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# The Significance of Church Organizational Structure in Litigation and Government Action

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# THE SIGNIFICANCE OF CHURCH ORGANIZATIONAL STRUCTURE IN LITIGATION AND GOVERNMENT ACTION

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## INTRODUCTION

When a court-appointed receiver attempted to take control of the Worldwide Church of God headquarters on January 3, 1979, the confrontation created headline news. Church leaders and attorneys across the country awaited the precedential resolution of a classic church legal battle. Few noticed that the first and second causes of action in the complaint alleged failure to account to the members of the corporation, failure to hold regular meetings of the members of the corporation, and failure to allow the members to vote on the governance of the corporation or to elect the directors as required by law.[1] During the hearing on the order to show cause, the court observed,

> with reference to the conduct of the affairs of the church, the administration of its assets and the expenditures over the last several years, and up to the present time—it seems to be conceded that in spite of the fact that the articles are filed in this corporation under the nonprofit clause of the State of California, and in spite of the fact that there are specific provisions in the articles and bylaws which place control in the board of directors, it seems, nevertheless, to be conceded that for many years this was essentially a one-man operation.[2]

It is an open question whether conduct of the corporate affairs in harmony with relevant bylaws and statutes would have avoided the sensational controversy over the church's financial practices. No one can say, but the incentive for a court challenge to management practices would certainly have been minimized.

Another church legal controversy that involves organizational structure is whether church-related schools are subject to unemploy-

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1. State v. Worldwide Church of God, Inc., No. C267607 (L.A. Super. Ct., filed, Jan. 2, 1979).

2. Reporter's Transcript at 388.

ment insurance laws. Prior to January 1, 1978, the Federal Unemployment Tax Act permitted states to exempt services provided in the employ of a church and also services provided in the employ of a school.[3] In 1976, Congress amended the Act eliminating the exemption for employees of a school.[4] Although several courts have upheld the ruling of the United States Secretary of Labor that removing the education exemption had effectively eliminated the exemption for all church-related schools,[5] the United States Supreme Court has recently ruled that schools that are a part of a church organization remain exempt.[6] The Court recognized that many of the church schools have no separate legal existence and their employees are hired, controlled, disciplined, and fired by church representatives; school buildings are owned by the church; and their employees are paid from church accounts.[7]

"Neither school has a separate legal existence. Thus, the employees working within these schools plainly are 'in the employ . . . of a church or convention or association of churches.' "[8] In this controversy, distinctions involving organizational structure have been prominent thoughout the opinions of the courts[9] as well as the legis-

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3. Federal Unemployment Tax Act, 26 U.S.C. §§ 3306(c)(8), 3309(b) (1970) (amended 1976).

4. Unemployment Compensation Amendments Act of 1976, Pub. L. No. 94-566, § 115(b)(1), 90 Stat. 2671 (1976).

5. *E.g.*, Ascension Lutheran Church v. Employment Security Bd., 501 F. Supp. 843 (W.D.N.C. 1980); Independent Baptist Church v. Tennessee, 468 F. Supp. 71 (E.D. Tenn. 1978).

6. St. Martin Evangelical Lutheran Church and Northwestern Lutheran Academy v. South Dakota, ___ U.S. ___, 49 U.S.L.W. 4575 (1981).

Although the Wisconsin Supreme Court ruled that all church-related schools are now included under the Act and did not analyze the significance of corporate structure, the court quoted legislative history indicating that Congress has considered organizational structure to be significant, at least with regard to institutions of higher education:

> [S]ervices of the janitor of a church would be excluded but services of a janitor for a separately incorporated college, although it may be church related, would be covered. . . . On the otherhand, a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to be operated primarily for religious purposes.

In the Matter of Northwestern Lutheran Academy, ___ S.D. ___, 290 N.W.2d 845, 848 (1980) quoting H.R. Rep. No. 612, 91 Cong., 1st Sess. 44 (1969).

7. 49 U.S.L.W. at 4577.

8. *Id.* at 4578 (footnote omitted).

9. Most cases support the exemption of church-related schools. *E.g.*, Alabama v. Marshall, 626 F.2d 366 (5th Cir. 1980); Lutheran Church-Missouri Synod v. Bowling, 89 Ill. App. 3d 100, 411 N.E.2d 526 (1980); Roman Catholic Church of the

lative history. The decision of the Court rested on statutory interpretation and the Court observed:

> Our holding today concerns only schools that have no legal identity separate from a church. To establish exemption from FUTA, a separately incorporated church school (or other organization) must satisfy the requirements of § 3309(b)(1)(B): (1) that the organization 'is operated primarily for religious purposes', and (2) that it is 'operated, supervised, controlled, or principally supported by a church or convention or association of churches.'[10]

