

with a ‘valid and neutral law of general applicability on the ground the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).’”<sup>43</sup>

***Government Neutrality in Religious Disputes.***—One value that both religion clauses serve is to enforce governmental neutrality in deciding controversies arising out of religious disputes. Schisms sometimes develop within churches or between a local church and the general church, resulting in secession or expulsion of one faction or of the local church. A dispute over which body is to control the property of the church will then often be taken into the courts. It is now established that both religion clauses prevent governmental inquiry into religious doctrine in settling such disputes, and instead require courts simply to look to the decision-making body or process in the church and to give effect to whatever decision is officially and properly made.

The first such case was *Watson v. Jones*,<sup>44</sup> which was decided on common-law grounds in a diversity action without explicit reliance on the First Amendment. A constitutionalization of the rule was made in *Kedroff v. St. Nicholas Cathedral*,<sup>45</sup> in which the Court held unconstitutional a state statute that recognized the autonomy and authority of those North American branches of the Russian Orthodox Church that had declared their independence from the general church. Recognizing that *Watson v. Jones* had been decided on nonconstitutional grounds, the Court thought nonetheless that the opinion “radiates . . . a spirit of freedom for religious organizations, and independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.”<sup>46</sup> The power of civil courts to resolve church property disputes was severely circumscribed, the Court held, because to permit resolution of doctrinal disputes in court was to jeopardize First Amendment values. What a court must do, it held, is to look at the church rules: if the church is a hierarchical one that reposes determination of ecclesiastical issues in a certain body, the resolution by that body is determinative, whereas if the church is a congregational one that prescribes action by a majority vote, that determina-

<sup>43</sup> *Employment Div. v. Smith*, 494 U.S. 872, 879 (1990), quoting *United States v. Lee*, 455 U.S. 252, 263, n.3 (1982) (Justice Stevens concurring in the judgment).

<sup>44</sup> 80 U.S. (13 Wall.) 679 (1872).

<sup>45</sup> 344 U.S. 94 (1952). *Kedroff* was grounded on the Free Exercise Clause. *Id.* at 116. But the subsequent cases used a collective “First Amendment” designation.

<sup>46</sup> 344 U.S. at 116. On remand, the state court adopted the same ruling on the merits but relied on a common-law rule rather than the statute. This too was struck down. *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960).