

The **BOISI CENTER** *for*

RELIGION *and* AMERICAN PUBLIC LIFE

Symposium on Religion and Politics

The Future of Religious Freedom



BOSTON COLLEGE

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FIRST THINGS

In Defense of Religious Freedom

Evangelicals and Catholics Together

March 2012

Eighteen years ago, this fellowship of Evangelical and Catholic pastors, theologians, and educators was formed to deepen the dialogue among our communities on issues of common concern, to explore theological common ground, and to offer in public life a common witness born of Christian faith. Since our founding in 1994, we have addressed, together, such important public policy questions as the defense of life, even as we have proposed to our communities patterns of theological understanding on such long-disputed questions as the gift of salvation, the authority of Scripture, and the call to holiness in the communion of saints. We hope that this collaboration has been a service to both Church and society; it has certainly drawn us closer together as brothers and sisters in Christ, and for that we are grateful to the Lord of all mercies.

At the beginning of our common work on behalf of the gospel, it did not seem likely that religious freedom would be one of our primary concerns. The communist project in Europe had collapsed; the commitment of Christian believers to defeat totalitarianism through the weapons of truth had triumphed; and throughout the world, a new era of religious freedom seemed at hand.

We are now concerned—indeed, deeply concerned—that religious freedom is under renewed assault around the world. While the threats to freedom of faith, religious practice, and religious participation in public affairs in Islamist and communist states are widely recognized, grave threats to religious freedom have also emerged in the developed democracies. In the West, certain religious beliefs are now regarded as bigoted. Pastors are under threat, both cultural and legal, for preaching biblical truth. Christian social-service and charitable agencies are forced to cease

cooperation with the state because they will not bend their work to what Pope Benedict XVI has called the “dictatorship of relativism.”

Proponents of human rights, including governments, have begun to define religious freedom down, reducing it to a bare “freedom of worship.” This reduction denies the inherently public character of biblical religion and privatizes the very idea of religious freedom, a view of freedom such as one finds in those repressive states where Christians can pray only so long as they do so behind closed doors. It is no exaggeration to see in these developments a movement to drive religious belief, and especially orthodox Christian religious and moral convictions, out of public life.

Given these circumstances, we offer this statement, *In Defense of Religious Freedom*, as a service due to God and to the common good. The God who gave us life gave us liberty. The God who has called us to faith asks that we defend the possibility that others may make similarly free acts of faith. By reaffirming the fundamental character of religious freedom, we contribute to the defense of freedom and to human flourishing, in our countries and throughout the world.

In making this statement, we confess, and we call all Christians to confess, that Christians have often failed to live the truths about freedom that we have preached: by persecuting each other, by persecuting those of other faiths, and by using coercive methods of proselytism. At times Christians have also employed the state as an instrument of religious coercion. Even some of the greatest leaders in the history of Christianity failed to live up to their own best ideals. As the Second Vatican Council’s declaration on religious freedom, *Dignitatis Humanae*, put it, “In the life of the People of God, as it has made its pilgrim way through the vicissitudes of human history, there has at times appeared a way of acting that was hardly in accord with the spirit of the Gospel or even opposed to it.” It is this memory of Christian sinfulness that gives us all the more reason to defend the religious freedom of all men and women today.

What Religious Freedom Is

As believers in the God of Abraham, Isaac, and Jacob, who reveals himself fully in the Lord Jesus, we find the deepest source of religious freedom in the form or nature of the human person created by God. Human beings have been created with the capacity to know God, the will to seek God, and a spiritual thirst for God. In Genesis 1:26, the Bible teaches us that only human beings are made “in the image of God.” No one bears this image (*imago Dei*) more than others; no one has the right to assert that by reason of race, tribe, ethnicity, class, or sex his imaging of God is superior to another.

In a world of manifest and innumerable inequalities, this radical equality of all men and women before God is the bond that allows us to speak meaningfully of a human family, a human race, in which we share mutual obligations—including the obligation to recognize and honor that sanctuary of conscience in which each person can meet the divine source of life. Any power, be it cultural or political, that puts unwarranted impediments in the path of the human quest for truth, which culminates in the human quest for God, is violating the order of creation.

These truths have already been stated in several Christian documents:

- In the 1986 *Instruction on Christian Freedom and Liberation* issued by the Congregation for the Doctrine of the Faith, we read that “God wishes to be adored by people who are free” (no. 44).
- In the National Association of Evangelicals’ 2006 *Statement on Religious Freedom*, this fundamental freedom is described as “the distinctive characteristic of the American project—what Roger Williams called ‘the livelie experiment.’ . . . It is an inalienable right that precedes the state itself.”
- In the 2010 *Cape Town Commitment*, Evangelical Christians of the Lausanne Movement declared, “Let us strive for the goal of religious freedom for all people. This requires advocacy before governments on

behalf of Christians and people of other faiths who are persecuted.”

Human freedom, and especially religious freedom, reflects God’s design for creation and his pattern of redemption. Religious freedom is thus grounded in the character of God as revealed in the Bible *and* in the moral structure of the world that we can know through reason. It is precisely as Evangelical and Catholic Christians that we affirm, on the authority of the Bible, religious freedom for all, even as we are prepared to defend religious freedom in public life through arguments drawn from reason.

Religious freedom is a fundamental right. As the American founders put it, it is “unalienable.” Religious freedom is thus a right that exists before the state. The just state recognizes this right of persons and protects it in law. In doing so, the state recognizes the limits of its own capacity: It cannot coerce consciences; it cannot compel belief. For the state that recognizes and protects religious freedom is not an omniscient state, but rather a state that acknowledges the rights of conscience and the prerogatives of the institutions that men and women freely sustain to express and pass on their religious convictions. It recognizes its duty to serve, and not to impede, those communities of civil society. Thus the recognition of religious freedom in full is a crucial barrier to the totalitarian temptation that seems to exist in all forms of political modernity.

In sum, religious freedom has both personal and public dimensions. It is grounded in the dignity of the human person as possessed of a thirst for the truth and a capacity to know it. The state that recognizes religious freedom as inherent and inalienable, a civil right protected by law, thereby acknowledges its incompetence over the sanctuary of human conscience. Religious freedom is fundamental both to the freedom of the individual human person and to the sustaining of just and limited governments.

The Genealogy of Religious Freedom

It is because Evangelicals and Catholics Together confess Jesus Christ as head of the Church and of our consciences that we insist that there can be

no compulsion whatsoever in the act of faith. Here, the Lord himself is our witness.

The New Testament, whose basic confession of faith was distilled by the first generation of Christians to the simple affirmation that “Jesus is Lord,” never depicts Jesus the Lord as coercing faith. Quite the contrary: Jesus reasoned with his listeners, instructed them in parables, called them to repent, and invited them to believe the good news of God’s kingdom. When his disciples asked him to call down fire from heaven to destroy those who refused to receive him, Jesus rebuked them (see Luke 9:52–55). Shortly thereafter, Jesus sent his disciples on a mission with the explicit instruction to respect others’ freedom (see Luke 10:1–12). Even the Risen One, whom the Church confesses as the Lord of the cosmos and of history, speaks of himself as one who invites: “Behold, I stand at the door and knock; if anyone hears my voice and opens the door, I will come in and eat with him, and him with me” (Revelation 3:20). The first chapters in the history of the Church, the Acts of the Apostles, show the first Christians preaching conversion and demonstrating by the quality of their lives and their witness that God’s Kingdom is “established” by the ministry of the word and the works of the Holy Spirit (see Acts 12:24). They acknowledged the authority and value of the state (see Romans 13) even as they recognized the limits of its reach (see Acts 5:29).

Recognizing the failures of Christians to live in accord with these convictions in the past, we also ask that the history of religious freedom be understood in its full amplitude. The genealogy of religious freedom is a rich and complex one; its story does not begin in modern times. It begins in the Jewish and Christian understanding of human dignity and freedom.