Professor Charles Whelan has suggested that Internal Revenue Service regulations ought to distinguish among religious organizations on the basis of function rather than form.[11] He would treat all church-related institutions the same except for those institutions that serve the general public *and* derive a substantial percentage of their current income from government. He would make no distinction on the basis that the organization was separately incorporated.[12] However, Whelan points out that terms such as "church," "religious organization," "integrated auxiliaries," and "religious order" each have a significantly different tax treatment under various sections of the Internal Revenue Code and regulations. The regulations "carry the threat that *mere separate incorporation by a church or one of its component parts will result in a refusal by Treasury and the Internal Revenue Service to treat that part as entitled to the tax status of a 'church.'* "[13] The Court, recognizing this difficulty, noted, "we disavow any intimations in this case defining or limiting what constitutes a church under FUTA or under any other provision of the Internal Revenue Code."[14]

Analyzing, designing, and meticulously examining organizational structure to obtain optimum advantage in dealing with gov-

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Diocese of New Orleans v. State, 387 So. 2d 1248 (La. App. 1980); Sant Bani Ashram, Inc. v. New Hampshire Dept. of Employment Security, 121 N.H. 74, 426 A.2d 34 (1981); Begley v. Employment Security Comm'n, 50 N.C. App. 432, 274 S.E.2d 370 (1981); Grace Lutheran Church v. North Dakota Employment Security Bureau, 294 N.W.2d 767 (N.D. 1980); Employment Div. v. Archdiocese of Portland, 42 Or. App. 421, 600 P.2d 926 (1979); Christian School Ass'n v. Commonwealth, 423 A.2d 1340 (Pa. Commw. Ct. 1980).

10. St. Martin Evangelical Lutheran Church, 49 U.S.L.W. at 4578.

11. Whelan, *"Church" in Internal Revenue Code: The Definitional Problems*, 45 FORDHAM L. REV. 885, 899 (1977) (emphasis added).

12. *Id.* at 898-99.

13. *Id.* at 899.

14. St. Martin Evangelical Lutheran Church, 49 U.S.L.W. at 4578, n.15.

ernment and the public bring to mind the world of complex business corporations, but now the organizational alternatives available to religious organizations have increased and the consequences of organizational structure have multiplied. The considerations are different for church executives and attorneys than for the business world, but the significance of organizational structure can no longer be ignored. Many of the lawsuits involving churches are influenced by organizational structure and practice.[15] It has therefore become necessary to examine the significance of organizational structure in relation to members, to the government, and to the public; in order to achieve organizational purposes and to implement denominational philosophy.

## I. HISTORICAL DEVELOPMENT

The historical development of religious organizations illuminates current ramifications of the differing structures.[16] In England a corporation could exist only with the express approval of the state and could not hold property on its own behalf.[17] Corporations were established by obtaining special charters from the king. These concepts were carried to the American Colonies.[18] Incorporation by special charter was widespread in New England and continues today in some states.[19]

Some New England colonies officially recognized and established a particular church. An organizational pattern developed that

15. *E.g.*, In the Matter of Northwestern Lutheran Academy, ___ S.D. ___, 290 N.W.2d 845 (1980); State v. Worldwide Church of God. Inc., No. C267607 (L.A. Super. Ct., filed, Jan. 2, 1979).

16. For a comprehensive survey of the history of religious corporations and the types of religious corporations laws currently in existence, *see* Kauper and Ellis, *Religious Corporations and the Law*, 71 MICH. L. REV. 1499 (1973) [hereinafter cited as Kauper and Ellis].

17. *Id.* at 1504-05.

18. *Id.* at 1505. An interesting example of the partiality that may arise under this method of creating corporations is demonstrated in Application for Charter of the Conversion Center, Inc., 388 Pa. 239, 1304 A.2d 107 (1957). When an application was presented to the superior court to obtain a charter for a corporation which included in its purposes to "place particular emphasis on evangelization and conversion of adherents to the Roman Catholic faith," the court denied the application because granting it "would in effect place the blanket of approval of this court on such activity." Although the Pennsylvania Supreme Court found the organization entitled to a charter and reversed the lower court, its decision was accompanied by a vigorous dissent to the effect that government authorization of proselytizing would violate separation of church and state.

19. *See, e.g.*, ME. REV. STAT. ANN. tit. 13, § 41 *et seq.* (1974); MASS. GEN. LAWS ANN. ch. 156B, § 3(b) (West 1970).

has been referred to as a territorial parish.[20] The church organization was similar to a municipal organization. Membership came with residence within the boundaries of the parish and subjected one to "all the consequences, agreeable and disagreeable, which residence in a town or county implied."[21] In some cases the minister exercised powers under a common law concept of corporation sole.[22] As religious pluralism developed and the nation moved toward a separation of church and state four types of statutory corporations gradually developed.[23]

A. *Special Corporate Charters*

In some states the practice of granting special corporate charters upon application was formalized in a statutory scheme[24] and this system of incorporation still exists in some states. Some statutes even provide specifically for the corporate affairs of each particular denomination.[25] The constitutionality of this type of incor-

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20. *See* Kauper and Ellis, *supra* note 16, at 1505.

