The Supreme Court approved two different methods that a court may use in determining church property disputes: the Deference/Church Autonomy Approach[5] and the Neutral Principles of Law Approach.[6] The Court noted, however, that "a State may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith."[7] "While both approaches have their adherents, neither is applied with great consistency, and legal scholars have written extensively about how difficult it is for local parishes to order their affairs in the face of this analytical quagmire."[8] Further, despite the broad authority to apply a variety of approaches, "courts frequently disregard seemingly fundamental questions such as what funds were used to purchase the property and how the relationship between the church and [local parish] operates on a day to day basis."[9] What has emerged is a body of case law that is contradictory and often unjust.

> Since the theological and ecclesiological tensions have developed over the election of a bishop living in a same-sex relationship and the authorization in parts of the [Anglican] Communion of a public Rite of Blessing of same-sex unions, enormous strains have also arisen in the [Anglican] Communion regarding the pastoral care of those parishes and dioceses within the Episcopal Church that have been alienated from the life and structures of the Episcopal Church because of those developments . . . .In response to these developments, some primates[10] and bishops of other Prov-

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5. The Deference/Church Autonomy Approach was first espoused by the Supreme Court in *Watson*, 80 U.S. 679. Professor Douglas Laycock is widely credited with popularizing the use of the phrase "church autonomy doctrine" in his article, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 COLUM. L. REV. 1373 (1981). Andrew Soukup, Note, *Reformulating Church Autonomy: How Employment Division v. Smith Provides a Framework for Fixing the Neutral Principles Approach*, 82 NOTRE DAME L. REV. 1679, 1680 n.6 (2007).

6. The Neutral Principles of Law Approach was approved by the Supreme Court in *Jones*, 443 U.S. at 602.

7. *Id.* (quoting Md. & Va. Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 368 (1970) (Brennen, J., concurring)).

8. Kathleen E. Reeder, *Whose Church Is It, Anyway? Property Disputes and Episcopal Church Splits*, 40 COLUM. J. L. & SOC. PROBS. 125, 129 (2006). Ms. Reeder also notes other scholarly work on this topic. *Id.* at 127 n.6.

9. *Id.* at 126.

10. "The use of the title PRIMATE in the context of meetings of the Anglican Communion denotes the chief archbishop or bishop of a province of the Anglican Episcopal family of churches." *See* The Anglican Communion, Instruments of Communion: Primates Meetings,

> inces have been drawn into ad hoc arrangements assuming or claiming differing levels of pastoral and Episcopal authority for such ministry. This has created a complex pattern of parishes which are opting out of the life and structure of the Episcopal Church.[11]

This interventionist structure is particularly significant to church dispute cases because Dioceses of the Episcopal Church are suing to retrieve church property from groups they consider to have left the church.[12] "In addition, it is becoming clear that around half a dozen dioceses are likely to withdraw from the Episcopal Church if their leadership continues in their conviction that the Episcopal Church has departed from a proper understanding of the Christian faith as received by Anglicans."[13] Given this situation, the Anglican Primates have urged "the representatives of The Episcopal Church and of those congregations in property disputes with it to suspend all actions in law arising in this situation."[14] It is not likely that churches are heeding that call.

If a parish in a hierarchical church splits from that church structure, who gets the property? Should it make a difference that the church is hierarchical in name but congregational in reality? Should it matter if the church belongs to an international church that operates in a congregational form in name but hierarchical structure in reality? If a court defers to the highest church tribunal in matters of doctrine and polity, what standard should be used to determine what the "highest" court is? Can neutral principles of law be applied justly if a court ignores inherently religious documents that also specify how church property is distributed? Should the court become involved in resolving church property disputes when the church itself has

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http://www.anglicancommunion.org/communion/primates/definition.cfm (last visited Feb. 20, 2007).

11. The Report of the Joint Standing Committee to the Archbishop of Canterbury on the Response of The Episcopal Church to the Questions of the Primates articulated at their meeting in Dar es Salaam and related Pastoral Concerns 9–10 (Oct. 2, 2007) [hereinafter THE REPORT], *available at* http://www.dncweb.org/Report_of_Jt_Standing_Comm.pdf.

