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Law and religion

Faith in courts

As the season of goodwill fades, an old problem returns: religious disputes that draw in secular courts

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PULSES rarely race in Shaughnessy, a genteel, old-money district of Vancouver where mature cedars shield mansions with giant drawing-rooms. But the splendid Anglican church there, which draws worshippers from across the city, is the centre of a dispute that arises in many countries: how should judges rule in religious rows? Usually such quarrels involve worldly goods and rival claims to be the true believers. They quickly raise theological issues normally settled in church councils, not the courtroom.

St John's Shaughnessy is the largest of four conservative parishes in British Columbia that have quit Canada's mainstream Anglican (Episcopalian) church in protest against the blessing of same-sex unions. They want to take their churches and their other property with them; their bishop is resisting.

In the latest twist in a long battle, in November, British Columbia's court of appeal ruled in favour of the bishop. Parish conservatives want to appeal. The issue is who runs the church—something that has riven Christianity since its founding. Liberals say the decision on same-sex blessing was taken according to the rules. Conservatives (many of them Chinese-Canadians) see it as an aberration: they argue that most of the 80m adherents to worldwide Anglicanism belong to churches that eschew gay unions.

The court's ruling will add to the billowing secular jurisprudence on the handling of disputes over religious assets. A similar row may be looming in the Church of England, where a bunch of Anglo-Catholics are turning to Rome in protest against women becoming bishops. Their leaders will be ordained as Roman Catholic priests on January 15th.

Such rows occur chiefly among Protestant Christians (Roman Catholicism has its own legal system), but also among Hindu and Sikh immigrants to the English-speaking world; they often arise when a religious community dissolves after the death of a charismatic leader. They feature more often in the New World than in Europe.

Marco Ventura, an Italian law professor, points out that most legal systems in continental Europe give such weight to the predominant church that rebels have little chance. The Paris municipality, which owns all church property there under France's *laïcité* regime, has at least half-heartedly backed the mainstream Catholic church in its efforts to oust ultra-conservatives from a church near the Seine.

Even in Christianity's holiest places, the careful rules set by Ottoman and British colonial powers (mostly still in force) have failed to settle quarrels about the faith's real estate. In December the Palestinian Authority issued an ultimatum to three Christian churches whose squabbling has endangered the 500-year-old roof of the Church of the Nativity in Bethlehem.

As for the modern Anglo-Saxon world, the 44-page judgment handed down by the court in British Columbia gives a glimpse of the complexity involved. It mulls over some of the landmark judgments of America's Supreme Court on intra-Christian disputes and mentions a recent case in Britain involving two factions of a Hindu sect. It also cites a remarkable ruling by Britain's law lords in 1904 vindicating a tiny bunch of Protestant diehards in a property row, on the ground that predestination was indeed an immovable part of their church's doctrine.

Under the English-speaking world's common law, precedents, sometimes going back to medieval England, always play a role. But wherever religion is concerned, national taboos and traditions matter too. The United States is a special case because of the constitutional bar on either establishing a religion or restricting religious freedom in any way. In the Supreme Court's view, this means that American judges must strenuously avoid doing or saying anything that implies they are weighing the merits of a religious doctrine.

Judges in most other democracies are less constrained. They may not wish to speculate on the destiny of the soul or the nature of sin. But property disputes between religious groups often involve the interpretation of trusts, which may have been established for, say, "the propagation of the Presbyterian faith". In a typical case, two or more factions will claim to be the genuine representatives of that faith and denounce their rivals as impostors. Like it or not, interpreting the wishes of a trust's founder in tricky circumstances is a quintessential job for a judge.

In its most recent landmark ruling (a 1979 case known as *Jones v Wolf*) America's Supreme Court said a court could look into a church property dispute but only if it studied the relevant documents (trusts, title deeds and so on) in a "neutral" and non-religious spirit, as though it were looking into rows among philatelists or hikers. This modified an earlier ruling that said courts should simply respect a church's internal procedures and their outcome.

Meghaan McElroy, an American legal scholar, argues that a "neutral" approach allows a judge to respond fairly whenever a large dissident movement, insisting on a point of principle, emerges within a religious group and makes a claim to part of its assets. Conservative Episcopalian parishes in Virginia (some of the richest in America) have used that sort of argument as they try to retain their property after breaking away from their church's gay-friendly mainstream. The state's Supreme Court overturned the parishes' initial victory, on technical grounds, in June 2010.

In 2009 London's High Court found itself considering rival claims to the assets (worth perhaps £25m) of a Russian Orthodox church and diocese in Britain. One lot of believers had realigned themselves to the Istanbul-based Ecumenical Patriarchate; a more conservative grouping remained loyal to Moscow. The trust deed said the assets could be reassigned if "any doubts may arise relating to the continuity of the life of the diocese". The Istanbul-leaning faction argued for a broad interpretation of this clause, saying that the community's original liberal and cosmopolitan atmosphere had been compromised. But the judge agreed with the Muscovites, who argued that no such doubt had arisen: services were continuing as normal.

At least the judge had something in writing. Even harder are questions of "implied trust", created by past gifts of money and effort. The British Columbia conservatives, in a tactic that is typical of such cases, argue that the assets now enjoyed by the four dissident parishes were bequeathed by people who believed in the principles of traditional Anglicanism, in other words as part of an

implied trust.

The court wrestled with that argument but ruled that the “implied trust” involved loyalty to the Anglican church’s regular structures (even with their newly gay-friendly line). Moreover, the judgment accepted the contention that same-sex unions were not a fundamental issue of Anglican doctrine. That is an interesting point for theological dispute, but marshy ground for secular courts to tread on. Yet as long as quarrelsome religious groups keep resorting to the law, judges can hardly avoid getting dragged in.

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