21. *Id.* at 1506, quoting C. ZOLLMAN, AMERICAN CHURCH LAW 106 (1933).

22. At a very early period the religious establishment of England seems to have been adopted in the Colony of Virginia; and, of course, the common law upon that subject, so far as it was applicable to the circumstances of that colony. The local division into parishes for ecclesiastical purposes can be very early traced; and the subsequent laws enacted for religious purposes evidently presupposed the existence of the Episcopal Church with its general rights and authorities growing out of the common law . . . among other things, the church was capable of receiving endowments of land, and . . . the minister of the parish was, during his encumbancy, seized of the free hold of its inheritable property, as emphatically *person ecclesiae*, and capable, as a sole corporation, of transmitting that inheritance to his successors.

Terett v. Taylor, 13 U.S. (9 Cranch) 43, 46 (1815).

Some courts have also recognized the existence of a Roman Catholic common law corporation sole. *See* Municipality of Ponce v. Roman Catholic Apostolic Church, 210 U.S. 296, 318 (1908); Reid v. Barry, 93 Fla. 849, 887, 112 S. 846, 860 (1927); Blanc v. Alsbury, 63 Tex. 489 (1885).

23. *See* text accompanying notes 24-41 *infra*.

24. *E.g.*, N.Y. RELIG. CORP. LAW § 180 (Consol. 1952), as applied in Application of New York Soul Clinic, 208 Misc. 612, 144 N.Y. Supp. 2d 543 (1955); PA. STAT. ANN. tit. 10, § 81 (Purdon 1959), as applied in Application for Charter of the Conversion Center, Inc., 388 Pa. 239, 130 A.2d 107 (1957).

25. *E.g.*, N.J. STAT. ANN. § 16:12-4 (West 1976), as applied in Protestant Episcopal Church in the Diocese of New Jersey v. Graves, 83 N.J. 572, 417 A.2d 19 (1980), where the court indicates that, although the state has a general statute for the incorporation of religious societies and congregations, the Episcopal parish in that case was incorporated under "An Act to incorporate religious societies, worshipping according to the customs and usages of the Protestant Episcopal Church." *Id.* at ____, 417 A.2d at 20 n.1.

poration statute is open to question and the structure of churches under these statutes usually cannot be changed without amending the statute.[26]

We have long passed the time when the state has any right to show favoritism in granting a privilege of this nature and the temptation to exercise prior restraint and censorship is inherent in the special charter system. The modern procedure of filing articles of incorporation rather than applying for a charter is a significant improvement.

B. *Trustee Corporations*

Under the trustee corporate form, trustees hold the assets of the corporation with an obligation to carry out the corporate purposes. The use of trustees to hold property developed as a widely used device at common law because an unincorporated association was not a legal entity and could not hold property in its own name.[27] By incorporating the trustees who already held title to the property, the legislatures of some states provided perpetual succession without any need to transfer property to some different entity and without changing the existing relationship. This method of incorporation was adopted in many eastern states and is widely used today.[28]

Under early common law a trust could not be enforced without specific identifiable beneficiaries. In England the concept of a charitable trust developed in which the trustee held assets for a particular use or purpose rather than for specific individuals. This charitable trust concept appears to have been the foundation for what has come to be called *Lord Eldon's Rule*. Lord Eldon extended the charitable trust concept by holding that assets contributed to a church were impressed with an implied trust in favor of the fundamental doctrines and usages of the church at the time the contributions were made.[29] Lord Eldon's Rule or the Implied Trust—Departure from Doctrine Rule was followed by many courts in America.[30]

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26. James Madison vetoed such an act incorporating an Episcopal church in the District of Columbia in 1810. For the full text of Madison's veto message, *see* Kauper and Ellis, *supra* note 16, at 1558 n.333.

27. *See* Hunt v. Adams, ___ Fla. ___, 149 So. 24 (1933). *See also* Kauper and Ellis, *supra* note 16, at 1511.

28. *E.g.*, ALASKA STAT. § 10.40.110 (1968); CONN. GEN. STAT. ANN. § 33-255 (West 1960).

29. Attorney General v. Pearson, 3 Mer. 353, 36 Eng. Rep. 135 (1817); Craig Dallie v. Aikman, 3 Eng. Rep. 601 (1813).

30. One judge observed that especially in the mid Atlantic and southern states the courts

The implied trust concept placed the courts in the position of passing judgment on the meaning and significance of church doctrine. The judge decides which beliefs are important, which are orthodox, and how they are to be implemented in church affairs. This obviously is not a role consistent with church-state separation. On the other hand, without court intervention, the trustee corporate form placed the trustees in a position where they could dominate church affairs, whether or not church polity recognized them as the appropriate organizational leaders, because they had control of the church assets. Whenever any dispute arose, the disagreement often led to division when the majority trustees appropriated the assets for the use of whichever faction they happened to favor. Unless the particular church happens to have beliefs that harmonize with the organizational structure the state has imposed, church polity is ignored and church affairs are disrupted or conducted in ways not necessarily consistent with church values and objectives.

