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PEPPERDINE DISPUTE RESOLUTION LAW JOURNAL

# Making a Deal with the Devil: A Mediation Approach to Mitigating the Negative Effects of Church Conflict

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## I. INTRODUCTION

“IT’S BEAUTIFUL when the congregational system is humming along . . . ,”<sup>1</sup> when everyone loves each other and there is peace among a fellowship of Christians. “But sometimes [that system] hits a pothole.”<sup>2</sup> Internal church conflict is no longer a new phenomenon. Modern church culture is suffering from an identity crisis. Controversial social issues in the secular arena have found their way into religious communities and stimulated debate. Battle lines are drawn between the pulpit and the pews when those issues are not received the same way.<sup>3</sup> And unfortunately, most churches are ill-equipped to handle these conflicts on their own.

Modern churches are looking for the most efficient and effective means of restoring peace. That peace can come in the form of complete resolution:

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1. Brad Hill, *Saved by Stalemate: When the Church Splits 50-50*, CHRISTIAN CENTURY, May 6, 2008, available at [http://findarticles.com/p/articles/mi\\_m1058/is\\_9\\_125/ai\\_n25406599/](http://findarticles.com/p/articles/mi_m1058/is_9_125/ai_n25406599/).

2. *Id.* In the five years prior to 2000, 75% of congregations reported some level of conflict. Carl S. Dudley et al., *Insights Into: Congregational Conflict*, FAITH COMMUNITIES TODAY, <http://fact.hartsem.edu/InsightsIntoCongregationalConflict.pdf>. In between 2003 and 2005, still a staggering 57% of congregations reported the same. *Id.*

3. David A. Roozen, *National Denominational Structures’ Engagement with Postmodernity: An Integrative Summary from an Organizational Perspective*, in CHURCH, IDENTITY, AND CHANGE: THEOLOGY AND DENOMINATIONAL STRUCTURES IN UNSETTLED TIMES 588, 588-89 (David A. Roozen & James R. Nieman eds., 2005). “Significant changes in religion typically come, historians tell us, during times of momentous social change. . . . [T]here is a pervasive literature across a wide spectrum of disciplines that indicates we are indeed in the midst of a major social transition.” *Id.*

restoration of the status quo where arguing members remain unified as a single, collective church. In other cases, such restoration is not possible. The conflict is too divisive, making dissolution inevitable. Even if a church has already separated, peace is still needed for residual conflict. Lingering disputes often involve the distribution of assets and ownership rights to property.<sup>4</sup>

This article aims to be a resource for both congregational and denominational churches in any stage of internal conflict. Whether members fight over theological questions, or factions split over who owns the church building, church conflicts are best resolved via the mediation process.<sup>5</sup> Mediation has the greatest potential for reaching resolution in these disputes because it uses an outside third-party, addresses parties' underlying needs and interests, and is more aligned with Christian principles. The selection of a mediator is also an integral part of the mediation process. Churches should choose a mediator who maintains the balance between impartiality and substantive credibility. A church should also use the equitable dissolution approach to divide church property after a separation.

Part II will identify "hot-button" issues that instigate church disputes. Part III points out the impact of those issues. Part IV discusses why mediation is the most beneficial means of resolving church conflict. Once a church has employed the tool of mediation, a church must make two succeeding decisions: Part V examines the selection of an adequate mediator as unique to these conflict situations; and Part VI investigates how a church should deal with its assets following a division. Part VII analyzes individual case studies of church conflicts applying the propositions within Parts IV and V. Part VIII is a final analysis and Part IX concludes this article.

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4. James H. Miller, a former Presbyterian Church (U.S.A.) pastor, "Religious Liberty and Religious Property Disputes: Who Owns the Lord's House?," Nootbaar Institute on Law, Religion, and Ethics (Jan. 30, 2009).

5. Mediation is a form of private decision-making among parties that goes beyond the negotiation process which "is a bargaining relationship between parties who have a perceived or actual conflict of interest." CHRISTOPHER W. MOORE, *THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT* 8 (3d ed. 2003). Since mediation has proven to be a successful approach in at least one church argument, it will likely do so in the future. The Trinity Episcopal Church and Central Florida Diocese reached an agreement via mediation. Elliott Jones, *Tentative Agreement Forged for Church Split*, VERO BEACH PRESS J., Apr. 25, 2008, at A1. Indeed, it was "mediation [that] brought . . . an agreement that [led] to an amicable separation" rather than a nasty divorce. *Id.*

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## II. SOURCES OF CONFLICT: HOT-BUTTON ISSUES

Secular hot-button issues have invaded modern church culture and sparked internal debate.<sup>6</sup> While there are numerous sources of conflict,<sup>7</sup> the most predominant include: the treatment and acceptance of homosexuality, the adherence to or absolution of traditional theological beliefs, the role and scope of church leadership, and the operation of church finances.

Religious communities are dealing with monumental challenges regarding homosexuality in the form of both theological acceptance and the practical treatment of individuals.<sup>8</sup> Modern churches argue whether those of homosexual orientation belong in leadership roles and whether they should even be embraced within fellowships.<sup>9</sup> This dividing issue has had particular influence on the Episcopalian and Presbyterian denominations.<sup>10</sup>

Sexual orientation is not the only issue attacking “core” religious beliefs.<sup>11</sup> Fundamental doctrines, such as the divinity of Jesus and the Bible as the inspired Word of God, are also points of contention.<sup>12</sup> According to a

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6. See generally CHURCH, *supra* note 3. “In the face of theological crises and plunging membership number[s], the days of some denominations appear to be numbered. . . . Other[s] . . . are also feeling the stresses of large-scale social change.” *Id.* at back cover.

7. Dudley et al., *supra* note 2, at 2.

8. See generally Larry B. Stammer, *North Hollywood Parish Is Third to Leave the Episcopal Church*, L.A. TIMES, Aug. 25, 2004, at B-1, available at <http://articles.latimes.com/2004/aug/25/local/me-episcopal25>.

The Episcopal Church and the 77-million-member worldwide Anglican Communion were thrown into a crisis a year ago when conservatives opposed the elevation of a gay priest to bishop, the Rt. Rev. V. Gene Robinson. They charged that the Robinson decision and previous church stances violated traditional understandings of biblical morality and teachings. Robinson’s supporters argued that the full acceptance of gays and lesbians—and their committed, monogamous relationships—was essential if the church was to fully embrace the dignity of all people, and said biblical interpretation had changed to reject slavery and give women rights unthinkable in biblical times.

*Id.*

9. *Id.*

10. See discussion *infra* Parts VII.A., VII.C.

11. The plethora of conflict involves more than just homosexuality. It is the entire social change that has dominated America. See *supra* note 3. Particularly in the Presbyterian Church (USA), homosexuality is only one manifestation of internal conflict—others include the controversy of “affirm[ing] the ‘singular’ saving Lordship of Jesus Christ.” Lillian Kwon, *Presbyterians to Address Risks of Churches Leaving, Property Disputes*, THE CHRISTIAN POST, Dec. 16, 2008, available at <http://www.christianpost.com/church/Denomination/2008/12/presbyterians-to-address-risks-of-churches-leaving-property-disputes-16/index.html>.