12. *See* Episcopal Diocese of Rochester v. Harnish, No. 2006/02669, 2006 WL 4809425 (N.Y. Sup. Ct. Sept. 13, 2006) (holding that, where a parish broke from the Episcopal Church and realigned itself with the Anglican Church of Uganda, the church property belonged to the Episcopal Church).

13. THE REPORT, *supra* note 11, at 10.

14. The Key Recommendations of the Primates, The Communiqué of the Primates' Meet-

not resolved that issue?

This Article first explores the two approaches the Supreme Court has authorized for resolution of church property dispute cases. It will then critique the application of those approaches to the unique polity structure in the Episcopal Church and the Anglican Communion. The Article then reviews a selection of chu

court to determine who would control the church's property.[20] The Court described the congregation as "a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control . . . over the whole membership of that general organization."[21] The Court then declined to resolve the conflict and instead noted that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final . . . ."[22] The Supreme Court gave three reasons for its decision. First, it explained that "[i]t is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance . . . ."[23] Second, it was famously noted that "[i]t is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith" as those within the church's tribunals.[24] "It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so."[25] And third, deference to the highest tribunal would protect the boundaries of church and state.[26] The Supreme Court noted:

> [I]t is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care . . . . This principle would deprive these bodies of the right of construing their own church laws . . . .[27]

Relying on *Watson*, the Supreme Court later invalidated a New York statute as unconstitutional in *Kedroff v. Saint Nicholas Cathedral*.[28] Fearing control of the Russian Orthodox Church in America by anti-religious Soviets, New York enacted a statute that transferred

20. *Id.* at 694 (explaining that the minority pro-slavery faction included some residents of Indiana, and therefore, they were able to claim diversity of citizenship as their basis for federal jurisdiction).

21. *Id.* at 722–23.

22. *Id.* at 727.

23. *Id.* at 729.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 733–34.

28. Kedroff v. Saint Nicholas Cathedral, 344 U.S. 94 (1952).

control of a cathedral from Russian-based religious leaders to the American church officials.[29] The Court said that churches have "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."[30] It is a principle emanating from the Free Exercise Clause.[31]

The Deference/Church Autonomy Approach was then broadened

three separate dioceses.[38] The Illinois Supreme Court held that the actions were invalid because the church had not followed its own law in accordance with its constitution.[39] The Supreme Court reversed, noting that the Illinois Supreme Court had "substituted its interpretation of the . . . Church constitutions for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation."[40] That substitution was unconstitutional because, "[t]o permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide . . . religious law [governing church policy] . . . would violate the First Amendment in much the same manner as civil determination of religious doctrine."[41]

Thus the line of cases emanating from the logic of *Watson* stand for the proposition that:

> Where resolution of the [church property] disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not dis

cal tribunal.[45] If a local church is congregational in nature, that is, governed independently of any other ecclesiastical body, "the rights of [conflicting groups] to the use of the property must be determined by the ordinary principles which govern voluntary associations."[46]

"Such blind deference [to a hierarchical church], however, is counseled neither by logic nor by the First Amendment."[47] As Kathleen Reeder noted, such an approach is unjust "because it cedes the role of adjudicator to church tribunals who are themselves a party in the dispute."[48] Additionally, such blind deference "imputes a relationship of implied trust between national and local churches that does not necessarily reflect a congregation's intent or expectations."[49] Is it always the case that a spiritually hierarchical church is also hierarchical in terms of property?

Nathan Belzer, a scholarly defender of the Deference/Church Autonomy Approach, has described it as the "lesser of two constitutional evils . . . because it violates fewer First Amendment principles than other judicial approaches."[50] However, even if one accepts that this is the lesser of two evils, it certainly comes at a great expense. This approach violates the Establishment Clause because it requires courts to blindly defer to the decisions of a church tribunal and, by doing so, courts are placing the force of governmental authority behind a particular religious group.

The Deference/Church Autonomy Approach also ignores the reality that churches are often a mixture of both congregational and hierarchical polity. By assuming a church is entirely hierarchical simply because it looks that way, the hierarchy is given an easy opportunity to dismiss the long held expectations of local congregations.[51] Kathleen Reeder notes that "[t]he deference approach often assumes that local churches have given implied consent to the church hierarchy, even though this assumption is not necessarily based on any understanding of the realities of everyday church operations."[52] In deter-

45. Watson v. Jones, 80 U.S. (13 Wall.) 679, 727 (1871).

46. *Id.* at 725.