Toward the middle of the 1800's a renewed zeal for democratic processes inspired yet a third state imposed distortion of church polity. In 1854, the New York Court of Appeals, apparently dissatisfied with the implied trust concept and with trustee dominance of religious corporations, reinterpreted its religious incorporations act and declared that "it was the intention of the legislature to place the control of the temporal affairs of these societies in the hands of the majority of the corporators."[31] A few years later, the membership majority of a congregation was allowed to leave the Congregational Church and keep the property when they reaffiliated as a Presbyterian church.[32]

Then, in 1872, the Supreme Court rejected the implied trust concept and the departure-from-doctrine corollary.[33] In the search to identify an implied purpose, the courts previously recognized two types of church polity based on different sources of authority. The congregational church, usually independent of any authority outside the local congregation, is directed ultimately by majority vote while

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seemed to adopt or ignore Lord Eldon's Rule as the facts of the particular dispute dictated. Equity ascendant; constitutional principles be damned. Sometimes the 'established church' was favored by the court's decision; at other times, the off-shoot faction of the church prevailed. No logical thread of consistency developed to govern the outcome of these disputes or to portend the future direction of the law.

Brady v. Reiner, 157 W.Va. 10, 198 S.E.2d 812, 826 (1973).

31. Robertson v. Bullions, 11 N.Y. 243, 264 (1854).
32. Petty v. Tooker, 21 N.Y. 267 (1860).
33. 13 U.S. (1 Wall.) 679 (1872).

the hierarchial church vests authority in various leaders of the church organizational structure. The Court ruled that internal disputes by congregational or independent churches must be resolved by applying their internal rules of government and the principles that ordinarily govern voluntary associations.[34] Congregations belonging to a hierarchical church were described as "a subordinate member of some general church organization in which there are superior ecclesiastic tribunals."[35] The Court held that the decisions of the ecclesiastical tribunals must be accepted as final and binding.[36]

C. *Membership Corporations*

As the modern business corporation governed by shareholders has developed, statutes for nonprofit organizations frequently have followed that pattern and it is the most widely established structure for nonprofit corporations today.[37] The members of the congregation form the membership of the corporation and become voting participants in corporate affairs. As usually adopted, this form probably lends itself most readily to the polity of independent or congregational churches, while the trustee and special charter forms better accommodate heirarchical churches.

D. *Corporations Sole*

A corporation sole is a corporation formed by one person who is the head of a religious body and is empowered to carry on the corporate affairs of the organization.[38] This form has origins in the

34. *Id.* at 725.

35. *Id.* at 722.

36. The following sources trace the course of the Court's decisions on this subject. First Presbyterian Church of Schenectady v. United Presbyterian Church, 430 F. Supp. 450 (N.D.N.Y. 1977); Barr v. United Methodist Church, 90 Cal. App. 3d 259, 153 Cal. Rptr. 322 (1979); State ex rel. Marrow v. Hill, 51 Ohio St. 2d 74, 364 N.E.2d 1156 (1977); Episcopal Church v. Graves, 83 N.J. 572, 417 A.2d 19 (1980); Brady v. Reiner, 157 W. Va. 10, 198 S.E.2d 812 (1973); Adams and Hanlon, Jones v. Wolf: *Church Autonomy and the Religion Clauses of the First Amendment*, 128 PA. L. REV. 1291 (1980) [hereinafter cited as Adams and Hanlon]; Kauper, *Church Autonomy and the First Amendment: The Presbyterian Church Case*, 1969 SUP. CT. REV. 347 [hereinafter cited as *Church Autonomy*]; Note, *Church Property Dispute Resolution: An Expanded Role for Courts After* Jones v. Wolf? 68 GEO L.J. 1141 (1980) [hereinafter cited as *Church Property Dispute*]; Note, Jones v. Wolf: *Neutral Principle Standards of Review for Intrachurch Disputes*, 13 LOY. OF L.A. L. REV. 109 (1979).

37. Kauper and Ellis, *supra* note 16, at 1539.

38. *E.g.*, CAL. CORP. CODE § 10000 *et seq.* (West 1977).

Church of England[39] and the Roman Catholic Church.[40] Although widely used today, there was a time when "the notion of a one-man corporation with all of its concomitant powers, was not generally acceptable to civil authorities, and the church was generally unsuccessful in its efforts to have the corporation sole adopted."[41]

## II. STATUTORY DEVELOPMENT

A number of states have followed the model Nonprofit Corporation Code which is based on a membership corporation concept.[42] This may work well for those congregational churches whose policy happens to conform, but it does not adequately recognize the need for a system of corporate law that is adaptable to the widely differing organizational structures of various denominations.

From the perspective of churches, a second deficiency is the failure of the model act to distinguish between religious and other nonprofit corporations. Constitutional and public policy considerations relevant to religious corporations are completely different than those concerning other corporations. Similarly, governmental objectives in regulation of religious corporations are different than those that apply to other nonprofit corporations.