12. Lillian Kwon, *Pittsburgh’s Largest Presbyterian Church Votes to Split*, THE CHRISTIAN POST, June 4, 2007, available at <http://www.christianpost.com/article/20070604/pittsburgh-s-305>

2004 survey, theological and doctrinal debates contribute to twenty-three percent of congregational church conflicts.<sup>13</sup> Theological questions have always divided churches, but now beliefs that once distinguished denominations from one another are also being threatened.<sup>14</sup> These challenges produce the denominational factions and church splits commonly seen today.<sup>15</sup>

Power struggles between church leaders<sup>16</sup> and their followers are by no means modern.<sup>17</sup> Churchgoers consistently debate who holds the driving force behind the direction of a church,<sup>18</sup> and, more specifically, what is taught from the pulpit on a weekly basis.<sup>19</sup> These common tussles have grown more and more difficult to resolve. Some of the increased difficulty is a result of the growth of postmodernism over the last twenty years.<sup>20</sup> As denominations reject absolutism and the top-down, hierarchical approach to

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largest-presbyterian-church-votes-to-split.htm. “Like many of the dissident churches, Signal Mountain Church experienced growing dissatisfaction with the PC (USA)—the largest Presbyterian denomination in the United States with 2.4 million members—over the past two decades, citing differences with the denomination over the recognition of the absolute Lordship of Jesus Christ and scriptural authority.” *Id.*

13. Dudley et al., *supra* note 2, at 2.

14. See James R. Nieman, *The Theological Work of Denominations, in* CHURCH, IDENTITY, AND CHANGE: THEOLOGY AND DENOMINATIONAL STRUCTURES IN UNSETTLED TIMES, *supra* note 3, at 625, 628. “Difference and theological imperfection always contain the potential for tension and conflict.” Roozen, *supra* note 3, at 590.

15. See CHURCH, *supra* note 3, at back cover.

16. Church leadership is a term of art that can include clergy members such as pastors, bishops, etc. or a board of elders or directors. See also Hill, *supra* note 1. According to Brad Hill, a minister in the Evangelical Covenant Church, and a participant in two near-church splits: “Leadership often gets too far ahead of the congregation. The core leadership team [spends] a lot of time discussing the preferred option, praying, investigating and evaluating its impact and consequences. [However, only] [s]ome of this [is] communicated to the congregation along the way . . . .” *Id.*

17. Indeed, the decision-making apparatus of the Methodist church has been something it has traditionally both agonized over and gloried in. Russell E. Richey, *Methodism as Machine, in* CHURCH, IDENTITY, AND CHANGE: THEOLOGY AND DENOMINATIONAL STRUCTURES IN UNSETTLED TIMES, *supra* note 3, at 523.

18. See Hill, *supra* note 1.

[W]hen the decision-making process is accelerated or compressed, when the decisions to be made in that process have huge implications for the life of the church, and when the issues raised are theologically profound and the consequences painful no matter what is decided[,] [a]t these times, a congregation can see its unity shattered.

*Id.*

19. Dudley et al., *supra* note 2, at 2.

20. Roozen, *supra* note 3, at 590-91.

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church leadership,<sup>21</sup> smaller parishes become more independent and willing to break off from their larger groups.

Church finances also raise internal church disputes. The “use and abuse” of money was the second most-reported source of conflict among congregations in the year 2000.<sup>22</sup> But while financial concern creates fighting within,<sup>23</sup> it also continues to be an issue during the post-secession stage of a church.<sup>24</sup> After a denominational church separates, a primary dispute is over who is entitled to the church’s financial gain.

### III. IMPACT OF HOT-BUTTON ISSUES ON CHURCHES

Each of these issues has significant impact on both congregational and denominational churches. Congregations suffer loss of financial income, members, and leadership.<sup>25</sup> Conflict also diminishes congregational vitality.<sup>26</sup> Many members who experience church conflict afterwards report disillusionment with church and a decrease in faith.<sup>27</sup> These members often cease to financially support their congregations and may even stop attending at all.<sup>28</sup> In the most extreme cases, these issues manifest into church

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21. *Id.* at 589. “Once inside, [post-modernity] challenges the cohesion and strength of denominational identities, of authority and power in national denominational structures, and of the loyalty and commitment of constituent congregations and members.” *Id.*

22. Dudley et al., *supra* note 2. For example, all because of a financial dispute, more than 100 . . . congregants opened their mailboxes to find letters of suspension or excommunication that accused them of bringing disorder to the[ir] church. [Over twenty members] also received criminal trespass notices, warning that police could arrest them if they set foot on church property. All the letters and notices were signed by the church’s board of elders.

Lindsay Wise, *Congregational Schism: A Rift over Finances and Control Has Torn Apart Houston’s Oldest Korean-American Church, Leaving Members in Turmoil / A Power Struggle Among the Spiritual*, HOUSTON CHRONICLE, May 12, 2008, at A-1, available at [http://www.chron.com/CDA/archives/archive.mpl?id=2008\\_4565728](http://www.chron.com/CDA/archives/archive.mpl?id=2008_4565728).

23. Even nondenominational Christian churches are splitting over this issue, like a Korean-American church in Houston with several lawsuits and failed mediation attempts. *See id.*

24. *See* discussion *infra* Part IV.C.

25. Dudley et al., *supra* note 2, at 2-3.

26. David A. Roozen, *American Congregations 2005* at 20 (2007), available at <http://fact.hartsem.edu/American%20Congregations%202005%20pro.pdf>.

27. Dudley et al., *supra* note 2, at 2. Lynn Moyer, Panelist, “Religious Liberty and Religious Property Disputes: Who Owns the Lord’s House?,” Nootbaar Institute on Law, Religion, and Ethics (Jan. 30, 2009).

28. Dudley et al., *supra* note 2, at 2-3.

separation.<sup>29</sup> Members of church factions also suffer emotionally and spiritually from the negative aftermath of division.<sup>30</sup> Some separations have affected a staggering number of church-goers.<sup>31</sup>

Complex financial disputes arise in the aftermath of church splits.<sup>32</sup> Property lawsuits in the United States have grown exponentially in the past few years.<sup>33</sup> Church property disputes are particularly growing in both number and complexity. In most cases, church parties are uneager to compromise.<sup>34</sup> One view holds that those who invest in a church—whether by membership or donation—have an implied share in that building’s property value. These people are then entitled to any derivative assets from the building. Most likely, supporters of this view are seceding members who financially contributed to a church or building but at a certain point no longer wanted to affiliate with the larger denomination. Their argument is

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29. Moyer, *supra* note 27.

30. Dudley et al, *supra* note 2, at 3.

31. The splits in the Episcopal Church that have taken place over the last few years, for example, have affected over seventy-seven million members. Louis Sahagun, *Episcopal Unit May Quit U.S. Church*, L.A. TIMES, Jan. 28, 2007, at B-1, available at <http://articles.latimes.com/2007/jan/28/local/me-diocese28>. Indeed, “[u]nresolved conflict impacts more than just the disputing parties. The entire congregation has a stake.” Rhoda Tse, *Interview with Church Conflict Expert, Kenneth Newberger*, THE CHRISTIAN POST, Sept. 29, 2005, available at <http://www.christianpost.com/article/20050929/interview-with-church-conflict-expert-kenneth-newberger/index.html>.

32. Church separation “triggers the distribution of assets.” 36 AM. JUR. 2D *Fraternal Orders and Benefit Societies* § 144. When the conflicts have reached this stage of impasse, the subsequent church splits are conceived as “[e]vents that constitute the dissolution of a subordinate body . . . include the cessation of meetings and of the activities of the club members, or the withdrawal of a portion of the members of the subordinate club and their formation of a new association.” *Id.* See also Audrey Barrick, *PCUSA Bodies Remain Without Quick Solutions*, THE CHRISTIAN POST, Feb. 22, 2007, available at <http://www.christianpost.com/article/20070222/pcusa-bodies-remain-without-quick-solutions/index.html>. “While many went in expecting immediate solutions to the financial and organizational crisis they have been facing due to the splitting of several congregations, the meeting’s facilitator indicated that ‘deep change’ requires time and ‘adaptive work.’” *Id.* See also Kwon, *supra* note 13 (“current activities of some congregations and ministers encouraging division within the church can lead to subordination of the church to the state”).