47. *Serbian E. Orthodox Diocese*, 426 U.S. at 734 (Rehnquist, J., dissenting).

48. Reeder, *supra* note 8, at 129.

49. *Id.*

50. Nathan Belzer, *Deference in the Resolution of Intrachurch Disputes: The Lesser of Two Constitutional Evils*, 11 ST. THOMAS L. no19.873f

plications of a later decision in *Employment Division v. Smith*,[59] which held that neutral, generally applicable laws that incidentally burden the religious conduct of individuals do not violate the Free Exercise Clause.[60] If the principle of *Smith* is taken to its logical end, defenders of blind deference must answer how religious groups can claim that they are exempt from generally applicable laws, including laws relating to voluntary organizations, when individuals lack the same immunity.[61] Thus,

> [d]espite the ease with which courts set forth [deference]/church autonomy principles, the doctrine creates a myriad of practical and doctrinal problems. In the practical context, the Supreme Court has ruled that courts can constitutionally burden church autonomy . . . but it never defined the degree of permissible interference. Conse-

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applied.[65] Then, in *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, Justice Brennan, in his concurrence, noted that "neutral principles of law, developed for use in all property disputes, provide another means for resolving litigation over religious property."[66] The Court's per curium opinion in *Maryland and Virginia Eldership* affirmed the Maryland Supreme Court's use of statutory law to resolve the case because it did not involve inquiry into religious doctrine.[67] Using state law, church deeds and the national church's constitution, the Maryland Supreme Court concluded there was no evidence giving the national church control over the local church property.[68]

The Supreme Court finally gave full credence to the Neutral Principles of Law Approach in

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gious organizations the same as voluntary organizations with regard to property dispute cases.[92] The expressed views of these Justices may suggest a more hands-on approach than *Jones* appears to suggest. Thus, the more restrictive nature of the Neutral Principles of Law Approach may not be on solid ground.[93]

Even if courts were to attempt to treat religious organizations as voluntary organizations, *Jones* prohibits the ability of courts to delve into polity, doctrine, and custom, thus precluding them from examining documents that are often significant indications of purpose and attachment.[94] "With ordinary secular associations, courts may examine relevant documents and extrinsic evidence to discern how activities fit underlying purposes, and to gauge whether primary attachment is to a local or general organization."[95] Greenawalt cautions:

> This creates a dilemma. Insofar as courts rely on decisional principles that avoid disputes about doctrines and church polity, the principles may be neutral in not requiring religious understanding, but, by effectively excluding forms of investigation analogous to those for secular associations, these same principles result in unequal treatment of religious and secular associations.[96]

There are nagging questions that courts must grapple with in using a neutral principles approach. For example: what documents may a court examine? How does a court determine if a document is too religious to be of probative value in a secular property dispute case? One of the weaknesses of the neutral principles is that in reviewing documents a court may realize they are religious and thus the court must defer to the highest tribunal. Thus, neutral principles may lead right back to deference.

Despite the nearly uniform popularity of this approach, courts have struggled to properly apply the Neutral Principles of Law Approach. The *Jones* dissenters "correctly pointed out that determining whether a court can apply the neutral principles approach on a case-by-case basis necessarily entails an entangling inquiry in to the religious group's organization or doctrinal practices."[97] Just as in the Deference/Church Autonomy Approach, the Neutral Principles of

Law Approach can lead to unjust results by refusing to review matters that parties often care a great deal about: doctrine and practices.

IV. THE EPISCOPAL CHURCH CASES: THE EPISCOPAL CHURCH

Canon provides that "all real and personal property held by or for the benefit of any Parish, Mission, or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission, or Congregation is located."[102] This canon was intended to create an express trust for the national church. It has been cited extensively by courts to resolve such conflicts.[103]

