.[55] Finally, as Mr. Justice Miller pointed out, those who join an ecclesiastical organization and derive the benefits of their affiliation must accept the decisions of the proper religious authorities. "[I]t would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed."[56]

If the local congregations of hierarchical church polities do not in fact have ultimate control of their local property, who does? In the light of *Watson*, the property must be said to be controlled by the membership of the general church as a whole through the system of hierarchical church courts. This result satisfies the general notions of the proper function of representative government and is both practical and equitable.[57] Abiding by the *Watson* precedent would, therefore, have the desirable effect of maintaining the representative type of church government in this country, while honoring the fundamental principles of the separation of church

[52] "All of which leads one to the ineluctable conclusion that these dissident lambs at one time happy and contented in the Central Church voluntarily bounded the theological fold in search of what they thought were greener ecclesiastical pastures but missed the boat and are now like the children of Israel grazing in the wilderness of dispair absent a church home which no human agency except perhaps intercession can restore."
Saint John's Presby. v. Central Presby. Church, 102 So. 2d 714, 719 (Fla. 1958). *Cf.* Trustees of Presby. v. Westminister Presby. Church, 222 N.Y. 305, 118 N.E. 800 (1918).

[53] 224 Ga. at —, 159 S.E.2d at 693.

[54] Gonzalez v. Roman Cath. Arch., 280 U.S. 1, 16 (1929).

[55] Protestant Ref. Church v. Tempelman, 249 Minn. 182, 191, 81 N.W.2d 839, 847 (1957). *See, e.g.*, BOOK OF CHURCH ORDER, § 1-4.

[56] Watson v. Jones, 80 U.S. (13 Wall.) 679, 729 (1871); *accord*, Barkley v. Hayes, 208 F. 319, 323 (1913).

[57] *See* Presbytery of Bismark v. Allen, 74 N.D. 400, 413, 22 N.W.2d 625, 631 (1946). *See generally* Comment, *Judicial Intervention in Church Property Disputes—Some Constitutional Considerations*, 74 YALE L.J. 1113, 1134-35 (1965).

and state.[58] To hold otherwise would effectively destroy the concept of representative church government in the United States.[59]

THOMAS B. ANDERSON

Social Welfare—The "Man in the House" Returns to Stay

Under the type of state welfare regulation popularly known as the "substitute father" rule, children otherwise eligible for benefits under the Aid to Families with Dependent Children[1] program are denied assistance if their natural parent maintains a continuing sexual relationship with someone of the opposite sex. This person is deemed to be a non-absent parent within the meaning of the Social Security Act, thus rendering the family ineligible for AFDC payments. Whether this person is legally obligated to support the children is irrelevant; whether he does in fact contribute to their support is also irrelevant; eligibility under such a rule is determined solely by the relationship between the parent (usually the mother of the children) and the "substitute" (usually an unrelated male).

In *King v. Smith*,[2] the Supreme Court unanimously held Alabama's "substitute father" rule invalid as inconsistent with Title IV of the Social Security Act, 42 U.S.C. § 601-09 (1964). Declining to reach the constitutional issue presented, the Court found the Alabama provision to be violative of the "Flemming Ruling"[3] and held that it defined

[58] *Cf.* Kedroff v. Saint Nicholas Cath., 344 U.S. 94, 110 (1952); Goodson v. Northside Bible Church, 261 F. Supp. 99, 103 (S.D. Ala. 1966).

[59] Barkley v. Hayes, 208 F. 319, 323 (W.D. Mo. 1913).

[1] Aid to Families with Dependent Children [hereinafter cited as AFDC] is one of the major components of the public assistance program established by the Social Security Act of 1935, 42 U.S.C. § 601-09 (1964). The program grants aid to dependent, needy children who have been "deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent," and who live with any of certain enumerated relatives. 42 U.S.C. § 606(a)(1) (1964). For a thorough discussion of AFDC and its predecessors, see W. BELL, AID TO DEPENDENT CHILDREN (1965).

[2] 88 S. Ct. 2128 (1968).

[3] 42 U.S.C. § 604(b) (1964). The ruling, given statutory approval in 1961 in response to a directive issued by the then Secretary of the Department of Health, Education & Welfare, Arthur Flemming, provides that

> A State plan for aid to dependent children may not impose an eligibility condition that would deny assistance with respect to a needy child on the basis that the home conditions in which the child lives are unsuitable, while the child continues to reside in the home. Assistance will therefore be