33. As evidenced from “[d]elegates of the Presbyterian Church (U.S.A.) [for example,] approv[ing] an up to \$2 million fund that would cover legal fees against congregations that pull out from the denomination and want to keep their church property.” Lillian Kwon, *Presbyterian Battle over Property, Churches Intensifies*, THE CHRISTIAN POST, June 27, 2008, available at <http://www.christianpost.com/article/20080627/presbyterian-battle-over-property-churches-intensifies/index.html>.

34. Joan Bakewell, *Why Should We Care If the Anglican Church Splits?*, INDEPENDENT (UK) NEWS AND MEDIA LIMITED, Editorial & Opinion, June 30, 2006 (“Each side sees any concession as betraying its principles. . . . How can such divergent views possibly sit side by side . . . ?”). See also Sean D. Hamill, *After Theological Split, a Clash Over Church Assets*, N.Y. TIMES, Oct. 5, 2008, available at [http://www.nytimes.com/2008/10/06/us/06church.html?\\_r=1&em](http://www.nytimes.com/2008/10/06/us/06church.html?_r=1&em) (where sides view compromise as too simplistic).

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one of fairness—those who make monetary sacrifices for a piece of property, in effect, own that property.<sup>35</sup> Perceived “abandonment” of the organizational structure that founded the property is irrelevant.<sup>36</sup>

Most bishops and denominational leaders have the opposite perspective. These people cite legal title as their claim to property ownership. This view is personally articulated by Reverend Harold Lewis, rector of Calvary Episcopal Church in Pittsburgh,<sup>37</sup> stating, “[t]he idea that you can vote to leave the church and have the assets and the finances go with you is nonsensical.”<sup>38</sup> He asserts that church members only have rights to church property to the extent they are members of *that* church either in name or affiliation.<sup>39</sup> Absent legal title or explicit contract ownership, all buildings and assets belong to the organization that originally established the church.<sup>40</sup>

Given the negative impact these conflicts have on religious communities, churches should decide to go to mediation. The mediation process is the most beneficial way of resolving church disputes. Mediation is better than negotiation or formal litigation under these circumstances because it uses an impartial third party, addresses parties’ underlying needs and interests, and is more aligned with Christian principles of resolving conflict.

## VI. MEDIATION AS A SOLUTION

### A. *Mediation More Appropriate than Negotiation or Litigation*

While negotiation is a bargaining process solely between the disputants, mediation uses an outside third-party.<sup>41</sup> The distinction is important because

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35. Moyer, *supra* note 27.

36. See Hamill, *supra* note 34.

37. Reverend Lewis is also a leader opposed to seceding from the larger Episcopal denomination. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. Aside from this one variable, the approach with which a mediator conducts the mediation process can vary greatly as there is no single formulaic approach to be applied in all conflicts. MOORE, *supra* note 4, at 67. For example, Dr. Kenneth Newberger, an expert in the field of conflict resolution, describes his mediation process with churches in conflict as follows:

Differences of opinion will be aired. From seemingly irreconcilable positions, we examine the underlying interests that need to be satisfied for mutually acceptable and

church conflicts involve strong emotions and hard positions.<sup>42</sup> Negotiating parties are left to their own bargaining techniques to try to influence the other sides' perspective.<sup>43</sup> It can be difficult for either side to maneuver through emotions to reach an amicable agreement.<sup>44</sup> Since many of these disputes involve moral or religious controversies, parties tend to view compromise as going against God's will.<sup>45</sup> As a result, "[c]onflict within religious communities can be particularly painful."<sup>46</sup> When a party believes God is on its side, there is not much bargaining room.<sup>47</sup> As conflict escalates, the church becomes a closed system and communication collapses.<sup>48</sup> It is precisely in these situations, after negotiation has failed, when mediation is most applicable.<sup>49</sup>

Formal litigation is equally ineffective.<sup>50</sup> Courts rarely consider church conflicts.<sup>51</sup> They historically treat "hot-button" religious disputes with

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forward-looking agreements to be reached. Factors contributing to the problem, such as organizational structure, culture, communication patterns, and individual behavior will be addressed. Strains in interpersonal relationships will also be examined with a view toward providing a non-coercive opportunity for reconciliation.

Tse, *supra* note 31.

42. See Bakewell, *supra* note 34.

43. See FISHER & URY, *GETTING TO YES, NEGOTIATING AGREEMENT WITHOUT GIVING IN* 1-14 (2d ed. 1991).

44. *Id.* at 29-32.

45. Hamill, *supra* note 34.

46. Benjamin Papa & Leigh Ann Roberts, Churches & Community Groups, *Alternative Approaches to Resolving Conflict in Churches, Religious Organizations and Communities: What Papa & Roberts Can Do to Help*, PAPA & ROBERTS, PLLC, <http://www.forwardfocusmediation.com/downloads/church-services.pdf>.

47. See Bakewell, *supra* note 34.

48. Dr. Kenneth Newberger has the same sentiment:

[A]s a conflict emerges and escalates, the church becomes more and more closed as a social system. Often times, church leaders will say, "We'll handle this conflict ourselves." . . . What typically happens is that communication and relationships break down even further. "Parties are not talking to each other" is a common result. This is nothing new to conflict resolution theorists and practitioners who, for years, have recognized the inherent negative interpersonal dynamics of closed systems. Researchers have found that the usefulness of direct, head-to-head negotiations decrease as the intensity of the dispute increases. At this point, a power struggle emerges.

Tse, *supra* note 31.

49. "Mediation is usually initiated when parties can no longer handle the conflict on their own." MOORE, *supra* note 5, at 8. Since these conflicts are so widespread and inherently difficult to resolve, see *supra* note 34, both denominational and nondenominational church conflicts arguably need an outside influence to be the impartial third-party mediator.

50. See generally Steven R. Hadley, *Handbook of American Church Courts*, 22 WHITTIER L. REV. 251, 257 (2000).

51. *Id.* Alternatively, mediation emphasizes a willingness to intervene and initiate in disputes despite a more complex or emotional subject matter. See MOORE, *supra* note 5, at 77.

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caution and shy away from doctrinal concerns.<sup>52</sup> Recent courts have been willing to intervene when a church dispute involves dividing property,<sup>53</sup> and some churches may even feel compelled to use litigation because of this trend.<sup>54</sup> However, in litigation parties focus on disagreement rather than compromise.<sup>55</sup> Adjudication fails to address church disputants' underlying interests because of this focus. Since the formal rules of evidence preclude open discussions and candidness in the courtroom,<sup>56</sup> the system does not consider parties' attitudes or feelings amidst doctrinal disputes.<sup>57</sup> As

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52. In fact, the United States Supreme Court has only heard ten internal church dispute cases in its 210 year history. Hadley, *supra* note 50, at 252.

53. Courts will also hear cases if the church conflict involves a secular, nonprofit organization. Christopher Burbach, *Revised Opinion Leads to Same Result for Split Church*, OMAHA WORLD-HERALD, Sept. 6, 2008, available at [http://www.instituteforlegalreform.com/component/ikr\\_news/30/article/11087025698.html](http://www.instituteforlegalreform.com/component/ikr_news/30/article/11087025698.html) (Trinity Church Interdenominational dispute was considered by the attorney general, and "Nebraska law requires the Attorney General's Office to oversee nonprofit organizations, including churches, on nonreligious matters"); See also Kwon, *supra* note 33 ("Thirty-nine additional presbyteries, face, or have faced, legal battles or similar challenges . . .").

54. See Julia Duin, *Episcopal Church's Rift Has Asset Edge*, WASH. TIMES, Nov. 10, 2005, at A01 (Episcopal Church has a team of lawyers standing by—named "Property Task Force"—to make sure the conservatives leaving the denomination don't leave "empty handed"). Even though the task force would draw on the help of mediation experts, they are choosing not to go to mediation first. *Id.* In general, dioceses claim that litigation is a last resort, but since courts generally side with the diocese in property disputes, going to court is becoming an increasingly popular initial course of action. See Hamill, *supra* note 34.