Courts may generally review spiritual documents if they are probative and can be read in purely secular terms. In *In re Church of St. James the Less*,[104] the Pennsylvania Supreme Court dealt with a parish that disaffiliated from the national church but attempted to retain its property.[105] Though the title to the property was in the parish's name,[106] the parish had remained within the denomination after the adoption of the Dennis Canon.[107] Despite those factors, the most important consideration for the court was that the charter noted its purpose was "the support of the public worship . . . according to the faith and discipline of the Protestant Episcopal Church," excluding from membership any person who "shall disclaim or refuse conformity with and obedience to the constitution, canons, doctrines, discipline, or worship of the Protestant Episcopal Church," and further prohibiting the parish from amending its charter without diocesan approval.[108] The court reasoned those spiritual documents were probative of the intent of the parish to create a trust in favor of the national church.[109]

The Massachusetts Appellate Court in *Episcopal Diocese of Massachusetts v. Devine* held that the Dennis Canon provides principally that a parish holds its property in trust for the national church.[110] *Devine* involved a parish seeking to disaffiliate itself from the national church. Because the bylaws of that parish included that it would "accede to the Constitution, canons, doctrine, discipline, and worship of . . . [the] Episcopal Church" it was bound to accept the authority of

102. *Id.*

103. *See In re Church of St. James the Less*, 888 A.2d 795, 803; Episcopal Diocese of Mass. v. Devine, 797 N.E.2d 916, 923 (Mass. App. Ct. 2003); *Trustees of Diocese of Albany*, 250 A.D.2d 282, 284-85.

104. 888 A.2d 795.

105. *Id.* at 800.

106. *In re* Church of St. James the Less, 833 A.2d 319, 322 (Pa. Commw. Ct. 2003).

107. *In re Church of St. James the Less*, 888 A.2d at 810.

108. *See In re Church of St. James the Less*, 833 A.2d at 323; *see also In re Church of St. James the Less*, 888 A.2d at 808–09.

109. *In re Church of St. James the Less*, 888 A.2d at 805.

110. 797 N.E.2d 916, 923 (Mass. App. Ct. 2003).

the Dennis Canon.[111] The Dennis Canon was also determinative for a New York Court in *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville*.[112] While noting that the deeds "do not indicate that Trinity Episcopal Church or its predecessors acquired the property with the intention to hold it in trust for [the national church],"[113] the court held that the Dennis Canon applied because it represented the existing church policy at the time the parish affiliatedentlb844 -1.1302 TD0.0001 Tc

quiry was whether an express trust existed. "Simply put, the issue [is] . . . whether the local churches expressly hold their property in trust for members of the Diocese and [the Episcopal Church]."[122] In relying on earlier California case law favoring a neutral principles approach, the court looked at the deeds of property, articles of incorporation, constitution, canons, and rules of the national church and state statutes.[123] The court found that only one parish had created an express trust because that parish was created after the Diocese approved a canon providing for an express trust.[124] The three others were incorporated prior to that.[125]

Despite the fact that the three other parishes had agreed to the constitution, canons, doctrine, and worship of the national church, the court held that this was "nothing more than expressions of present intention" analogizing this to a marriage vow which can be broken in divorce.[126] "As in matrimony, always and forever do not preclude a change in heart and do not create an express trust in another's property."[127]

In *Protestant Episcopal Church in the es-* *(2)* *w J wed* *g e issue [is]*

ples of law principle come into play."[133] Because the parishioners disaffiliated themselves from the Episcopal Church, they lacked standing to dispute the "hierarchical control over St. Stephen's church property."[134]

B. A Critique of the Courts' Handling of Episcopal Church Property Dispute Cases

As the trial court in *Devine* noted, "courts in other jurisdictions . . . have concluded [the Episcopal Church], its regional Dioceses, and local parishes constitute a hierarchical church . . . ."[135] In applying the neutral principles analysis, Reeder notes that "courts almost unilaterally rule in favor of the diocese and against the local church with what appears to be little regard for highly salient, case-specific facts."[136] It is understandable that courts will seek to examine similar documents such as constitutions, corporate charters, the Dennis Canon and so on because it has the attractive advantage of producing consistent results. However, as Reeder further notes, "these uniform outcomes fail to account for differing expectations and investments of parish members and church leadership."[137]

In examining documents such as corporate charters or other church documents giving "lip service" to the constitution and canons of the national church through the lenses of property law, corporate law, and trust law, courts assume "a near-slavish devotion of local churches to their dioceses and denominations."[138] While the *Barker* court may be an outlier in its conclusion, it rightly realized that "a blanket assumption that member organizations accept all decisions of their superiors is untenable."[139]