In the fourth century, Lactantius (whom the Renaissance humanists called the “Christian Cicero”) wrote, “Religion cannot be a matter of coercion.” A century later, the greatest of the Latin Fathers of the Church, St. Augustine, wrote in his *Commentary on the Gospel of St. John*, “When force is applied, the will cannot be aroused. You can be compelled to enter a church against your will; to approach the altar against your will; to

receive the sacrament against your will. But you cannot believe against your will. No one can believe except willingly.” The greatest of the medieval theologians, St. Thomas Aquinas, insisted that no one should be compelled to the faith “because to believe depends on the will.”

In his 1523 treatise *Temporal Authority: To What Extent It Should Be Obeyed*, Martin Luther declared that the state has no authority over the soul, and he demarcated the limits of government in the spiritual realm: “It has laws which extend no further than to life and property and external affairs on earth, for God cannot and will not permit anyone but himself to rule over the soul. Therefore, where the temporal authority presumes to prescribe laws for the soul, it encroaches upon God’s government and only misleads souls and destroys them.” Luther’s contemporary John Calvin believed that in the face of “overbearing tyranny,” a Christian must “venture boldly to groan for freedom.” He protested the intrusions on the church’s freedoms of assembly and speech.

In early American history, the Puritan dissenter Roger Williams founded the colony of Rhode Island in the conviction that the bloody persecution of men for their religious convictions was “contrary to Scripture.” In the sixth point of his *Plea for Religious Liberty* (1644), Williams wrote that it is “the will and command of God” that permission be granted to Jews, Muslims, and non-Christians alike in their worship and in the exercise of their consciences, so that the only sword used in matters of the soul should be “the sword of God’s Spirit, the Word of God.” Just before the American Revolution, the Baptist pastor Isaac Backus grounded his *Appeal to the Public for Religious Liberty* (1773) in the teaching and example of Jesus, stating that “our Lord has most plainly forbidden us, either to assume or to submit to any such [compulsion] in religion.”

In our own time, the 2010 *Lausanne Cape Town Commitment* called Christians to “being committed to advocate and speak up for those who are voiceless under the violation of their human rights,” and declared, “Let us strive for the goal of religious freedom for all people. This requires advocacy before governments on behalf of Christians *and* people of other

faiths who are persecuted.”

Finally, the Second Vatican Council, after careful consultation with Protestant observers, summarized and restated many of these themes in *Dignitatis Humanae*. We, as Evangelicals and Catholic Together, fully affirm the teaching of this declaration that

the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups or of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits. . . . This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right.

Religious Freedom in the Architecture of Democracy

As we have argued, just government recognizes and protects those rights that are built into human nature by God and that can be known by both reason and revelation. The most basic of these fundamental rights is religious freedom, which is most basic because it touches what is deepest in the human spirit: our thirst for the truth, which Christians believe is in fact a thirst for God. Religious freedom, then, grounds the freedom of speech, of assembly, of the press, and all other freedoms. Absent religious freedom, there is no freedom in the deepest meaning of the word. Absent religious freedom, democracy crumbles.

The fundamental human right of religious freedom precludes the establishment of a religion to which all citizens must conform. That is why

the First Amendment to the United States Constitution wisely links the free exercise of religion to its prohibition of “laws respecting an establishment of religion.” The prohibition of an establishment of religion is one crucial means to advance the end of the free exercise of religion. Thus “no establishment” and “free exercise” are not in tension, as much modern jurisprudence understands them to be. Nor does “no establishment” demand a naked public square, shorn of religiously informed moral conviction. The “separation of church and state” is intended to protect freedom *for* religious conviction; it is not intended to promote religion’s exile from public life.

It is essential for the full expression of religious freedom that believers be welcome, in law and in social custom, to bring their religiously based moral convictions into the ongoing public debate over how we ought to order our common life. Religiously informed moral argument does not establish religion or impose sectarian values on a pluralistic society. Such charges are undemocratic, for they deny to fellow citizens and religious communities the right to bring the sources of their deepest convictions into public life. For their part, believers often have the resources to make their arguments in the public square in ways that every citizen, irrespective of religious belief or the lack thereof, can engage. Thus we seek neither a naked nor a sacred public square, but a civil public square open to the full range of convictions.

Religious Freedom in Peril

As the Pew Forum on Religion and Public Life has noted, Christians face harassment in more countries than any other religious group. In the words of the World Evangelical Alliance, Christians are “the largest single group in the world . . . being denied human rights on the basis of their faith.”

Overt persecution of Christians is widespread in many Islamic societies. Christians are murdered by radical Islamists in churches in Egypt and Iraq. Bibles are not permitted in Saudi Arabia, and the Saudi national

curriculum continues to teach students to “kill” Jews and apostates, view Christians as enemies, and spread the Islamic faith through “jihad”—a teaching it promotes by funding the distribution of extremist textbooks throughout the world. In some Islamic states, conversion to another religion is a capital offense. In Iran, a Christian pastor who refused to recant his faith has been brought to trial for apostasy. In Pakistan, blasphemy laws forbid any criticism, however mild, of Islam. Muslim persecution of Christians is not confined to one area of the world, for these practices can be found in Indonesia and northern Nigeria as well as the Middle East, North Africa, the Persian Gulf, and the Indian subcontinent. Nor is it likely that the “Arab Spring” will lead to a springtime of religious freedom in the Islamic heartland and beyond. Indeed, if radical Islamists come to power, the situation of Christians and other religious minorities will become even more perilous.

Islamic societies are not alone in their persecution of Christians. The remaining communist states in Asia—North Korea, the People’s Republic of China, and Vietnam—and “postcommunist” states such as Belarus, Turkmenistan, and Uzbekistan restrict religious freedom in their determination to control all aspects of social life. In India, Christians are persecuted by Hindu radicals who burn orphanages and schools for no reason other than their Christian sponsorship; here, too, conversion to Christ can be life-threatening.

Religious freedom is under assault even in countries where the language of human rights is part of the public moral vocabulary. In Canada, for example, Evangelical pastors have been fined by “human rights commissions” for preaching biblical morality in matters of human sexuality. In Great Britain, couples have been denied foster children because of their commitment to teach the young the moral truths inscribed in the Bible. In Poland, a Catholic magazine editor was fined by a court for speaking the truth about abortion. In these and other instances, coercive state power is being deployed to impose a secularist agenda on society while driving religious faith and practice out of public life.

By these and other means, “religious freedom” is reduced to a private lifestyle choice. In Europe and Canada, what amounts to state-established secularism erodes the exercise of full religious freedom by impeding the public witness of Christian communities. It also substantially threatens the free exercise of religious belief in preaching and catechesis.

In the United States, religious freedom is being encroached upon and reduced through the courts, in administrative policy, and in our culture. For example, the Equal Employment Opportunity Commission (EEOC), through the office of the solicitor general, recently challenged the longstanding interpretation of the “ministerial exception” to antidiscrimination and other employment laws in *Hosanna-Tabor v. EEOC*. The legal arguments presented by officials from the executive branch of government would have dramatically reduced the constitutional protections that allow Christian communities to choose their ministers according to their own criteria. Fortunately, in a unanimous decision the Supreme Court of the United States affirmed the ministerial exception.

While the Supreme Court has protected the right to determine religious leaders, the capacity of religious believers to form and sustain distinctive institutions is threatened today. The United States Department of Health and Human Services has proposed “preventive services” regulations that require provision of FDA-approved contraceptives, including abortifacients like Ella, and sterilization. These regulations threaten the religious freedom of insurers, employers, schools, and other religious enterprises that conscientiously oppose contraception and abortion. Limiting conscience protections to those in religious institutions that serve only their own members, as some have proposed, criminalizes the public witness of religious organizations such as Catholic universities and other religious social welfare institutions.