55. Duin, *supra* note 54 ("If there's a desire to amicably deal with issues of disagreement, we're not seeing very much from the opposition in that respect"). See also *supra* note 34.

56. "[I]nvolving the courts [may also] threaten . . . the religious practices of [a] denomination." Kwon, *supra* note 11. Kears Pollock, moderator of the Pittsburgh Presbytery, holds such a view. *Id.* He believes:

[c]ourt orders . . . prevent presbyteries from dealing with division, disorder, disobedience, dismissal and determination of the true church. . . . [Further,] [t]he evolving civil law in many jurisdictions appears intent on adopting a *default* condition of requiring all non-hierarchical denominations to be treated as congregational in character ignoring the Biblical and historical nature of Presbyterian ecclesiology.

*Id.* (emphasis added).

57. See discussion *supra* Part IV.A. The mediator who seeks to define mediated issues, without the initiative of the parties, risks imposing his conception of the issues instead of getting an understanding of what the dispute is about. See generally MOORE, *supra* note 5, at 409. As a solution to this dilemma,

[a] mediator may meet with each party in a caucus before a joint meeting, or after values have been mentioned in a joint session, and explore whether . . . it is really necessary for another party to understand the values in play. . . . By discussing these merits or possible outcomes, the mediator may be able to help the parties decide whether or not to discuss their values in the context of the mediation.

opposed to negotiation or litigation then, church conflicts need a form of dispute resolution that assists communication and targets underlying concerns.

*B. Mediation Uses a Neutral Third Party*

Mediation assists the parties' communication by incorporating a third-party mediator. A third-party mediator has the power to set the agenda of the discussion.<sup>58</sup> In doing so, the mediator focuses the parties' attention on a resolution rather than their differences.<sup>59</sup> With such direction, parties are better able to lay emotion aside and seek agreement. The mediator also clarifies misunderstandings between the parties.<sup>60</sup> Church conflicts often involve inaccurate presumptions about the motives and positions of the other side.<sup>61</sup> Disputants become entrenched in their own conceptions of right and wrong without giving ear to what the other party is really saying.<sup>62</sup> In this sense, the mediator also contributes by reframing positions so they are less threatening.<sup>63</sup> Parties are more willing to entertain solutions and ideas when they come from someone other than the "enemy."<sup>64</sup> By opening and controlling the lines of communication, the third party increases the likelihood of resolution.

*C. Mediation Addresses Underlying Needs and Interests of Parties*

Parties may have needs or interests beneath the surface of a dispute.<sup>65</sup> Church property disputes, for example, involve much more than the desire for financial gain.<sup>66</sup> Seceding members seek acknowledgment of their contributions to their church properties.<sup>67</sup> And practically, they need a place to worship. On the other side, denominations are interested in retaining

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*Id.*

58. *Id.* at 244.

59. *Id.* at 246 (“[A]genda formation is to identify issues on which the parties will most likely reach agreement and that will probably not take long to discuss and settle.”).

60. MOORE, *supra* note 5, at 237. “A third-party mediator [would] bring perspective and constructive communicative processes.” Tse, *supra* note 31.

61. FISHER & URY, *supra* note 43, at 23 (“Ultimately, . . . conflict lies not in objective reality, but in people’s heads.”).

62. *See id.*

63. MOORE, *supra* note 5, at 237 (“The essence of reframing [is to] present it in a new way so that it can be more easily addressed and handled by the parties.”).

64. *Id.* at 236.

65. *See* Hamill, *supra* note 34.

66. *See id.*

67. *See id.*

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properties or buildings for financial benefit.<sup>68</sup> They are also concerned with “saving face” amidst other conflicts.<sup>69</sup> If churches no longer affiliate with their national denominational identity, funds, resources, and morale diminish.<sup>70</sup> Once a few parishes successfully split off, others threatening to do so may have greater bargaining power in the future. Since the mediation process involves open discussions between parties during “joint sessions,”<sup>71</sup> these concerns and needs are addressed. Mediation also encourages parties to use integrative bargaining techniques.<sup>72</sup> Rather than claiming value, parties are encouraged to generate new options for mutual gain.<sup>73</sup> Churches in conflict would benefit from creative solutions because an integrative approach would provide remedies neither side would have come up with on their own.

#### *D. Mediation More Aligned with Christian Conflict*

Some commentators advocate that mediation is best suited to address religious conflict because of its agreement with Christian principles.<sup>74</sup> An alternate view asserts that since Christianity is based on ideals of peace rather than conflict, any form of secular conflict resolution is misplaced.<sup>75</sup> Modern Christian mediators aim to dispel this latter theory as a misconception,<sup>76</sup> by encouraging churches to embrace conflict as a means

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68. See discussion *supra* Part II.

69. See Duke Helfand, *Split in Episcopal Church Hits New Level*, L.A. TIMES, Dec. 4, 2008, available at <http://www.latimes.com/news/printedition/front/la-na-episcopal4-2008dec04,0,526783.story> (over 700 other churches expressing displeasure over leadership).

70. See *id.*; see also discussion *supra* Part II.

71. ALLAN H. GOODMAN, *BASIC SKILLS FOR THE NEW MEDIATOR* 66 (2d ed. 2005).

72. Integrative bargaining focuses on maintaining the relationships of the parties and their interests. See FISHER & URY, *supra* note 43, at 9.

73. *Id.*

74. Rebecca Barnes, *Church Conflict: A Good, Clean Fight*, CHURCHCENTRAL.COM, Sept. 24, 2004, <http://www.churchcentral.com/article/Church-conflict:-A-good,-clean-fight> (last visited Jan. 8, 2010). Some believe the principles of mediation are rooted in Christian theology itself, rendering it the most appropriate means of resolving Christian disputes. *Id.*

75. “Persons of faith tend to view conflict through a negative lens, and it frequently does have negative consequences.” Roozen, *supra* note 26, at 20.

76. Tse, *supra* note 31.

In fact, a major reason churches experience such destructive conflict is because it is so contrary to what people (unrealistically) expect to find. When it does occur, instead of constructively dealing with it in a healthy way, people try to bury it—only to eventually discover it emerging with a vengeance. And then people are shocked. We need to

toward growth.<sup>77</sup> They propose that religion is not immune from conflict but rather a more likely place for it.<sup>78</sup> This perspective articulates why there is such a need for an effective resolution process. Since the causes of church conflicts are often religious, mediation appeals to parties by normalizing the dispute through referencing the biblical reconciliation process.<sup>79</sup>

#### V. WHO SHOULD MEDIATE CHURCH CONFLICT?

Once a church decides to use the mediation process, it then has to select a suitable mediator.<sup>80</sup> A church conflict mediator should be well suited for the dispute.<sup>81</sup> If the mediator is not tailored to successfully address the conflict, the process will fall apart.<sup>82</sup> Because the presence of the mediator is what distinguishes mediation from other forms of dispute resolution, such as negotiation,<sup>83</sup> the mediator's capability is crucial to the outcome of the dispute. Sifting through potential mediators to find an effective one may be difficult.<sup>84</sup> There is not a hard and fast rule requiring churches to choose one type of mediator over another. For these conflicts, however, it is apparent that thought should be put into whomever a church selects. First, a church should consider whether or not the person is impartial. This involves examining where they found the mediator in the first place. A church should also discern the mediator's level of credibility regarding background knowledge of church politics.<sup>85</sup> Finally, a church should consider any

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establish a pro-active conflict management system in every church. Such a system will more likely transform a dispute into a positive outcome.

*Id.*

77. Dudley et al., *supra* note 2.

78. See Press Release, London Mennonite Centre, Church Mediation: Can the Church Deal Better with Its Conflicts? (June 7, 2007), <http://www.menno.org.uk/pdf/ConferencePressRelease.pdf>. “‘Even the healthiest churches have to cope with substantial disagreements within them,’ asserts the Revd. Paul Hills, a Baptist Senior Regional Minister.” *Id.*

79. See *Matthew* 18:15-17 (outlining the biblical approach to addressing conflict among believers). See also Tse, *supra* note 31 (arguing that *Matthew* 18:15-17 is “applicable for issues relating to sin” and inappropriate for issues “over difference of opinion over goals, methods, priorities, resources, style, etc.”).