California, in a recent revision of its Nonprofit Corporations Code, recognized the tremendous diversity of nonprofit organizations and provided for three primary types of nonprofit corporations: mutual benefit, public benefit, and religious.[43] In contrast to the provisions regarding mutual benefit corporations, where the legislature incorporated extensive membership rights,[44] and to the provisions regarding public benefit corporations, where there is a strong public policy favoring democratic procedures,[45] the religious corporation provisions contemplate the broadest latitude in organization and conduct of corporate affairs while providing adequate

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39. Kauper and Ellis, *supra* note 16, at 1505.

40. *Id.* at 1523.

41. *Id.* at 1523-24.

42. *E.g.*, D.C. CODE ENCYCL. § 29-1001 to 29-1099l (West 1968 & Supp. 1978-79); ILL. REV. STAT. ch. 32 § 163a *et seq.* (1977); NEB. REV. STAT. § 21-1901 to 21-19,109 (1977).

43. In addition, the code retains provision for corporations sole. CAL. CORP. CODE §§ 10000-15 (West 1977).

44. *Id.* §§ 7310-50 (West Supp. 1981).

45. *Id.* §§ 5510-27 (West Supp. 1981).

guidelines for those instances where the organization has not clearly defined its own polity in its articles or bylaws.[46]

## III. LITIGATION

Courts generally have expressed reluctance to become involved in disputes over church membership.[47] However, the courts have been willing to determine whether actions concerning membership have been taken in a fair, impartial way in accord with the organization's own rules of procedure.[48] Similarly, courts have been willing to supervise an election of a pastor or a trustee where it appears that the church itself is having difficulty conducting an impartial election.[49]

The manner of conducting church business has been central to many cases. Some of those cases have arisen simply because of carelessness, ignorance, or malice.[50] The message in these cases is that church officers, pastors, and denominational leaders may well find themselves on the losing side in litigation if they fail to recognize basic organizational and procedural requirements.

In other cases, litigation has occurred or its outcome has been determined by the failure of churches to develop a structure consistent with their concept of church organization. In *Samoan Congregational Christian Church v. Samoan Congregational Church of Oceanside*[51] a dispute arose between a local congregation and its parent denominational body.[52] When the local church ousted its minister and installed another in his place, the parent body, an unincor-

46. *Id.* §§ 9110-9610 (West Supp. 1981).

47. *But see* Randolph v. First Baptist Church of Lockland, 68 Ohio Law Abs. 100, 120 N.E.2d 485 (1954).

48. *See* Konkel v. Metropolitan Baptist Church, 117 Ariz. 271, 572 P.2d 99 (1977); Second Baptist Church of Reno v. Mt. Zion Baptist Church, 86 Nev. 164, 466 P.2d 212 (1970); Smith v. Lewis, 578 S.W.2d 169 (Tex. 1979).

49. Providence Baptist Church v. Superior Ct., 40 Cal. 2d 55, 251 P.2d 10 (1952); Burnett v. Banks, 130 Cal. App. 2d 631, 279 P.2d 579 (1955); Second Baptist Church of Reno v. Mt. Zion Baptist Church, 86 Nev. 164, 466 P.2d 212 (1970).

50. *E.g.*, Mt. Zion Baptist Church v. Second Baptist Church of Reno, 83 Nev. 367, 432 P.2d 328 (1967). Vote to merge was invalid because meeting was called without notice required by the bylaws.

51. 66 Cal. App. 3d 69, 135 Cal. Rptr. 793 (1977).

52. By far the most frequent type of litigation churches have become involved in that is influenced by corporate structure is the internal dispute; either congregational split or conflict between congregation and denominational hierarchy. It is estimated that there are ten to twenty-five such cases each year. *See* Adams and Hanlon, *supra* note 34, at 1291 n.1; *Church Property Dispute*, *supra* note 34, at 1140 n.1.

porated association of churches, brought an action to impress a trust on all the assets of the local church. The court refused to consider where the ecclesiastical power rested within the church because the court found no evidence of intent to create an express or implied trust. Further, the articles of incorporation and bylaws of the local congregation placed the control of the corporation in the board of directors and provided that the government of the church was vested in its members. In those circumstances the court indicated "the assets of the religious non-profit corporation are deemed to be impressed with a charitable trust deriving from the express declaration of corporate purpose."[53] Although the case does not reveal whether the language of those corporate documents reflected a disagreement between the congregation and its parent body over the appropriate distribution of governing power within the church organization or resulted from the unfortunate use of pattern language from a lawyer's form book, it certainly demonstrates the danger of using standardized pattern language in organizational documents for a church. A careful review must be made to insure that the documents faithfully reflect the intended structure and allocation of authority.[54]

The courts applying Lord Eldon's Rule[55] were willing to protect organizational purpose even to the point of impressing church assets with an implied trust for the purposes for which the organization existed at the time the assets were given. Although courts will not now seek an implied trust,[56] it is clear that they will enforce an express trust. Therefore, it is important to remember that "the assets of the religious nonprofit corporation are deemed to be impressed with a charitable trust deriving from the express declaration of corporate purpose."[57]

The corporate purpose, as set forth in the articles of incorporation, needs the most careful thought and drafting. A careful value judgment is required. Often incorporators are anxious to articulate a

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53. 66 Cal. App. 3d at 73, 135 Cal. Rptr. at 795.