Administrative and regulatory policies pose further threats to religious freedom. Christian doctors, nurses, pharmacists, and other health-care providers are being put at professional risk by policies that compel all

health-care workers to undertake procedures and provide prescription drugs that many of them regard as immoral.

We also note that the attempt to redefine marriage through coercive state power has already brought pressure to bear on Christian ministers, despite exceptions provided in legislation. Further, in no state where the redefinition of marriage has passed the legislature has the religious institution exception provided all the religious freedom protections needed for individuals and groups that oppose the legalization of same-sex unions in those states.

The Renewal of Religious Freedom

We live in the greatest period of persecution in the history of Christianity. In the twentieth century, noble martyrs like Dietrich Bonhoeffer and Blessed Jerzy Popieluszko gave their lives for Christ amid a cloud of witnesses greater in number than those martyred for the Name in the previous nineteen centuries of Christian history. That witness continues today in the self-sacrifice of men like Shahbaz Bhatti, a Christian cabinet officer murdered because of his defense of the religious freedom of all of his fellow Pakistanis.

As Evangelicals and Catholics who seek to honor the witness of these and other martyrs, we pledge to work together for the renewal of religious freedom in our countries and around the world. We will resist the legal pressure brought on Christians in the medical profession, the armed forces, and elsewhere to participate in actions that they deem immoral on the grounds of both faith and reason.

We acknowledge that the state enjoys its own sphere of competence. But we remind the modern democratic state that it is a limited state. We applaud the United States Supreme Court's decision to sustain the long-held ministerial exception. In the same spirit of concern for religious liberty, we ask that legislators formulate explicit conscience protections for health-care workers. And we counsel legislators to intervene and reverse

the coercive efforts at the Department of Health and Human Services and other agencies to mandate health coverage and adoption procedures that will force religious institutions to betray their foundational principles. In these and other areas, we must vigilantly defend religious freedom.

We also join together in asking our federal governments to defend religious freedom in conducting the foreign policy of the United States and Canada. We recognize the complexities into which such a commitment inevitably leads; we also see the evidence of history, which teaches that religiously free societies are better for their people, and safer for the world, than societies in which persecution is culturally and legally affirmed. Thus we call on our public officials to undertake prudent measures to advance the cause of religious freedom in full.

In all of this, we believe we are acting as Christians have been commanded to act, and speaking as citizens of mature democracies ought to speak. Our faith in Jesus Christ as Lord and Savior, and our baptism in the name of the Most Holy Trinity, compels us to defend the religious freedom of all who are created in the image of God. Our gratitude for the religious freedom that has been a hallmark of North America for over two centuries compels us to work to defend religious freedom in the United States and Canada, and to work for the religious freedom of others in all lands. For the sake of the common good, we, Evangelicals and Catholics Together, urge our fellow citizens and our public officials to join us in the renewal of religious freedom: to defend religious freedom for all persons and to guard against its erosion in our societies.

Evangelical Protestants

Charles Colson

Prison Fellowship

Dale Coulter

Regent University School of Divinity



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Religious liberty threats: no longer a unifying idea of what they are

By Patricia Zapor Catholic News Service | Print | Share
News

WASHINGTON (CNS) -- In what now seem to have been heady days of the 1990s, Baptists, Catholics, the American Civil Liberties Union and People for the American Way were among the members of a philosophically diverse coalition that stood together in pursuit of a federal law protecting the free exercise of religion.

Today, among those same organizations, there may be as many ideas about what the chief threats are to religious liberty as there once were members of the group that produced a single-minded legislative focus.

"When the same words are used to describe conflicting or competing terms," for how to apply the religious freedom protections of the First Amendment, "something is wrong," said the Rev. Welton Gaddy, a Baptist minister who heads the Interfaith Alliance. He moderated the first panel of a March 18 conference, "Defining Religious Freedom in America," with the observation that the "free exercise coalition is no more, amid controversies over many subjects."

As Wendy Kaminer, a civil liberties attorney and correspondent at theatlantic.com, noted during the conference sponsored by the Freedom Forum and Moment magazine, "it's very easy to find consensus in general definitions" of religious freedom.

"It becomes a benchmarking exercise," agreed Mark Chopko, a partner and chair of the nonprofits and religious institutions practice group at Stradley, Ronon, Stevens & Young. "We all agree on what the principles are."

But when it comes to practical application to contemporary situations, the consensus falls apart, panelists agreed.

For example, Gaddy said, one contemporary subject of disagreement is whether religious liberty is threatened by or enhanced by faith-based entities receiving federal funds to operate programs. Some see the line separating church and state envisioned by the Founding Fathers as precluding such funding. Others observe that the constitutional protection was meant to keep government from interfering with religion, not block collaboration between the two in pursuit of the common good.

Although it was not specifically raised, a subtext of the discussion was some religious entities' objections to the federal requirement that employers, including most religious employers, include coverage of contraceptives, some abortion-inducing drugs and sterilization procedures

in their health plans.

The U.S. Conference of Catholic Bishops and other faith-based entities object to the Department of Health and Human Services mandate on moral grounds and argue it is a threat to religious liberty. The Catholic Church teaches that the use of artificial contraception is a sin. New proposed HHS rules expand the exemption for religious employers, but the USCCB has said they do not go far enough because there is no exemption for individual employees and for-profit employers morally opposed to such coverage.

Not all faiths oppose artificial contraception and many religious organizations have lined up on the other side of legal arguments over the HHS requirement.

Kaminer said attacks on religious liberty come from both the government -- such as in the surveillance of Muslims by police agencies focused on terrorism -- and by individuals, sometimes those who believe they are fighting discrimination.

"Individual religious liberty also is under attack from the most militant advocates of anti-discrimination," she said, "who conflate (religious) belief with actions."

On the other hand, Kaminer said many religious institutions "are overprotected. We're hearing claims for religious liberty that I believe are demands for the power to impose religious beliefs on others."

Muslims have recently been targeted on the basis of their faith, in surveillance by law enforcement agencies, by community challenges to plans to build mosques and by local and state attempts to pass laws barring possible imposition of Shariah -- or Islamic law -- in their communities.

Hoda Elshishtawy, legislative and policy analyst for the Muslim Public Affairs Council said the last example is particularly baffling.

"There's a misperception that American Muslims want to impose Shariah on the public," she said. "The American Muslim community isn't even asking for it."

Richard Foltin, director of legislative and national affairs for the American Jewish Committee, noted that although a handful of states and cities have passed anti-Shariah laws, "there's not a single jurisdiction in which anti-Shariah laws have been allowed to take effect (because they are blocked by courts that find they violate the First Amendment). This is a case where a threat to one faith is a threat to all."

Foltin said the follow-up question that doesn't often get asked when people talk about religious liberty being under attack is: "Compared to what?"

"I say we are very lucky in this country to have the things to argue about that we argue about," Foltin added.

Elshishtawy said that as a Muslim woman, she hasn't personally felt victimized by religious discrimination, despite the regular conflicts over mosque construction plans and the fact that "national discourse around Islam and Muslims is very negative."

She said she's reminded regularly by her grandparents of the difference in religious liberty between the United States and other countries.

Her grandparents immigrated to the United States from Egypt in the 1960s, she explained. They call it "a beautiful dream" to be living where they can freely practice their faith, she said.

Holly Hollman, general counsel for the Baptist Joint Committee for Religious Liberty, said "religious freedom is always under attack in some ways." But it's nothing new in the United States.

"We've always fought about this (as a country). And we should," she said.

Not once, but twice that '90s-era coalition of more than 60 religious and civil liberties organizations has come together.

In 1993, they helped get the Religious Freedom Restoration Act passed and signed into law, protecting religious practices from "burdensome and unnecessary governmental interference." After the Supreme Court tossed out provisions of that law, leaving intact only its application to actions of the federal government, they again coalesced in support of the Religious Liberty Protection Act in the late 1990s.

By then, however, the unified approach only went so far. The House passed the bill, but it never came up for a vote in the Senate.