80. See MOORE, *supra* note 5, at 43.

81. *Id.* at 59.

82. *Id.* at 43-55.

83. See *supra* note 33 and accompanying text.

84. See Tse, *supra* note 31.

85. See George H. Friedman & Allen D. Silberman, *A Useful Tool for Evaluating Potential Mediators*, 9 NEGOT. J. 313, 314 (1993). This is a classic argument in the mediation field regarding the requirements of substantive knowledge about a dispute versus knowledge solely about the mediation process itself. See *id.* at 313-14. “An oft-debated question in the mediation field is whether a mediator must possess substantive knowledge of the issues involved in the underlying

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internal or external influences on the mediator that may affect the process as a whole.

*A. Impartiality of Mediator*

Since these controversies are infused with heightened passions,<sup>86</sup> the mediator should be as impartial and neutral as possible. Out of the various mediator types,<sup>87</sup> the most effective would be the independent mediator. The independent mediator “[s]erves at the pleasure of the parties, [and having] no authority to enforce agreement, seeks a jointly acceptable, voluntary, and non-coerced solution.”<sup>88</sup> The parties themselves come up with the solution when they use an independent mediator.<sup>89</sup> These mediators are often professionals who maintain both impartiality and neutrality.<sup>90</sup> Although “[n]o one can be entirely impartial[,]”<sup>91</sup> this attribute is important for church disputes. Impartiality is an essential component of mediation because it creates trust between the individual parties and the mediator.<sup>92</sup> If the mediator builds up sufficient rapport during the initial stages of the mediation, he is better equipped to encourage parties to compromise later on.<sup>93</sup> Neutrality is also important in cases where value conflicts permeate the larger issue.<sup>94</sup> Since many sources of church disputes are religious and moral value questions,<sup>95</sup> churches seeking a mediator should place high value on the potential mediator’s neutrality. When there is deep mistrust and

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dispute.” *Id.* at 313. The author agrees with the view that substantive knowledge not only saves time educating the mediator about the inter-working of a church conflict, *see id.*, but it also establishes mediator credibility before the parties.

86. *See supra* note 38 and accompanying text.

87. There are variations in types of mediators and there are procedures that follow from each. *See MOORE, supra* note 5, at 43-55. Mediators can enter a dispute through multiple avenues including: “direct invitation by one or more of the parties, (2) referrals by secondary parties, (3) direct initiation by the mediator, or (4) appointment by a recognized authority.” *Id.* at 85.

88. *Id.* at 44-45.

89. *See id.* at 44.

90. *See id.* at 44, 52-53. Moore states: “Impartiality refers to the absence of bias or preference in favor of one or more negotiators, their interests, or the specific solutions they are advocating.” *Id.* at 53. “Neutrality, on the other hand, refers to the relationship or behavior between the intervenor and disputants.” *Id.*

91. *See id.*

92. *See id.* at 54.

93. *See id.* at 93-94.

94. *See id.* at 400-26.

95. *See discussion supra* Part II.

negativity on both sides of a conflict, objectivity will more likely engender resolution.<sup>96</sup> Parties are more open to the mediator's influence if they believe the mediator is unbiased, and solely committed to achieving resolution.<sup>97</sup>

Churches should also pay attention to where the mediator came from. Church conflict mediators are most commonly chosen from either informal mediation organizations or from churches themselves.<sup>98</sup> Many mediation services provide training specifically for church leaders.<sup>99</sup> In this sense there is potential for leaders to fill the dual roles of disputant and mediator. A similar problem arises when the mediator in the particular dispute is not a pastor, but holds a position of leadership in a local denomination.<sup>100</sup> Mediators in both of these scenarios would lack the detachment necessary to be fully neutral. They would more likely propose a favorable outcome towards a party in leadership. Thus, selecting these mediators would create the type of bias the impartiality requirement is intended to negate. These mediators would also fall under the type labeled "social network mediator," whose partiality is not a focus.<sup>101</sup> Alternatively, outside organizations,<sup>102</sup> including law firms,<sup>103</sup> offer professional mediation services. These mediators enter a conflict situation with no ties to either side. They bring the objectivity of a fresh, detached perspective. Parties are more likely to accept

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96. See MOORE, *supra* note 5, at 192-93. Another influence on impartiality is the power balance between the disputants. See *id.* at 71-72. Moore explained, "all parties must have some means of influence, either positive or negative, on other disputants at the table." *Id.* Without this equitability, a mediator's impartiality may become tainted. *Id.* at 71. In an effort to reach a power balance, the mediator may assume a role "that is dangerously close to advocacy" for the weaker party, which should be avoided. *Id.* at 72.

97. See *id.* at 93-94, 192-93.

98. See Papa & Roberts, *supra* note 46.

99. See *id.*

100. Stammer, *supra* note 8. In this case, although the mediator would theologically appear impartial, the parties nevertheless questioned his impartiality based on his role in the church:

Bruno said he had offered to allow a conservative Episcopal bishop with whom the parishes agreed theologically to serve them. But the Rev. William Thompson, rector at All Saints', said he declined the offer on behalf of all the parishes. Thompson noted that such a visiting bishop would still be under Bruno's jurisdiction.

*Id.*

101. MOORE, *supra* note 5, at 43.

102. Louise Phipps Senft & Associates is one such organization offering mediation services and training for congregational church conflict. See Baltimore Mediation, Congressional Church Conflict, [http://www.baltimoremediation.com/bizwork\\_conchurch.php](http://www.baltimoremediation.com/bizwork_conchurch.php) (last visited Nov. 16, 2009).

103. For example, Papa & Roberts, PLLC, is a Nashville law firm providing mediation services. <http://www.paparoberts.com>. See also Elliott Jones, *Tentative Agreement Forged for Church Split*, VERO BEACH PRESS J., Apr. 25, 2008, at A1. Trinity Church Interdenominational in Omaha, NE, went to litigation over church governance and pastors. The parties opted to bring in a "church-splitting firm" to help settle the dispute and divide church assets. *Id.*

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and respond to mediators whom they believe are fair and unbiased in assisting resolution.<sup>104</sup> Churches in conflict should aim to derive a mediator from one of these latter sources.

The argument that impartiality is not the best quality in a mediator has some merit. If a mediator is too far removed from the substance of a dispute, he may not have sufficient knowledge or awareness of the intricacies of the issues involved. There must be a balance between the mediator's independence from the dispute and his familiarity with the issues in the church conflict. This assertion lends itself to the second consideration churches must give when selecting a mediator.

### *B. Credibility of Mediator*

For effective mediation, the mediator must establish credibility with the parties.<sup>105</sup> While there are varying forms of credibility,<sup>106</sup> substantive credibility is especially vital for church disputes.<sup>107</sup> This means the church conflict mediator should be sufficiently familiar with the affairs of congregational or denominational churches. Without some background knowledge of how churches operate and the sources of religious conflict, meeting the other requisites would be irrelevant. Parties only receive the benefits of having the mediator involved if they give credence to his propositions.<sup>108</sup> By having sufficient knowledge, the mediator can help parties look beyond their seemingly irreconcilable positions. Armed with credibility, the mediator can de-position the parties if they are too rigid or unrealistic in their bargaining demands.<sup>109</sup> Determining a potential mediator's credibility should not be an overwhelming task for a church in conflict. Once a church has thoroughly researched the source of the

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104. MOORE, *supra* note 5, at 54.

105. *See id.* at 90-93.

106. *Id.*

107. *Id.* "Substantive credibility refers to specific knowledge, expertise, or experience regarding the content of issues in dispute that the moderator can bring to assist the parties." *Id.* at 93.