This should not come as a great surprise to the courts, given the 0 -1 consisnd dassum4mi4(s.7(m)6.[(rehe co)6(grgandlin a)]TTc8 Tm0.ai)]TJ[(co004 8.7.6 trs( )T

e denom0(national)0-4.0826hurch.'-0Tc(P5ME28TfJ5740Tj0.05Tf9.88Th) 5e courts have clung to)

church property disputes in favor of the national church. While this appears reasonable at first glance, it ignores the reality of congregational life. Many Episcopal Parishes were founded long before the Dennis Canon was approved in 1979. Further, while the national church, after the Supreme Court decision in *Jones*, sought to "maintain a stronghold over church property . . . member parishes likely remained relatively uninformed about impending legal difficulties if they attempted to secede."[147] It is inherently more unjust when, as Judge Colins noted in his dissent in *In re Church of St. James the Less*, "parishioners had donated and funded the purchase of real and personal property associated with [the parish] and that the deeds indicated that [the parish] had always owned the property in fee simple."[148] Judge Colins explained that *Jones* did not sanction a denomination unilaterally imposing a trust on property by amending its governing documents and claiming that the individual church would be deemed to hold property in trust for the diocese.[149]

As Reeder notes, national and diocesan conventions are "often political and theological powder kegs. A conservative church in a relatively liberal diocese has little hope of rallying enough votes to send a conservative representative to [the national convention]."[150] It is precisely because of this phenomenon that Bishops from other provinces of the Anglican Communion have now intervened into the national jurisdiction of the Episcopal Church.[151]

> In ruling in favor of the diocese, courts rely heavily on the Dennis Canon and the implied trust doctrine. . . . [B]ut a closer examina-

> but under the application of neutral principles and deference, they lose the very properties they have purchased, improved, and maintained.[152]

V. THE STRUCTURE OF THE ANGLICAN COMMUNION AND THE QUESTIONS A COURT SHOULD ASK

"The National Church is a member of the Anglican Communion, a group of churches that all have their roots in the doctrine, discipline, and worship of the Church of England's Book of Common Prayer."[153]

A terrific example of where the court got it wrong is *Episcopal Diocese of Rochester v. Harnish*.[154] In that case, a parish in New York disaffiliated from the Diocese of Rochester and the national church[155] and realigned itself with the Anglican Church of Uganda.[156] Originally, the parish was a mission, but when it applied to be recognized as a parish in 1947, it agreed to abide by the Constitution and Canons of the diocese and national church.[157] Serious theological disputes culminated in a Diocesan Convention declaring the parish extinct.[158] Thereafter, the parish sought "alternative ecclesiastical oversight by other bodies within the Anglican Communion," which was given by the Archbishop of the Anglican Church of Uganda.[159] Interestingly, the Diocese and the national church denied any relationship between the Anglican Church of Uganda and the Episcopal Church.[160] The parish agreed, but from a church governmental point of view.[161] The property in question was granted for the sole purpose of building the parish and included a clause insisting that if the property was ever abandoned, the title would revert back.[162] Thus the deed conveyed the land to the parish with no express trust for the diocese or national church.[163] Further, "all the funds for building the church, the small

152. Reeder, *supra* note 8, at 157–58.

153. Episcopal Diocese of Rochester v. Harnish, No. 2006/02696, 2006 WL 4809425, at *2 (N.Y. Supp. Ct. Sept, 13, 2006).

154. *Id.*

155. *Id.* at *2.

156. *Id.* at *3.

157. *Id.* at *2.

158. *Id.* at *3.

159. *Id.*

160. *Id.*; *see also id.* at *5 (discussing the Episcopal Church's allegations that the Anglican Church of Uganda "severed all ties to the Protestant Episcopal Church").

161. *Id.* at *3.

162. *Id.* at *4.