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Applying God's Law: Religious Courts and Mediation in the U.S.

ANALYSIS April 8, 2013

Across the United States, religious courts operate on a routine, everyday basis. The Roman Catholic Church alone has nearly 200 diocesan tribunals that handle a variety of cases, including an estimated 15,000 to 20,000 marriage annulments each year.¹ In addition, many Orthodox Jews use rabbinical courts to obtain religious divorces, resolve business conflicts and settle other disputes with fellow Jews. Similarly, many Muslims appeal to Islamic clerics to resolve marital disputes and other disagreements with fellow Muslims.



For the most part, religious courts and tribunals operate without much public notice or controversy. Occasionally, however, issues involving religious law or religious courts garner media attention. The handling of clergy sexual abuse cases under Catholic canon law, for example, has come under scrutiny.² Internal church proceedings aimed at disciplining Protestant clergy have generated news coverage because they have highlighted debates over same-sex marriage and openly gay ministers.³ There also have been public protests against Orthodox Jewish men who refused to grant their wives a religious divorce.⁴ Meanwhile, bills aimed at banning the use of Islamic (sharia) law – or at restricting the application of religious or foreign law in general – have been introduced in more than 30 state legislatures. (For more details on those legislative initiatives, see the map graphic [“State Legislation Restricting Use of Foreign or Religious Law.”](#))

Disputes over the laws of various religious traditions have occasionally made their way into U.S. civil courts, but the Supreme Court consistently has ruled that judges and other government officials may not interpret religious doctrine or rule on theological matters.⁵ In such cases, civil courts must either defer to the decisions of religious bodies or adjudicate religious disputes based on neutral principles in secular law. For example, in recent years the Episcopal Diocese of Virginia has battled in state court with several congregations over control of buildings, property and funds after the congregations voted to join more theologically conservative branches of the worldwide Anglican Communion. So far, the cases have been decided in favor of the diocese using contract and real estate law rather than church law.⁶

Role of Mediation in Religious Legal Disputes

Grievances within a faith tradition often are settled amicably or adjudicated by the religious community itself without involvement from religious or secular courts. Indeed, many religious groups encourage members who are accused of (non-criminal) moral wrongdoing or who are involved in a financial dispute with another member of the religious group to engage in mediation in an effort to come to a voluntary agreement. In many cases, more formal tribunals and the like are employed only after such efforts at mediation fail.

For many Christians, mediation is more than just a cost-efficient way to resolve disputes. Some cite biblical passages, such as St. Paul's First Letter to the Corinthians, which urge believers to bring their grievances to fellow believers rather than to outside authorities. In addition, some Christians believe that mediation helps to promote reconciliation and forgiveness for everyone involved. “God has called us to something that’s more glorifying than proving what’s right or even just,” according to Annette Friesen, who works as a conciliation and training consultant at Peacemaker Ministries’ Institute for Christian Conciliation in Billings, Mont.

Mediation also has a place in other faith traditions. For instance, a saying (or hadith) of the Prophet Muhammad speaks of the risks judges take when they make wrong or unjust decisions.⁷ As a result, mediation is often viewed as a better course of action than settling the dispute in court, according to Imam Moujahed Bakhach, who directs the Mediation Institute of North Texas in Fort Worth.⁸ “Many Muslims like mediation for resolving problems because it allows them to work things out without necessarily disclosing private matters in a public place,” Bakhach says.

Jews – particularly the Orthodox, who often view Jewish law (halakhah) as governing nearly every aspect of daily life – also frequently turn to religious mediators to resolve disputes with fellow Jews. “Mediation is strongly favored in Jewish law, and rabbinic literature contains high praise for parties who are able to settle their disputes rather than engage in litigation,” according to Rabbi Shlomo Weissmann, director of Beth Din of America, a rabbinical court in New York City. “While there is no specific process for mediation that all or most rabbis follow, rabbis encourage settlement and will attempt to mediate disputes whenever

that is possible.”

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About This Report

This report by the Pew Research Center focuses on religious courts and mediation, examining how some of the country's major Christian denominations and other religious groups – 15 groups in total – routinely decide internal matters and apply their religious laws.

Some of the legal codes – Islamic sharia and Jewish halakhah, for example – are quite comprehensive, covering many aspects of individual, family and community life, from marriage and divorce to death and inheritance. Other religious legal traditions, including those of many Protestant denominations, focus largely on internal church governance, including the expulsion of members and disciplining of wayward clergy.

Each entry includes links to official documents and other resources to help readers who want to delve more deeply into a particular religious group's laws or judicial system.

African Methodist Episcopal Church

The African Methodist Episcopal Church (AME), one of the nation's largest African-American churches, has a hierarchical structure with a number of layers. Near the bottom of this hierarchy is the Quarterly Conference, a local administrative body within each AME congregation that meets four times a year and is made up of local church leaders. Quarterly Conferences, in turn, are part of larger regional groupings that meet once a year, called Annual Conferences. Ordained and lay delegates elected by the Annual Conferences convene every four years in what is called the General Conference.

Disciplining Church Members

The church's ecclesiastical law is outlined in its Book of Discipline. Lay members may be subject to discipline if they disrupt their congregation or behave in ways that, in the words of the church's chief executive and general superintendent, Bishop Clement Fugh, “exclude them from the grace and glory” of the church. This can include being rowdy during services, being drunk in public or refusing to submit to the authority of church leadership.

Allegations of such misconduct go to a group of the local congregation's leaders – known as the Board of Stewards – which investigates and issues an opinion on the credibility of the charges, says Fugh. The board then presents its findings to a committee it has appointed to hear the case. During the hearing, the accused may speak and call witnesses on his or her behalf. The committee then votes on whether to affirm the decision of the Board of Stewards. Possible punishments include suspending membership or barring the offender from holding leadership positions in the church.

Those who believe they have been unfairly disciplined may appeal to their congregation's Quarterly Conference during its next meeting. The appeal is heard by the members of the conference – a presiding elder as well as a group of leaders from the congregation. The conference's decision is final, Fugh says.

Disciplining Religious Leaders

Disciplining clergy is a more complicated process, in part because the AME Church handles sexual misconduct and other kinds of misconduct differently, Fugh explains.

Sexual Misconduct

Any sexual misconduct involving a minor is immediately turned over to civil authorities for investigation. When charges of other kinds of sexual impropriety arise – for example, when a minister is alleged to have had an extramarital affair with an adult congregant – the Board of Stewards of the minister's congregation reports the charge to the presiding elder of that congregation. The presiding elder then refers the allegation to the Judicial Committee of the Annual Conference to which the church belongs, which then investigates the matter.

If the Judiciary Committee finds the charge is credible, it convenes a Trial Committee – comprised of 12 elders from the Annual Conference – and holds a formal trial. During the trial, the Judiciary Committee provides the evidence against the accused and may call witnesses. The accused may be represented by a secular lawyer, church elder or other counselor and may also call witnesses. Members of the Trial Committee act as judges and rule on the charge. A person can challenge the ruling of a Trial Committee by appealing to the Judicial Council, a body of nine ministers and laypersons elected by the General Conference as the highest judicial body in the church. The Judicial Council reviews the trial and issues a ruling, which is final.

Other Misconduct

According to Fugh, when an ordained minister is charged with committing a non-sexual offense, a church panel called the Ministerial Efficiency Committee handles the complaint. Offenses that might come before this group include unethical behavior, such as theft, as well as preaching ideas that are inconsistent with AME doctrine, such as proclaiming that homosexuality is not a sin. The Ministerial Efficiency Committee hears evidence in the case and makes a report to the Annual Conference to which the church belongs. The report includes the committee's opinion on the guilt or innocence of the accused and, if appropriate, a recommended punishment, such as a formal reprimand or suspension. At the Annual Conference's next meeting, it reviews the report and votes on the charge. Its decision is final.