54. Under the "living relationship test" some courts have looked at the conduct of the parties. *See, e.g.*, State Ex Rel. Morrow v. Hill, 51 Ohio St. 2d 74, 364 N.E.2d 1156 (1977). The court expressly refused to look at the conduct of the parties in *Samoan Church* and the modern emphasis on "neutral principles" encourages this narrower review.

55. *See* text accompanying notes 29-30 *supra*.

56. *But see* Crumbley v. Solomon, 243 Ga. 343, 254 S.E.2d 330 (1970).

57. Samoan Congregational Church, 66 Cal. App. 3d at 73, 135 Cal. Rptr. at ___.

narrow specific corporate purpose to insure "preservation of the faith." However, foresight is rarely adequate to anticipate all the possible changes in purpose and such restrictions often are more hindrance than help.

One case where corporate purpose became decisive was *Queen of Angels Hospital v. Younger*.[58] Apparently because of changing circumstances, the directors of a church-operated nonprofit hospital decided to lease the hospital facility and to use the proceeds from the lease to operate medical clinics.[59] They filed an action for declaratory relief seeking court approval of the plan. After reviewing the articles of incorporation and finding that the express primary purpose was operation of a hospital, the court ruled that "whatever else Queen of Angels Hospital Corporation may do under its articles of incorporation, it was intended to and did operate a hospital and cannot, consistent with the trust imposed upon it, abandon the operation of the hospital business in favor of clinics."[60]

In a similar situation, the six remaining members of a Baptist church voted to dissolve the corporation and to distribute the assets to three Baptist churches, a servicemen's center, and a theological seminary. However, the articles of incorporation stated that the incorporators were "desirous of forming and conducting in Richmond, Contra Costa County, a Baptist Church."[61] In dissolution proceedings the court ruled that the assets were "impressed with a charitable trust by virtue of the express declaration of the corporation's purposes,"[62] applied the doctrine of cy pres, and directed that the assets be divided between the two nearest Baptist churches. From the standpoint of applying neutral principles of law, the court's decision may be correct. However, it is difficult to see how this decision, imposing the will of the state on the church, serves any constructive purpose for either the state or the church, unless it was actually the intent of the church to restrict the use of its assets. The most effective drafting remedy is not to use language of trust that will invite unwanted court participation in church affairs.

The new California Nonprofit Corporation Code avoids any risk that a statement of corporate purpose will be interpreted as creating a trust that was not intended. Section 9130 of the California Cor-

58. 66 Cal. App. 3d 359, 136 Cal. Rptr. 36 (1977).

59. *Id.*

60. *Id.* at 368, 136 Cal. Rptr. at 41.

61. Metropolitan Baptist Church of Richmond, Inc. v. Younger, 48 Cal. App. 3d 850, 854, 121 Cal. Rptr. 899, 901 (1975).

62. *Id.* at 857, 121 Cal. Rptr. at 903, quoting Pacific Home v. City of Los Angeles, 41 Cal. 2d 844, 852, 264 P.2d 539, 543 (1953).

poration Code provides that the statement of purpose in the articles of incorporation will be "this corporation is a religious corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Religious Corporation Law (primarily or exclusively [insert one or both]) for religious purposes."[63] The code section does permit a further description of the corporation's purposes but the draftsman should remember that a more specific statement of purpose may result in a narrower charitable trust being imposed on the use of the organization's assets.

Most Supreme Court decisions on the subject of corporate purpose have been in the context of church property disputes. In *Watson v. Jones*,[64] the Court announced that it would accept the decision of the hierarchical church tribunal rather than look for an implied trust. Later, the Court recognized majority rule in congregational churches and indicated that it would review the actions of the church to determine whether the church had complied with its own procedures.[65] Since the *Watson* decision was a diversity case and the first amendment was not applied to the states until much later,[66] the state courts continued to follow the implied trust concept until 1969. In that year the Court reversed a Georgia Supreme Court decision allowing two Presbyterian churches to withdraw from that denomination with their property because the denomination was found by the state court to have departed from its original tenets and doctrines.[67] The Court observed that the

> departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role . . . [T]he departure-from-doctrine element of Georgia's implied trust theory can play *no* role in any future judicial proceedings.[68]

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63. CAL. CORP. CODE § 9130 (West 1977).

64. 13 U.S. (1 Wall.) 679 (1871). *See* text accompanying note 33 *supra*.