163. *Id.* at *10.

endowment funds, and land for the church were either donated or paid for by the parishioners of [the parish] without any grants from the Episcopal Diocese."[164]

In resolving this dispute, the court relied on a neutral principles of law approach.[165] The court examined the deeds first, the local church charter second, the statutes governing holding church property third, and the national church's constitution regarding church property last.[166] Relying largely on the Dennis Canon and on the Article of Incorporation's reference to a law relating to Episcopal Churches, the court held that the property belonged to the national church.[167] The

analysis or, at the very least, a difficult speculation of the original intent of the donor. Further, such an analysis could cripple churches from developing new doctrines.[173]

Who pays for the parish involves very little doctrine and the answer to that question should make for a more fair result. When a diocese purchased property or was deeded that property, the diocese should justly keep that property in the case of schism. The same is true if members of a parish purchased the property or were deeded the property. This allows the parties in a case to take out of the dispute what they put in. Though courts uniformly rule to the contrary, this may be said to stem from a court's failure to understand the lack of bargaining power of parishes. In many instances, dioceses and the national church enact policies without a full knowledge of parishes in any number of areas, including church property. Understanding that a parish, especially one founded hundreds of years ago, likely had no idea the diocese had a policy that gave it an implied or express trust in church property may allow a court to give greater weight to a parish's position in a church property dispute.

The greatest shortcoming of the court cases dealing with Episcopal parishes is the lack of deference courts give to the Anglican Communion. To understand the role that the Anglican Communion should play in such decisions it is necessary to understand where the Anglican Communion fits into Episcopal polity.

> The Anglican Communion [is] a fellowship of churches in communion with the See of Canterbury. Individual provinces express their own communion relationships in a variety of judicial forms, as: bipartite (in communion with Canterbury); multipartite (in communion with all Anglican Churches); or simply through the idea of belonging to the Anglican Communion.[174]

Like the language that courts find so important in parish charters, the Episcopal Church's own Constitution sates that "[t]he Protestant

standards but a parish wishing to disaffiliate from the diocese is not? Who should get the property? Further, what if that parish realigns itself with an Anglican province that is not in violation of Anglican standards and thus wishes to disaffiliate with one that is? The court in *Harnish* apparently ignored the connection to the Anglican Communion by accepting the diocese's contention that the Anglican Church of Uganda was not in communion with it. However, under Anglican polity, it is not which member church is in communion with the other, but who is in communion with the See of Canterbury.

One reason courts may ignore the role of the Anglican Communion is that many refer to the autonomy of the member churches. This is fundamental to Anglican polity. However,

> the concept of 'provincial autonomy' in Anglican thinking was developed in its early twentieth century context to signify 'independence from the control of the British Crown'. . . .
>
> . . .
>
> A further development in meaning then occurred: as provinces received or devised their own constitutions, autonomy . . . came to be interpreted more in terms of 'the right of each church to self-determination', expressed in the possession of extensive powers over the determination of local issues.[176]

Thus, the word "autonomy" represents within Anglican polity "not an isolated individualism, but the idea of being free to determine one's own life within a wider obligation to others."[177] One of the controversies that have arisen in this context is the authority of The Lambeth Conference.[178] The Lambeth Conference is a body consisting of all Bishops of the Anglican Communion recognized by the Archbishop of Canterbury. The seemingly settled view is "[w]hile the decisions of Lambeth Conferences do not have canonical force, they do have the moral authority across the Communion. Consequently, provinces of the Communion should not proceed with controversial developments in the face of teaching to the contrary from all the bishops gathered in Lambeth Conferences."[179]

Recent controversies have shown how the structure of the Angli-

176. THE WINDSOR REPORT, *supra* note 151, at §§ 73–74.

177. *Id.* § 76.

178. The Lambeth Conference "takes place every ten years at the invitation of the Archbishop of Canterbury**.** It is the only occasion when bishops can meet for worship, study and conversation. Archbishops, diocesan, assistant and suffragan bishops are invited." The Lambeth Conference, http://www.lambethconference.org (last visited Feb. 20 2008).

179. THE WINDSOR REPORT, *supra* note 151, app. 1 at 61.

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This example shows how, while autonomous, the Anglican Communion operates on a hierarchical basis with authority. The importance of this authority in cases of church property disputes is clear when it is noted that the

> Primates urge the representatives of The Episcopal Church and of

However, the Court later narrowed this exception in *Serbian Eastern Orthodox Diocese* by holding that

> whether or not there is room for "marginal civil court review" under the narrow rubrics of "fraud" or "collusion" when church tribunals act in bad faith for secular purposes, no "arbitrariness" exception in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, international organization or ecclesiastical rule, custom or law.