Fugh notes, however, that the AME Church rarely employs this complex judicial system. Though there are more than 4,000 AME congregations in the United States, he says, "very few" cases arise each year against either laypersons or ministers.

For More Information

[The Doctrines and Discipline of the African Methodist Episcopal Church](#)

[Governing Structure of the African Methodist Episcopal Church](#)

Assemblies of God

The Assemblies of God, the largest Pentecostal denomination in the U.S., according to Pew Research's 2007 U.S. Religious Landscape Survey, is a fellowship of churches that gives its roughly 12,500 congregations substantial autonomy.⁹ At the same time, it has a two-tiered hierarchy – consisting of 64 regional District Councils and a national General Council – which exercises limited authority over congregations and credentials their ministers. Under this governance structure, local congregations control many areas of church life, including disciplining lay members for misconduct. But regional and national church authorities play an important role in settling some disputes, notably those involving clergy.

Disciplining Clergy

The church's bylaws list 14 offenses that can bring about the dismissal of a minister, including sexual immorality, incompetence, financial impropriety, and being contentious and uncooperative toward district leadership. "The ones that get invoked most often involve sexual misconduct, misusing money and having a contentious spirit," according to James Bradford, general secretary of the church. "We usually dismiss fewer than 125 pastors each year, out of a total of over 35,000 credentialed ministers," he adds.

When an Assemblies of God minister is accused of wrongdoing, the complaint is taken up by the superintendent of the district where the pastor's church is located. If, after an investigation, the superintendent finds the charges to be credible, he calls the minister before the district's governing board. Here, the minister has a formal opportunity to hear the evidence against him and to respond. If the board determines that the charges are true, it can either suspend the minister (often with the hope of rehabilitating him) or dismiss him. The severity of the disciplinary action usually depends on the offense and the willingness of the minister to repent. "Our first instinct is always rehabilitation and restoration," according to Duane Durst, superintendent for the New York District. However, Durst says, there are some offenses that lead to automatic dismissal. "Child abuse and molestation, using child pornography, homosexual conduct: these are absolute knockouts," he says.

If the district board finds the pastor culpable and the pastor continues to maintain his innocence, he can appeal to the national church's General Council and its 20-member Credentials Committee. The committee can either affirm the district's decision or, if it determines that the case was not handled properly, return it to the district for reconsideration. The committee does not have the authority to overturn the district's decision, however. If the district's decision is affirmed, the accused pastor can appeal one more time – to the General Presbytery, the national church's 300-member policymaking body. However, the General Presbytery will consider an appeal only if there is new exculpatory evidence. Otherwise, the decision is affirmed and no further appeals are allowed.

Conflicts Between Pastors and Congregations

Church officials also play a role in mediating conflicts between pastors and their congregations. These conflicts are "usually about control – who's in charge and how are they in charge," according to Durst, who has mediated these types of disputes as a district superintendent.

If the pastor, the church's board of elders or 30 percent of the congregation's members request it, the district superintendent will intervene to try to resolve a dispute. Usually, the superintendent appeals to each side to understand the other. For example, if a congregation brings a complaint about the way a new pastor is allocating church resources, the superintendent will attempt to mediate the dispute and find a solution that both sides can live with. "We remind the congregation that they chose this pastor and that they need to understand that there are significant differences between him and his predecessor," Durst says. "And we tell the pastor that he needs to earn [the congregation's] trust before he can make big changes." This strategy works "about half the time," Durst says, adding, "Often how we handle the

problem is much more important than the problem itself."

For More Information

[Assemblies of God Constitution and Bylaws \(PDF\)](#)

[Assemblies of God Statement on Requirements for Ministry \(PDF\)](#)

[Assemblies of God Views on Discipline and Self-Control](#)

Buddhism

There is no unified Buddhist law or central Buddhist authority in the United States. While American Buddhists may agree on some core ethical principles, Buddhist communities in the U.S. are largely autonomous and may enforce rules differently. This contrasts with Buddhism in Asia, where the religion's major sects are organized around monasteries that are deeply rooted in Buddhist law, according to Charles Prebish, professor emeritus of religious studies at Penn State University and Utah State University. "Buddhism, as it [has] moved west, has never been a strongly monastic tradition," Prebish says.

The basic law or code of ethics embraced by all major Buddhist sects is called the Vinaya. Each sect has its own variant of the Vinaya, usually consisting of more than 200 rules to which all monks and nuns are expected to adhere. The four most important rules are maintaining celibacy, not stealing, not killing and not making false claims to spiritual attainment. Laypersons are traditionally expected to follow five rules, which prohibit killing, lying, stealing, taking intoxicants and having illicit sex.

According to Thanissaro Bhikkhu, abbot of Metta Forest Monastery in northern San Diego County, Buddhist sects in the United States are not as hierarchical as those in Asia.¹⁰ Instead, he says, Buddhist sects in the U.S. can best be described as "membership organizations of individual and independent monasteries." Even within each sect, he says, there is no authority enforcing a standard interpretation of the Vinaya. "There is no pope. Each community is its own authority," he says.

The cohesiveness of Buddhist law in America is further diluted by the diversity within communities, according to Paul Numrich, professor of religion in the Theological Consortium of Greater Columbus, Ohio. Some Buddhist communities include monks or nuns from more than one sect – another practice that differentiates American Buddhists from their Asian counterparts. Accordingly, Buddhist monks and nuns in American communities must adjust the Vinaya to smooth out sectarian differences. In addition, Numrich says, American monasteries tend to bend the rules to accommodate modern life – for example, by allowing monks to wear shoes or ride in cars, something generally not done in Asian monasteries.

Though various American Buddhist communities have their own ethical standards, monks and nuns – and, to a lesser degree, laypeople – still are subject to discipline if they break their commitments to the Buddhist way of life. According to Prebish, when monks violate the Vinaya, or when lay Buddhists break one of the five central rules, they often receive some form of punishment. For severe offenses, monastics can be expelled from their communities and lose their status as monks and nuns. Laypeople also can have their membership in a religious community revoked.

Disciplining Monastics

According to Thanissaro Bhikkhu, monks at his monastery are rarely punished for minor infractions, such as eating at the wrong time of day. However, when a monk is accused of a more serious offense, such as theft, sexual immorality or "starting strife about the [monastery's] rules or teachings," an investigation usually follows. Normally a council of about four abbots from nearby monasteries will meet with the accused and the accuser (who does not have to be a fellow monastic or even a Buddhist) to ask questions and determine whether the monk is culpable. If the abbots believe the charges are credible, they will attempt to obtain a confession. A speedy confession is important because it can result in leniency. When a monk will not confess to a violation of the Vinaya, even a minor one, his whole community can vote on his status as a member of the group. With a unanimous vote, the community can expel a wayward monk or even defrock him, making him ineligible to enter another monastery.

After confessing to a minor offense, a monk might be put on probation. According to Thanissaro Bhikkhu, the probationary period usually lasts six days plus the number of days the monk concealed the violation. Probation normally consists of removing the monk from some of his daily duties, especially anything involving leadership of novices.

Disciplining Lay Buddhists

There also is one situation in which lay Buddhists attached to the monastery might be disciplined, Thanissaro Bhikkhu says. "If the monks are convinced a particular [layperson] is trying to defame the monks or trying to harm the monks, they can get together as a community and refuse to accept alms from that person," he says. In Buddhism, the giving of alms is more than an act of charity; it helps lay Buddhists achieve spiritual enlightenment by lessening their attachment to material things. Therefore, when monks refuse to accept alms from someone, they make it difficult for the person to continue to move forward in their practice of the faith.

According to Thanissaro Bhikkhu, if a lay Buddhist breaks state or federal law, Buddhist monks would not become involved. "There's no ecclesiastical court that deals with that kind of" misconduct, he says.