65. Boudin v. Alexander, 15 U.S. (1 Wall.) 131 (1827). *See also* Brundage v. Deardor, 55 F. 839 (N.D. Ohio 1893).

66. *See* Everson v. Board of Educ., 330 U.S. 1 (1947); Cantwell v. Connecticut, 310 U.S. 296 (1940).

67. Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969), *rev'g*, Presbyterian Church v. Eastern Hts. Presbyterian Church, 224 Ga. 61, 159 S.E.2d 690 (1968).

68. 393 U.S. at 450 (emphasis added).

The court observed, however, that "there are neutral principles of law, developed for use in all property disputes, which can be applied . . . . States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions."[69] In 1979, the Supreme Court decided *Jones v. Wolf*.[70] The Supreme Court of Georgia had affirmed a trial court decision in favor of the majority of a divided Presbyterian congregation where the trial court applied the neutral principles of law. This concept had been outlined[71] by the Georgia Supreme Court in response to the United States Supreme Court's reversal of *Presbyterian Church v. Hull Church*.[72] The court awarded the property to the majority of the local congregation because the deeds were to that congregation and a review of the local church charter, state statutes, and general church constitution revealed no language of trust in favor of the general church. The Supreme Court remanded because the state courts had not expressed their basis for determining that the majority represented the local church. The Court indicated that the state might use a rebuttable presumption that the church follows a rule of majority representation, or it might determine the faction properly representing the local church by looking to the polity of the general church. In that instance, however, the court would be constitutionally required to give deference to the determination of the appropriate church tribunal.

The important message from this case is that churches can expect their charters, articles of incorporation, constitutions, bylaws, and similar organizational documents to be reviewed in a search for express language of trust and "through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy."[73] The same rule may very likely be applied to any conflict where church corporate form is relevant. This places a great deal of responsibility, as well as

69. *Id.* at 449.

70. 443 U.S. 595 (1979).

71. Presbyterian Church v. Eastern Heights Church, 225 Ga. 259, 167 S.E.2d 658 (1969).

72. 393 U.S. 440 (1969).

73. Jones v. Wolf, 443 U.S. at 603-04. In fact the court indicates an "obligation of 'states, religious organizations, and individuals to structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.' " (citation omitted).

opportunity, in the hands of church leaders and attorneys to draft documents that clearly indicate the allocation of church authority for the determination of organizational purpose, the control of church assets, and the resolution of church conflicts.

Although the Court approved the neutral principles of law approach as a constitutionally valid method of resolving church litigation, it also pointed out that "the First Amendment does not dictate that a state must follow a particular method of resolving church property disputes. Indeed, 'a state may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters.' "[74] An organization should expressly indicate who will determine the use of its assets, for whose benefit they are held, and who is to resolve any differences over the use of assets or conduct of any other business.

The widespread use of the corporate form has given some courts an apparent justification for greater involvement in religious affairs. In a dispute over the authority of a pastor to call a special church business meeting, the Washington Supreme Court observed that the president of a corporation has no power to call a meeting unless the bylaws or a resolution of the board of directors make it his duty to do so.[75] "While the cited cases pertain to private business corporations, we see no reason why the rule there announced is not equally applicable to religious corporations."[76] In a dispute over the right of a church-operated hospital to approve a pension plan for the members of a religious order that had provided services to the hospital, the court dismissed a reference to canon law by stating, "plaintiffs have sought the benefits of and conformed to the general requirements of civil law; they cannot now decline to be ruled by the principles which [the hospital] has itself invited."[77] In a dispute between a Baptist pastor and members of his congregation over the conduct of a church business meeting, a Kentucky court ruled, "the right of action by or against religious corporations and the procedure in such actions are governed by the rules governing actions by or against corporations generally."[78] The court further observed, "such a corporation is civil in nature and is an entity distinguishable

74. *Id.* at 602 (citation omitted)(emphasis added).

75. State Bank of Wilbur v. Wilbur Mission Church, 44 Wash. 2d 80, 265 P.2d 821 (1954).

76. *Id.* at ____, 265 P.2d at 827.

77. Queen of Angels Hosp. v. Younger, 66 Cal. App. 3d 359, 136 Cal. Rptr. 36 (1977).

78. Willis v. Davis, 323 S.W.2d 847, 849 (Ky. 1959).

from an ecclesiastical society or association."[79] It appears that courts generally will recognize that a corporation is in some degree distinct from the ecclesiastical or spiritual body of the church,[80] and greater regulation may be attempted because a state-created entity appears more secular in nature and the state feels entitled to control the entity it has created.

Although the courts insistence on treating corporations as civil entities may not be entirely misplaced, a church might appropriately consider whether it is better not to incorporate at all but to conduct its business as an unincorporated association. At common law an unincorporated association had no legal identity and could not hold title to property.[81] Today many states provide some degree of legal recognition for unincorporated associations by statute[82] and the courts have moved toward recognizing unincorporated associations as separate legal entities and limiting the liability of members of associations for acts that they did not personally authorize or perform.[83] Indeed, for a church with a hierarchical structure where property is dedicated to the purposes of the general church, it may be appropriate to question whether any purpose is served by incorporating local congregations. Some denominations of hierarchical structure do not incorporate their local congregations and no cases have been found where this has created difficulty.