108. *Id.* at 54.

109. *See* FISHER & URY, *supra* note 43, at 97. The BATNA chart is a list of things a fact-finder should consider when examining a case. *Id.* The mediator uses this chart to deposition the parties. *Id.* It is a chart of the strengths and weaknesses of a case as it would be presented before a judge or jury to emphasize to the party the benefit of resolving the issue during the mediation rather than hand the decision-making power over to an outside authority. *Id.*

mediator, his level of knowledge pertaining to a particular church or denomination should be apparent.

*C. Internal and External Mediator Influences*

Finally, when selecting a church conflict mediator, disputants should consider any additional variables that may affect the mediator's role. Understanding the influences on the mediator provides insight into who is most fitting to mediate the particular conflict. By affecting the mediator, these influences also have potential to affect the outcome of an argument. As a result, consideration must be given to both the internal influence of the mediator's stylistic approach, and the external influence of conflict timing.

Mediators are often categorized by their particular styles.<sup>110</sup> Facilitative mediators focus on the self-determination of the parties,<sup>111</sup> whereas more evaluative mediators impose their personal opinions on a case.<sup>112</sup> Broad mediators seek to address a myriad of issues within a single mediation whereas narrow mediators focus solely on the issue at hand.<sup>113</sup> A church in conflict over controversial issues should select a mediator who is more broad and facilitative in approach. These styles allow church parties to vent their feelings in an open, reciprocal way. The facilitative mediator allows the free-flow of ideas without passing judgment or assessing parties' positions. In the same way, if parties are given freedom to talk about a broad range of issues, their underlying needs and interests are more likely to surface.

In contrast, a church disputing over property should select a mediator who is more narrow and evaluative. Once a church has reached the point of separation, there is little benefit to deviating from the pertinent issue of who gets what. Since at that stage parties are disputing their relative claims over the church building or property assets, it is appropriate for the mediator to make an evaluation. The evaluative mediator is the voice of reason, encouraging parties to be realistic about their positions.<sup>114</sup> In light of these differing techniques, a mediator's style greatly influences the effectiveness of mediation as applied to a specific church conflict.

Another influence on the mediator that churches should consider is the level of conflict development and timing of entry.<sup>115</sup> The level of conflict

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110. See MOORE, *supra* note 5, at 44-45.

111. *Id.*

112. *Id.* They impose their own opinions by independently assessing the parties' options and articulating that assessment. *Id.*

113. *Id.*

114. See FISHER & URY, *supra* note 43, at 97.

115. MOORE, *supra* note 5, at 70.

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development is viewed as the stage reached in negotiations.<sup>116</sup> A church in conflict can be in its initial stages, when a hot-button issue has recently surfaced and disputing parties are just beginning to disrupt church fellowship. In other cases, a church could be in the post-separation stage. The mediator adjusts his stylistic approach depending on the stage.<sup>117</sup> Thus, churches should be aware of the stage of their dispute when choosing the mediator. The degree of emotional intensity between parties goes hand in hand with the level of conflict.<sup>118</sup> As conflicts progress, emotions peak and subside. These emotions may affect the mediator's ability to handle the dispute, including his potential for bias. Conflict timing and parties' emotions are by no means the only external influences on a mediator, but they are likely to have the strongest affect on church disputes.<sup>119</sup>

Overall, a church should be aware of these influences, but a mediator who achieves a balance between the first two criteria should be more than adequate. An impartial mediator with substantive knowledge of church politics will have the tools to appease emotions. He will be flexible enough to adapt to the needs of the conflict regardless of its timing or stage. Now that churches are equipped with criteria to select the mediator, narrowed attention must be given to what a church should do with its property after a separation.

#### VI. HOW SHOULD CHURCHES SPLIT PROPERTY ASSETS FOLLOWING A DIVISION?

If a church eventually separates, how should it divide up the property? This question has been at the forefront of news headlines over the last few years.<sup>120</sup> There are many divergent views on how to divide assets once a church decides to separate. The difference in views is especially significant

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If a mediator enters a dispute in its early stages, prior to extreme issue polarization or the development of intense emotions, he or she will use a different strategy and set of moves from those that would be used at a later stage, when the parties have been negotiating and have reached a substantive impasse or had a highly emotional interchange.

*Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. See Kwon, *supra* note 11.

when millions to billions of dollars are at stake.<sup>121</sup> Many options for property allocation are available, but this article examines approaches from family and divorce, business, and corporate law. Overall, the equitable doctrine from divorce law is the best approach for resolving disputes over church property.

#### A. Family and Divorce Law Approaches

Family and divorce law offer an initial approach for consideration. When two spouses choose to divorce, the state law of the parties' residence generally determines division of property.<sup>122</sup> Within that law, there are two common methods that courts apply: the community property division approach and the equitable distribution approach.<sup>123</sup>

##### i. Community Property Division Approach

Within a community property state, each party is entitled to one-half of the property acquired during marriage.<sup>124</sup> Applied in the context of a church split, opposing parties would be entitled to one-half of the property and assets. This approach may be beneficial regarding liquid assets; however, more often church separation disputes involve some form of real property like a church building.<sup>125</sup> Since it would not benefit either party to physically divide a church building, another integrative solution is more suitable.

##### ii. Equitable Distribution Approach

Most states follow an equitable distribution approach.<sup>126</sup> In divorce proceedings, assets are divided "equally" between spouses.<sup>127</sup> A number of

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121. Duin, *supra* note 54. The Episcopal Church has billions in real estate, endowments, pension funds and investments at stake since the denomination was founded in 1789. *Id.* See also Kwon, *supra* note 29 ("Delegates of the Presbyterian Church (U.S.A.) approved an up to \$2 million fund that would cover legal fees against congregations that pull out from the denomination and want to keep their church property."); Hamill, *supra* note 34.

122. Lee R. Russ, Annotation, *Divorce: Equitable Distribution Doctrine*, 41 A.L.R. 4th 481 (1985).

123. UNIF. MARITAL PROPERTY ACT § 4 (1983).

124. UNIF. MARRIAGE & DIVORCE ACT § 307 Alt. B (1973).

125. See generally Hamill, *supra* note 34.

126. BRETT R. TURNER, *EQUITABLE DISTRIBUTION OF PROPERTY* § 1:1 (3d ed. 2009).

127. UNIF. MARRIAGE & DIVORCE ACT § 307 Alt. A(a). See also Russ, *supra* note 122.

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factors are taken into account in determining what is “equal.”<sup>128</sup> These factors include duration of marriage, custodial provisions, and each party’s amount of contribution.<sup>129</sup> Given these considerations, the equitable approach is better suited to resolve the conflicts at hand. Church parties could analyze relevant factors such as how long the denomination has held the property, or whether the seceding group has added significant value to the property. If the mediator assists a party in balancing factors to establish the most “equitable” solution, it will more likely support the outcome.<sup>130</sup> This approach increases the likelihood of reaching resolution by allowing both sides to feel they are being treated fairly. In church property disputes, many of the underlying concerns would also be mitigated with this approach. For example, the mediator may suggest establishing a lease for the church building, so that the seceding members maintain their church home, but the denomination keeps ownership. By offering integrative solutions to both sides under this approach, the mediator expands the pie of options available for the parties’ informed decision-making.<sup>131</sup>

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128. § 307. Primarily the term “equal” in this context is based on fairness. Some factors the court considers include:

the duration of the marriage, and prior marriage of either party, antenuptial agreement of the parties, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties, custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of each party in the acquisition, preservation, depreciation, or appreciation in value of the respective estates, and the contribution of a spouse as a homemaker or to the family unit.