For More Information

[The Buddhist Monk's Discipline: Some Points Explained for Laypeople](#)

Catholic Church

Based on ancient Roman civil law and developed over many centuries, Catholic canon law is complex and extensive, affecting the lives of both ordained and lay Catholics. In the United States, canon law cases are administered primarily by local tribunals, which largely handle marriage-related cases in which no one is on trial. Less frequently, American canon law tribunals will adjudicate disciplinary cases against clergy.

The Canon Law Court System

Canon law is administered by a three-tiered hierarchy of courts within the church, says Michael Ritty, founder of a canon law consultancy in Feura Bush, N.Y. At the lowest level, each of the church's 195 dioceses in the United States has a Court of First Instance, which acts as a trial court. The size and activities of these courts vary widely, according to Nicole Delaney, director of the tribunal for the Diocese of Phoenix. Some have large staffs and handle many cases each month, while others (generally in smaller dioceses) are small and devoted almost exclusively to granting marriage annulments.

In addition, each diocese sends all appeals to an appellate court, known as a Court of Second Instance, usually administered by the nearest larger diocese, known as an archdiocese. The final authority on all penal and non-penal cases is the Holy See, the church's highest authority headed by the pope and headquartered at the Vatican in Rome. The Holy See has a number of final appeals courts. For instance, all marriage appeals are disposed of by a tribunal called the Roman Rota. Most of the appeals in penal cases end up at a court called the Apostolic Signatura. However, appeals in penal cases involving charges of sexual abuse are handled by a tribunal at the Congregation for the Doctrine of the Faith, which oversees church doctrine.

The Judicial Process

At the lowest (diocesan) level, trials are overseen by canon lawyers acting as judges, who rule after reviewing evidence that has been collected by the court and presented by counselors, who are known as advocates. While one judge is adequate for uncontested marital cases, three judges are used when the trial involves the possibility of excommunication, the dismissal of a priest, or a marital case where major issues are being contested.

"This is not an adversarial system like we have in secular courts in the United States," Ritty says. "Judges rather than advocates examine witnesses." However, Ritty adds, advocates for the parties involved do have an opportunity to present arguments, with the defense advocate always speaking last.

In addition to the judges and the advocates for the parties involved, there are often court officials who are tasked with representing various positions. For instance, in marriage annulment cases, where the presumption of an intact marital bond must be disproved, a person called the Defender of the Bond argues before the court in favor of preserving the marriage. In contentious penal cases, such as those involving priestly misconduct, an official known as the Promoter of Justice is tasked with seeking the public's good, somewhat like a prosecutor in secular courts.

The Appeals Process

According to Delaney, judges' decisions in marriage and penal cases must be ratified by the Court of Second Instance. Since the Court of Second Instance acts as an appeals court, it primarily reviews procedural matters, ensuring that the trial at the Court of First Instance was conducted properly.

If the Courts of First and Second Instance return different rulings in a marriage case, the Rota in Rome settles the matter. In addition, any party can appeal directly to Rome, even if there is not a split decision, says Monsignor Thomas Green, professor of canon law at the Catholic University of America in Washington, D.C.

Types of Cases

Green says that "the vast majority" of cases in canon law tribunals are marital. These include annulments as well as dispensations for Catholics to marry non-Catholics.¹¹ According to statistics compiled by the Canon Law Society of America, between 15,000 and 20,000 marriage annulment cases per year have come before Catholic Courts of First Instance in recent years in the United States.¹² The vast majority of these petitions for annulment ultimately were granted.

According to Green, most other canon law trials in the U.S. involve penal cases, which involve serious wrongdoing that often breaks secular criminal laws. The most serious, including those involving sexual abuse allegations, bypass the local tribunals and are tried in Rome. In total, Green estimates that American Catholics are involved in 25,000 to 30,000 non-penal and penal cases each year.

In penal cases, the official known as the Promoter of Justice acts not only as the public prosecutor but also as the chief investigator. Indeed, a penal trial will not proceed unless the Promoter of Justice informs officials that there is sufficient evidence to try someone for specific canon law offenses.

For More Information

[Roman Catholic Code of Canon Law](#)

[Canon Law Society of America](#)

[CanonLaw.info](#) (Website of Canon Lawyer Edward Peters)

[Catholic News Agency on Marriage and Annulment](#)

Church of Jesus Christ of Latter-day Saints

Disciplining Church Members and Religious Leaders

When a member of the Church of Jesus Christ of Latter-day Saints (Mormons) seriously violates its teachings or doctrines, local ecclesiastical leaders first attempt to facilitate repentance and reconciliation. "Our first hope is always confession and contrition," says Richard E. Bennett, a professor of Mormon history and doctrine at Brigham Young University in Provo, Utah. "We want to give people a chance to repent and change their lives." In addition to encouraging repentance, the church's disciplinary process also aims to protect the innocent from harm and to safeguard the integrity of the church, Bennett says.

There are a host of offenses that constitute misconduct – ranging from criminal activity to apostasy, which Mormons define as teaching doctrines or advocating practices in direct opposition to the church. In most cases, only the most serious offenses lead to formal proceedings. In less serious cases, the local bishop (the lay leader of a Mormon ward, or congregation) may impose discipline informally, with an eye toward putting the person back on the right track. Even serious cases that do not involve members of the all-male priesthood are usually handled by the bishop or by a disciplinary council that he convenes.

The church does not have paid, professional clergy. "In our church, there is a lay priesthood, and it extends to all worthy male members," Bennett says.¹³ If a transgression involves a member of the priesthood or serious charges (such as serial adultery or the commission of criminal felonies) against anyone in the church, the case may come before a body known as a Stake High Council. A Mormon stake consists of several wards and is headed by a stake president, who is also a layman. The Stake High Council is made up of 13 male members of the church – the stake president and a dozen other local leaders.

Disciplinary Procedures

The Stake High Council's intent is not to punish or rebuke the accused, says Bruce Hafen, president of the LDS Temple in St. George, Utah. "This is not punitive. The majority of cases come from those who have confessed rather than those who have been accused," he says. Often, a case involves someone who has confessed but has since repeated their bad behavior. "The most common offenses are adultery and other sexual offenses," Hafen says, adding that a typical Stake High Council hears an average of three or four cases a month.

To prevent injustice or misunderstandings, up to six members of the Stake High Council are prepared to speak on behalf of the alleged transgressor, while six others defend the best interests of the church and any potential innocent victims, such as children, who might be involved. After the proceedings, the stake president determines guilt or innocence as well as what course of action to take in cases in which the person is found guilty.

Someone who is found guilty can be put on probation, which involves stripping the person of certain church privileges (such as the right to receive sacramental bread and water during services or the right to teach Sunday school) for a short period of time. Disfellowship, which allows a Mormon to retain church membership but not hold any offices or participate in important ceremonies such as baptisms or administration of Communion, is a more serious punishment. "Probation is often less formal than disfellowship," Hafen says, and other congregants often do not know when someone is on probation. Disfellowship is more severe and more public, Hafen adds.

In the most serious cases, a person can be excommunicated, which means a complete loss of church membership. However, even those who have been excommunicated for serious offenses can work to be readmitted into the church or, if they belonged to the lay priesthood, to regain their office.

Disciplinary decisions at every level may be appealed to the president of the entire church (who is viewed by Mormons as a prophet and seer) and his top two counselors. These three function as the First Presidency, the highest governing body of the church. But, according to Bennett, they rarely intervene unless there is clear evidence that local authorities acted inappropriately. The First Presidency "almost always supports what was done at the local level," he says.

Religious Marriage and Divorce

Mormons also have rules governing marriage and divorce. Because they believe that a marriage "sealed" in a Mormon temple ensures that the husband and wife will remain together for eternity, divorce is not taken lightly. Still, if a couple is no longer living together and their efforts and those of the church to preserve the marriage have failed, they can petition the First Presidency to grant a cancellation of their sealing, which is essentially an annulment. These petitions are quite common and the requests are usually granted. Once the marriage is dissolved, each party is free to marry another person in the temple.