## CONCLUSION

Historically there has been a gradual change in the alternatives available to churches and religious organizations in developing their organizational structure. Today it is clear that courts will not delve into religious beliefs and church ecclesiastical matters[84] and will not impose an implied trust on church assets. Since the Supreme Court has specifically indicated that states may follow various alternative methods of resolving church property disputes, the law will vary from state to state. The principles applied in those cases can also be expected to apply in may other cases where organizational structure

79. *Id.* at 848.

80. *See* Burnett v. Banks, 130 Cal. App. 2d 631, 279 P.2d 579 (1955).

81. *See, e.g.*, Grand Grove of United Ancient Order of Druids v. Garibaldi Grove No. 71, 130 Cal. 116, 62 P. 486 (1900).

82. *See, e.g.*, CAL. CORP. CODE § 20000 *et seq.* (West 1977).

83. *See* Georgia v. National Democratic Party, 447 F.2d 1271 (D.C. Cir. 1971); Barr v. United Methodist Church, 90 Cal. App. 3d 259, 153 Cal. Rptr. 322 (1979); Orser v. George, 252 Cal. App. 2d 660, 60 Cal. Rptr. 708 (1967).

84. Courts will not delve into religious beliefs except to consider the need to accommodate a religious observance. *See* Sherbert v. Verner, 374 U.S. 398 (1963).

is significant. Courts can also be expected to apply the same principles to religious organizations that are applied to other organizations. Religious corporations will often be considered separate from the ecclesiastical body of the church and will be dealt with according to the rules applying to nonprofit corporations generally. Congregational churches will be dealt with on the basis that they are governed by a majority rule subject to compliance with their own properly adopted rules and procedures. With regard to hierarchical churches, courts may either rely on the decisions made by hierarchical authority or they may conduct an objective review of the organizational structure to determine the rights, responsibilities, or authority involved. These concepts follow the treatment the courts have accorded to secular organizations. Thus, "the hierarchical church is less often vulnerable to judicial instrusion by virtue of the fact that it has its own general law, procedure, and organs for the authoritative resolution of internal disputes."[85] While churches are not likely to change their denominational structure from congregational to hierarchical in order to escape judicial intrusion, the door has been opened wide for churches to exercise resourcefulness in structuring themselves to minimize judicial intrusion in their organizational affairs and to substantially improve the prospects that the government will relate to the organization on the same terms in which the church perceives itself.

Initially churches should review state law applicable to religious organizations and ask for statutes that are clear and concise, giving functional guidelines for formation and operation of religious organizations with the maximum latitude for structuring organizations in conformity with the polity of the church, including the appropriate use of unincorporated associations and both membership and trustee corporations, with a minimum of state involvement. Second, church organizational structure should be reviewed to determine that it correctly reflects church polity and objectives. If corporations are formed there should be a review of the role they will fill in the church structure, recognizing that their operation may be the subject of increased judicial review. Organizational documents should demonstrate a clear, express, functional description of the intended sources of authority and the intended purpose with a clear indication of whether there is authority to deviate from the express purpose. There should be a clear guideline in organization bylaws of the procedure by which decisions are to be made and a specific avenue of appeal where there is any internal disagreement.

85. Brady v. Reiner, 157 W.Va. 10, 198 S.E.2d 812, 827 (1973).

Especially in the case of congregational churches, mandatory mediation and possibly even binding arbitration might be considered as an expressly mandated means for resolving any internal disagreements. There should be an express statement of whose benefit assets are held for and an express procedure[86] for resolving disagreements over the use of assets, over the exercise of authority, over procedure of organizational business and appeals, and over membership in the organization.

> The ground rules for judicial intervention in religious disputes are now being nationalized and the application of these rules will be subject to supervision by the Supreme Court. Churches of both types of polities now may assert a federal constitutional liberty to define and develop their doctrines and to determine their affiliations with other church bodies, free from the hazards of litigation in the civil courts over the departure from doctrine issue. . . . [*Presbyterian Church v. Hull Church*] elevates a religious body's organic law—charter, constitution, and bylaws—to a new level of importance. Values served by the departure from doctrine standard, in terms of institutional stability and the expectations of donors, can be achieved by formulations explicitly set forth in the organization's basic documents. Similarly, the church organization, whatever its polity, is in the best position to maintain its autonomy as against the risk of judicial intervention by spelling out in its organic law the focus of authority, the procedure to be followed, and the limitations to be observed.[87]

86. This does not necessarily mean a detailed or complex procedure. The courts will review church decisions for procedural due process and a church should avoid creating an exacting procedure that invites technical error.

87. *Church Autonomy, supra* note 36, at 378.