*Id.*

129. *Id.*

130. In situations where two divorcing spouses agree on how to divide their assets, a formal agreement called a “property settlement agreement” may be composed by lawyers. *Cause of Action to Set Aside Property Settlement Agreement Not Merged in Divorce Decree*, in 32 CAUSES OF ACTION 2D 569 § 1 (2008). Indeed “a property settlement is ‘[a] contract that divides up the assets of divorcing spouses. . . .’ and it may include ‘a division of marital debts as well as assets.’” *Id.* (citing BLACK’S LAW DICTIONARY 1255 (8th ed. 2004)). This contract or agreement includes a detailed list of who gets what; it is legally valid and binding. *Id.* While this would be ideal in a church conflict scenario, such an amicable agreement seems unlikely.

131. See FISHER & URY, *supra* note 43, at 56.

## B. Corporate Law Approach

### i. Contractual Approach

Another possible approach is to fashion church division as a business transaction. Instead of holding on to property, the denomination may decide to sell to the seceding group.<sup>132</sup> For instance, the side owning legal title to a church building may name a price and choose to sell it to the seceding members who have used the church building on an everyday basis. This method is successful, but only in the narrowly-applied context where one party clearly holds title. In addition, that party must agree to allow the separating group to keep the property without consequence. Such an outcome is possible. In one case the title holder even went beyond selling the property, readily handing it over to the opposing disputant.<sup>133</sup> Most church property disputes are not so cut and dry though.<sup>134</sup> It is not always obvious who has legal ownership of a church building and parties are not always so magnanimous.<sup>135</sup>

### ii. Nonprofit Dissolution Approach

A final example derives from the dissolution of nonprofit organizations. When nonprofit corporations dissolve, common law held that any remaining assets went to the state government or a similar 501(c)(3) nonprofit.<sup>136</sup>

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132. The Associated Press, *Breakaway Presbyterian Church Buys Back Property*, THE CHRISTIAN POST, Dec. 16, 2008, available at <http://www.christianpost.com/article/20081216/breakaway-presbyterian-church-buys-back-property.htm>.

Kirk of the Hills Presbyterian Church in south-central Tulsa, the largest Presbyterian church in Oklahoma, left the Presbyterian Church (U.S.A.) two years ago over concerns that the denomination had abandoned its biblical foundation. The church sued, seeking to retain control of its building and land. But Tulsa County District Court Judge Jefferson Sellers ruled that the denominational constitution of the Presbyterian Church (U.S.A.) made the presbytery, not Kirk of the Hills, the rightful owner of the property. The congregation at Kirk of the Hills voted on Nov. 30 to accept an agreement with Presbyterian Church (U.S.A.) and its Eastern Oklahoma Presbytery to buy the property for \$1.75 million and to end all litigation. The presbytery officially sold the property to the church yesterday.

*Id.*

133. Kwon, *supra* note 12 (East Tennessee's Presbytery's decided to dismiss Signal Mountain Presbyterian Church to EPC "with all its property, real or personal, without condition.").

134. See Hamill, *supra* note 34.

135. *Id.*

136. See New York State Department of Law (Office of Attorney General), Summary of Registration and Filing Requirements for Charitable Entities, 322

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Courts have since abandoned this rule and hold instead that title goes to the nonprofit corporation's members upon dissolution.<sup>137</sup> In general, however, nonprofits' articles of incorporation or bylaws govern the distribution of assets in these situations.<sup>138</sup> Since churches are viewed as "nonprofits" under the Internal Revenue Code,<sup>139</sup> this final approach of "dissolving" or "separating" a structurally similar organization is relevant. In the absence of a church explicitly articulating what occurs in a separation process, mediators could similarly propose that remaining church members receive derivative assets. While theoretically this proposition makes sense, in reality it fails to provide an actual solution. One core argument in these church conflicts is who the *true* members are—those who secede or those who remain with the authority. Since this approach would therefore create yet another layer of conflict, it is probably not the route a church should take.

Similar to a mediator selection, a church may take whatever approach is most applicable to its individual dispute. This article provides suggestions or analyses of the potential results of various selections, but is by no means definitive. Indeed several approaches to church separation of property—real or not—are available. Nonetheless, the most applicable is likely the equitable dissolution analogy from divorce law. While a fixed number of assets mandate purely distributive bargaining in these disputes, some consideration of what is "fair" will allow the parties to feel heard regarding their respective positions. Regardless of the outcome, church disputants will more likely adhere to agreements if they are based on evenhandedness.

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<http://www.oag.state.ny.us/bureaus/charities2/pdfs/char023.pdf> (Example of the State of New York's instructions on the dissolution of a nonprofit with assets).

137. WILLIAM MEADE FLETCHER, 16A FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 8135 (citing *Late Corp. of Church of Jesus Christ of Latter-Day Saints v. United States*, 136 U.S. 1 (1890)).

138. *Id.* (citing *In re Midwest Athletic Club*, 161 F.2d 1005 (7th Cir. 1947)).

139. 26 U.S.C.A. § 501(c)(3) (West 2006) ("Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable . . ." purposes are considered exempt from tax on corporations).

## VII. APPLIED CASE STUDIES OF CHURCH CONFLICT

### A. *The Episcopalian Church*

Since 2003, the Episcopalian church has been breaking into “ever narrower sects” with commentators speculating that, “[d]isestablishment [may] be the one thing that helps it survive.”<sup>140</sup> These sects have been battling over numerous hot-button issues including resistance to homosexuality and female priests<sup>141</sup> as well as questions of salvation and the authenticity of the Bible.<sup>142</sup> Most recently, the American diocese is separating from the more liberal European Episcopal Church,<sup>143</sup> and instead aligning itself with the Anglican Province of South America.<sup>144</sup> This is significant in that “[a]lthough parishes have left the national church, primarily over the ordination of gays and lesbians, this is the first time that an entire diocese has sought to align itself with the more conservative members of the Anglican Communion overseas.”<sup>145</sup> Those who left argue they are “being faithful to biblical teachings.”<sup>146</sup>

Another significant issue with the Episcopal Church is the dealing of assets. One viewpoint in the Episcopalian denomination adheres to traditional Canon Law.<sup>147</sup> Under that method, “abandoned” churches go directly to the diocese unless the parish predates the organization of the diocese.<sup>148</sup> This positional approach is not well received by those who desire the opposite outcome. It would be more beneficial to suggest a more integrative approach such as those derived from the various aspects of law, rather than one such as this that is entirely win-lose.

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140. Associated Press, *Diocese to Break from Episcopal Church*, WASH. POST, Oct. 5, 2008, at A07.

141. *Id.* In October of 2008, the Pittsburg diocese was specifically breaking from the more liberal Episcopal Church over disagreements regarding salvation and homosexuality. *Id.*

142. *Id.* (whether the American Episcopal Church believes that the Bible is the revealed Word of God).

143. *Id.*

144. Sahagun, *supra* note 27 (seventy-seven million member fellowship).

145. *Id.*

146. *Id.*

147. Duin, *supra* note 54.

148. *Id.*

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### B. *The Methodist Church*

Dramatic changes have swept the Methodist Church, redefining the role of the denomination's leadership, identity, and mission.<sup>149</sup> Changes driven by social forces include organizational control, the meaning and priority of biblical authority, and the scope of the church's mission.<sup>150</sup> Recently the leadership has been accused of having "narrow ideological agendas."<sup>151</sup> The Methodist Church, similar to its denominational counterparts, also struggles over the issue of homosexuality.<sup>152</sup> With such intense emotions on both sides, the choice of mediator is crucial. These churches should look to the type of mediator, his qualifications, and biases in order to discern whether he can successfully mediate such intense and divergent value conflicts.

### C. *The Presbyterian Church*

The doctrines of the Holy Trinity and the authority of the Bible are the current main points of contention for the Presbyterian Church. Smaller groups are seeking to realign with other Presbyterians who agree with their views. One such group submitted a formal request, asking the Pittsburgh Presbytery to dismiss it from the PC (USA) in order to join the more conservative Evangelical Presbyterian Church (EPC).