For More Information

["Disciplinary Procedures,"](#) Encyclopedia of Mormonism

[Official Website of the Church of Jesus Christ of Latter-day Saints](#)

Episcopal Church of the United States

Disciplining Clergy

The governing structure, rules and procedures of the Episcopal Church are set out in its Constitution and Canons, which were first ratified by the church in 1785 and last amended in 2012. One part of the Constitution and Canons concerns the disciplining of deacons, priests and bishops. Clergy can face disciplinary action for a variety of offenses. These include conducting worship services that differ significantly from approved church liturgy; failing to safeguard church property or money; failing to perform clerical duties; and misconduct, ranging from committing a crime to having a sexual relationship with a

congregant.

When accusations are made against a priest or deacon, they are reviewed by a church official known as an intake officer, usually a high-ranking member of the clergy who serves the diocese in this position for a set period of time. If the intake officer believes the accusations fall within the disciplinary offenses outlined in the Constitution and Canons, the local bishop will attempt, usually successfully, to settle the issue without formal proceedings, says Stephen Hutchinson, chancellor of the Episcopal Diocese of Utah. If, however, negotiations fail, the case is handed to a disciplinary body known as a Conference Panel, which brings together all parties – including the bishop, the intake officer and the accused cleric – in an attempt to resolve the case. “This is not a trial, but a discussion,” Hutchinson says, adding, “The goal here is to determine the best way forward.”

If no agreement or reconciliation is reached, the case against the priest or deacon moves to a Hearing Panel, where civil lawyers for both sides present evidence and examine witnesses. Ultimately, a three-judge panel, made up of clergy and laymen, issues a verdict. If the cleric is found guilty, he or she can appeal the decision to a diocesan body known as a Provincial Court of Review. The court of review can overturn the verdict only if they find procedural flaws in the trial; it does not reconsider the Hearing Panel's findings of fact in the case.

Bishops are treated differently from other members of the clergy. If the allegations concern deviation from church doctrine, the bishop is tried before a panel of fellow bishops. If the charges concern other issues, such as misuse of money or sexual impropriety, the bishop is tried before a panel of bishops and priests or one consisting of deacons and lay members. As with the trials of priests and deacons, proceedings against bishops also involve civil lawyers and the presentation of evidence and witnesses. In addition, any decision can be appealed to a Court of Review for Bishops, which consists of nine bishops. Like the Provincial Court of Review, the Court of Review for Bishops can only overturn a verdict if they discover procedural flaws in the trial.

Disciplining Laypeople

Although the Episcopal Church rarely disciplines lay congregants, cases against laymen occasionally arise. “You can still be excommunicated in the Episcopal Church by bringing scandal upon the church – by publishing untrue things about the church or its members or repeatedly disrupting church services,” Hutchinson says. When a lay Episcopalian is accused of these kinds of offenses, it is up to his or her priest to determine whether excommunication is warranted. But excommunications can be appealed to the local bishop.

Excommunication is rare – Hutchinson notes, for example, that there has been only one excommunication in the Utah diocese since he began working there in 1985 – and it is not necessarily permanent. According to Hutchinson, sincere repentance can end excommunication. There also are lighter forms of discipline. For example, a congregant might lose certain privileges but still retain church membership. “Sometimes people are simply prevented from coming to the communion rail,” says David Beers chancellor to the church's presiding bishop, Katharine Jefferts Schori.

For More Information

[Constitution and Canons of the Episcopal Church](#)

[Episcopal Church Discipline: A Guide for the Laity](#)

Evangelical Lutheran Church in America

Disciplining Religious Leaders

The governing structure and rules of the Evangelical Lutheran Church in America (ELCA) are set out in its Constitution, Bylaws and Continuing Resolutions. These documents lay out disciplinary procedures for cases involving alleged misconduct by ordained ministers and certified lay ministers (known as rostered leaders), such as a church's musical director or director of religious education. Both ordained ministers and rostered leaders may be censured, suspended or removed from office for a variety of offenses, ranging from deviation from church doctrine to adultery or the commission of a crime.

In cases where someone makes accusations against a minister or other church leader, the local bishop investigates the allegations, including speaking with the accused and his or her accusers. If the minister admits to serious wrongdoing, such as having a sexual relationship with a congregant, the bishop typically will ask the minister to resign from the congregation and perhaps from the official roster of ministers as well. But if the minister claims to be innocent or refuses to resign from the ministry, the bishop may bring formal charges or appoint a committee of clergy and lay representatives from the synod (regional district) to investigate the allegations further and make a recommendation as to whether formal disciplinary charges should be brought.

If formal charges are filed against the minister, the case goes before a discipline hearing committee made up of 12 clergy and lay members. Half the members are drawn from the synod in which the charges arose and half come from other synods of the ELCA. As the formal process unfolds, the accused remains free to terminate the proceedings by resigning from his or her post.

Once the disciplinary hearing gets underway, however, the proceedings follow special rules. The accuser – usually the bishop who brought the charges – and the accused have the opportunity to present evidence and confront witnesses. “This has many, though not all, of the same procedures you'd find in a trial, including limited discovery, right to counsel, right to cross-examine accusers and right to a record of the proceedings,” says Robert W. Tuttle, a professor of law at George Washington University and legal counsel to the ELCA's Metro Washington, D.C., Synod. If a majority of the members hearing the case determine that the accused has committed the charged offense, he or she can appeal the decision to a

churchwide Committee on Appeals, which reviews the disciplinary hearing to ensure that it was properly conducted. If the appeals committee finds no reason to question the disciplinary hearing, the decision of the disciplinary committee is affirmed and no more appeals are permitted.

Disciplining Congregations

The ELCA Constitution also details procedures for disciplining congregations, which can be censured or even ejected from the church for deviating from church doctrine or disregarding the church's constitution. The process for disciplining a congregation is similar to that used by the church in cases involving ministers. If the local bishop determines that the charges against the congregation have merit, and if the congregation refuses to address the problem, a disciplinary committee of 12 clergy and lay persons is formed and a trial takes place. Congregations judged to be in violation of church doctrine and rules can appeal the decision to a churchwide appeals committee (a body elected by the churchwide assembly), which has the final say.

Disciplining Church Members

The ELCA also has rules for congregations to follow when disciplining church members for repeatedly being disruptive or other public misconduct. "Before any formal actions are taken, the pastor and others take the person aside and warn him to stop," says Tuttle. If the person does not stop the behavior, the congregation's governing body, the Congregation Council (a body elected by the congregation's members), can hold a hearing and impose disciplinary measures by a two-thirds vote of the council's members. This decision can be appealed to the local synod and no further. Discipline can range from an admonition or warning to suspension of membership to expulsion from that congregation.

For More Information

[Constitutions of the Evangelical Lutheran Church in America](#)

[The Evangelical Lutheran Church in America's Definitions and Guidelines for Discipline](#)

Hinduism

Hinduism has no governing structure or single body of law. "There are many markers of identity in Hinduism, but there is no centralized authority," says Vasudha Narayanan, a professor of religion at the University of Florida in Gainesville. "In terms of law, there are many different codes of righteous behavior, as well as local custom and practice."

Disciplining Clergy

In the United States, most Hindu temples have their own rules and practices, usually determined by each temple's lay board of trustees. In practice, this means that certain types of misconduct by a priest might be handled differently by different temples. "Priests serve at the pleasure of the board of trustees, which means that when they decide you have to go, you have to go," Narayanan says.

At the Hindu Temple of Atlanta, for instance, a body known as the Executive Committee for Religious Activities is responsible for investigating any allegation of serious priestly misconduct. "They investigate the charges and, if they are credible, the president of the temple, in consultation with the committee, will take action," says B. Krishna Mohan, who co-founded the temple. "If it's serious, we usually tell [the priest] that his services are no longer needed and that he should go," Mohan adds.