However, unlike the other case studies, the Presbyterian Church provides one example of a successful division of church property. In East Tennessee, the Signal Mountain Presbyterian Church voted to separate from

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149. James Rutland Wood, *Leadership, Identity, and Mission in a Changing United Methodist Church*, in CHURCH, IDENTITY, AND CHANGE: THEOLOGY AND DENOMINATIONAL STRUCTURES IN UNSETTLED TIMES, *supra* note 3, at 534.

150. *Id.*

151. *Id.*

The United Methodist Church—the second largest denomination in the United States—has had a long history of separation and union. Six break-off denominations were formed during its 200-year history in the U.S., and four Methodist groups joined soon after to form the influential mainline denomination of this day. On Thursday, May 6, 2004, the Methodists at the quadrennial General Conference in Pittsburgh put forth a call for amicable separation, this time, over the issue of homosexuality in the church.

Pauline J. Chang, *Separation in the UMC*, THE CHRISTIAN POST, May 7, 2004, available at <http://www.christianpost.com/article/20040507/separation-in-the-umc.htm>.

152. See, e.g., B.A. Robinson, *The United Methodist Church and Homosexuality*, *Trials of Gregory Dell, Karen Dammann & Mark Williams*, RELIGIOUS TOLERANCE (2004), available at [http://www.religioustolerance.org/hom\\_umc9.htm](http://www.religioustolerance.org/hom_umc9.htm).

the EPC.<sup>153</sup> Immediately after the split, negotiations over the church property began and the EPC eventually allowed the church to be dismissed ““with all its property, real or personal, without condition.””<sup>154</sup> Although this outcome is uncommon, its occurrence not only signals hope for the resolution of these polarizing conflicts, it also reinforces the concept that mediation will be successful in this dispute arena.

#### D. Other Church Conflicts

Church conflict is not isolated to major denominational groups.<sup>155</sup> Throughout the United States and abroad, interdenominational and nondenominational churches undergo the same issues and battles. This final case study examines one situation in which mediation is utilized and another in which it ought to be.

An interdenominational church in Omaha, Nebraska, went directly to litigation over conflicts regarding church governance and choice of pastor.<sup>156</sup> Where the opinion of the attorney general was determinative in the primary stages of conflict, parties subsequently opted to bring in a church-splitting firm to help settle the dispute and divide the assets.<sup>157</sup> This example reveals the growing awareness, even in litigated situations, of the benefits of mediation in the context of church grievance and asset-splitting.

Dividing sects are equally as common in nondenominational churches, but they may be occurring less frequently. An example is found in the ever-narrowing groups of movements in the Churches of Christ. The first split took place around 1880 over controversies regarding musical instruments in worship.<sup>158</sup> The two groups distinguished themselves as the Churches of Christ and the Christian Church (Disciples of Christ).<sup>159</sup> Later in the early 1970s a smaller group of church-goers broke from the Churches of Christ over disagreements in doctrinal emphasis.<sup>160</sup> The newly formed group named the International Churches of Christ grew exponentially over the

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153. Kwon, *supra* note 12.

154. *Id.*

155. Dudley et al., *supra* note 2. Conflict is widespread, extensive, and intensive. *Id.*

156. Letter from Jon Bruning, Attorney General of State of Nebraska, to Greg Scaglione, Trinity Church, Interdenominational (Sept. 4, 2008) (on file with author). *See also* Burbach, *supra* note 53.

157. Letter from Jon Bruning, *supra* note 156. *See also* Burbach, *supra* note 53.

158. LESTER G. MCALISTER & WILLIAM E. TUCKER, *JOURNEY IN FAITH: A HISTORY OF THE CHRISTIAN CHURCH (DISCIPLES OF CHRIST)* (1975).

159. *Id.*

160. Russell Paden, *The Boston Church of Christ, in AMERICA'S ALTERNATIVE RELIGIONS* 133-36 (Timothy Miller ed. 1995).

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succeeding twenty years.<sup>161</sup> However, in 2003, the International Churches of Christ splintered due to leadership abuses and financial inconsistencies.<sup>162</sup> A subsequent group, the Portland Movement, broke from the International Churches of Christ, again accusing the preceding group of doctrinal “softness.”<sup>163</sup>

In order to prevent ever-narrowing sects, mediation of disputed issues, particularly regarding leadership, may have a mitigating effect. Rather than leaders negotiating among themselves, reaching impasse, and ultimately separating from the church with a group of followers, mediation requires the use of an impartial third party. The benefits of this third party as discussed above would resolve many of the sources of leadership conflict beforehand. And otherwise, mediation may facilitate a more peaceful separation between the two groups than has been the case historically.

#### VIII. FINAL ANALYSIS

The current state of affairs in most churches is tenuous at best. Once purely secular controversies have seeped into church pews and provided sources of conflict with no apparent remedies. As mediation is a proven tool in other arenas, its application to these conflicts should be considered by churches in conflict. With the myriad of concerns in these conflicts regarding mediator selection—ranging from stylistic approach to basic likelihood of bias—a few general qualifications remain. Possession of these criteria presume a more advantageous mediator than otherwise. In the event that a conflict has reached impasse in its reconciliation phase, mediation is also helpful in facilitating parties’ discussion of separation and division of assets. While many approaches for separating churches are available, given the sensitivity of parties’ emotions and consideration of their underlying needs and interests, an equitable distribution approach is best. It would allow parties to leave the table more satisfied than in formal litigation or negotiation. The third party mediator would facilitate balancing factors of equity and assist parties in discerning the fairest result.

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161. *See id.*

162. TIMOTHY GREESON, ICOC UPDATE 2005: IS THE THREAT RESURFACING? (2005), available at <http://www.newcovpub.com/icc/update2005.htm>. *See, e.g.*, Letter of Resignation by Kip McKean (Nov. 6, 2002), available at [http://ucd.discipleforum.com/icocmain/Documents/11\\_02/mckean\\_resignation.htm](http://ucd.discipleforum.com/icocmain/Documents/11_02/mckean_resignation.htm).

163. The Portland Church Leadership, *Concern for All the Churches*, City of Angels International Christian Church (2009), <http://www.caicc.net/010107.php> (last visited Jan. 8, 2010).

## IX. CONCLUSION

Postmodernism has supplanted traditional norms of deference to authority not just in the United States, but worldwide. While the global secular arena continues to embrace a culture of conflict, more hot-button issues will surface and then dissolve into churches. This means the line between what is a “religious” and what is a “civil” matter will continue to blur. These issues will increase in complexity as more decision-makers, both religious and nonreligious, are forced to get involved. Conflicts of faith will continue to affect everyone, not just those directly involved.

Church conflicts are not exclusive to the United States. The Episcopalian conflict involves diocese on the continents of Europe and South America as well. The growing questions will be, what, if any, solution will alleviate the negative impacts of social changes? And, how can they be resolved across international lines? An increased number of disputants will seek a source of conflict resolution that best suits their respective situations. The inadequacy of negotiation will grow more apparent as parties are unable to reach a compromise. Disputants will continue to leave the courtroom disheartened and disillusioned by litigation’s lack of attention to their underlying concerns. The costs of litigation will also outweigh any likely benefit to church parties filing suit.

Only the mediation approach will provide the flexibility needed to resolve these worldwide church conflicts. The mediation process will emphasize impartiality and substantive knowledge, contain an integrative analysis, and resolve conflicts by expanding available resources to reach resolution.

On the surface, church conflicts and property disputes in particular seem irreconcilable. However, churches equipped with the tool of mediation will see its effectiveness firsthand and grow more hopeful about successful resolution. Even in a postmodern world, peace within churches is possible. The beauty of peaceful fellowship among Christians will be restored. This peace will have a reverse effect on the social realm from which most conflict originates, and modern churches will be free to continue in their efforts to reach out to a hurting world.