Misconduct among worshipers is almost never an issue, Narayanan says. "If you were behaving badly, you would not be censured or denied access to worship," she says. Mohan agrees: "If someone is doing something wrong in their personal life, such as adultery, we do not tell that person to stop," he says. However, inappropriate behavior at the temple can lead to a reprimand. "If someone comes in drunk or has dressed inappropriately, we will take them aside and tell them to fix it," Mohan says.

For More Information

[Council of Hindu Temples of North America](#)

Islam

Islamic law, or sharia, is the code of religious belief and conduct that governs many aspects of Muslim life. It covers a broad range of areas, including crime and punishment; marriage, divorce and inheritance; banking and contractual relations; and diet and attire. Some elements of sharia, especially concerning worship and other religious practices, are clearly outlined in the Quran, the Islamic holy book, while other questions are settled according to different clerics' interpretations of general sharia principles.

The purpose of sharia is to allow Muslims to live their earthly lives according to Allah's wishes, according to Sheik Abdool Rahman Khan, an expert on sharia law and chairman of the Shariah Council of the Islamic Circle of North America, a Muslim education and advocacy group in New York City: "We believe that if we do not do things properly in this world, then we will have consequences in the hereafter."

Disputes Between Individuals

Sharia sometimes plays an important role in helping Muslims resolve disputes, particularly domestic ones. Indeed, the most common disputes involving sharia, at least in the United States, probably concern issues surrounding the dissolution of a marriage, such as asset allocation or child custody, says Lee Ann Bambach, an attorney who is completing a Ph.D. in religious studies at Emory University in Atlanta. Inheritance and contract dispute cases also occasionally come up, she says.

In many Muslim countries, marital and other disputes often come before sharia courts, where a judge sometimes renders a decision after hearing only from the two parties involved, without other evidence or witnesses. In the United States, there are no sharia courts operating at this time, Bambach and other experts say. However, a number of Muslim imams offer voluntary dispute-resolution services to American Muslims based on principles of Islamic religious law.

For example, Imam Talal Eid runs the Islamic Institute of Boston, an organization that handles religious divorces, inheritance disputes and child-custody cases for Muslims across the United States. Most of his cases center on divorces, often involving women trying to obtain an Islamic divorce from an uncooperative husband. "I investigate, and if the wife's claims are legitimate, I will talk to the husband and try to convince him. If the husband continues to refuse to grant a [religious] divorce, I grant her one," he says. Eid does not call his institute a sharia court, but he does liken its work to that of a Jewish beit din, or rabbinical court (see below).

According to Bambach, many U.S. Muslims take marital and other problems to local imams and ask them to use sharia principles to resolve the disputes. But because there is no single credentialing organization or centralized hierarchy for American imams, there also are no standard procedures for dispute resolution, she says.

Abed Awad, an attorney in Hasbrouck Heights, N.J., who is an expert on sharia, says the ground rules for dispute resolution are often set by the imam and other participants in an ad hoc manner at the beginning of each case. "These things tend to spring up as the need arises," he says.

According to Khan, at the Islamic Circle of North America the resolution of each case also must be in line with secular American law and procedure. For instance, he says, "I let people know that I cannot issue a [religious] divorce decree unless a court has given them a [civil] divorce document first."

Eid follows the same procedure. "Today you have to mix modern and Islamic law," he says.

For More Information

[Islamic Institute of Boston](#)

[Islamic Circle of North America](#)

[Sharia in America](#) (A Website Co-Founded by Abed Awad)

Judaism

Orthodox Judaism

For Orthodox Jews in the United States, religious law, or halakhah, is central to everyday life. Jewish law regulates personal and religious conduct, as well as communal conduct, including how to resolve disputes, says Rabbi Yosef Chaim Perlman, administrator of the Badatz Bais Aharon court in Brooklyn, N.Y. Religious law governs most aspects of an Orthodox Jew's life "from the moment he opens his eyes in the morning ... until he closes his eyes to go to sleep, and everything in between," Perlman says.

In general, Jewish law and rabbinic teaching discourage one Jew from suing another in civil court.¹⁴ Instead, rabbinical courts, called battei din (the singular is beit din, also commonly spelled beth din), adjudicate a wide range of conflicts, says Rabbi Shlomo Weissmann, director of the Beth Din of America in New York. These religious tribunals handle not only divorces but also employment and commercial conflicts, disagreements between tenants and landlords, and many other contentious issues. In addition, rabbinical courts oversee conversions to Orthodox Judaism.

The focus of religious courts can vary, as each Orthodox community has its own beit din to serve the needs of its members. For example, Weissmann says divorces make up the majority of cases in his beit din – more than 300 per year. By contrast, Perlman estimates that only a quarter of the cases that come before his beit din involve marital disputes. Perlman says Jews in his community also use the beit din for such purposes as arbitrating commercial agreements. "Their Jewish education" has made them feel more responsibility to take disputes to a beit din, as well as more aware of the wide range of services the religious tribunal offers, he says.

Religious Divorce

Nevertheless, granting Jewish divorces is an important task for most battei din, including Perlman's. When both the husband and wife agree on the terms, obtaining a Jewish divorce, known as a get, is largely routine. On other occasions, however, rabbinical authorities can help adjudicate issues such as child custody and the division of property, which also must be ratified by a secular court to have the force of law.

In Orthodox Judaism, a woman cannot obtain a divorce – and therefore cannot remarry – without her husband's consent. Sometimes, in order to obtain money or attempt to stop a divorce, a husband will refuse to grant his wife a get, no matter how broken the marriage may be. In such cases, a beit din cannot divorce the couple. But both Perlman and Weissmann say that to sway an obstinate husband, rabbis may issue rulings calling on the community to exert social pressure on the man by, for example, barring him from the synagogue or protesting outside his home or workplace until he relents.

How Courts Operate

A beit din usually consists of a panel of three rabbis, although some panels have as few as one or as many as five members, Perlman says. It is also common for a beit din to have a pool of community leaders from whom to draw judges, including some who are experts in secular law or business rather than rabbis. This is why the composition of the court can vary from case to case, Weissmann says.

Each party is permitted to bring an attorney or other counselor to the trial, and the counselors can call witnesses to testify. After hearing arguments, examining witnesses and considering the evidence presented by both sides, the judges issue a ruling. This decision is usually unanimous, but when unanimity is not possible, the decision is made by majority vote.

Battei din sometimes take civil laws and decisions into account in their rulings. This is particularly true in divorce cases when a civil divorce already has been granted. Rabbinical courts also might use civil law to help resolve business conflicts, especially if the parties have contractually agreed beforehand to arbitrate disputes using secular American law.

For More Information

[Beth Din of America](#)

[Journal of the Beth Din of America](#) (PDF)

[Jewish Law](#) (Website Operated by Leading Orthodox Jewish Legal Scholars)

Conservative Judaism

Conservative Judaism is often viewed as a middle ground between the Orthodox and the Reform movements. "Like the Orthodox, we believe that Jewish law is binding, but ... like the Reform, we believe that the law evolves over history," says Rabbi Elliot Dorff, professor of philosophy at American Jewish University in Los Angeles. "The Orthodox would not consciously change the law, but we are willing to do so when warranted by changing circumstances and new knowledge, such as science and economics," Dorff adds. At the same time, he says, Conservative Jewish law does not place as much emphasis on personal autonomy as Reform Jewish law does.

According to Rabbi Daniel Shevitz of Congregation Mishkon Tephilo in Venice, Calif., Conservative rabbinical courts have two primary functions: issuing divorces and annulments, and approving conversions.

Religious Divorce

Like the Orthodox, Conservative Jews require divorced couples to receive a get before they can remarry in a Conservative synagogue. Unlike the Orthodox, however, when a husband is unwilling to give his wife a Jewish divorce, Conservative authorities can annul the marriage without his permission and permit the woman to remarry. "There is a Talmudic tradition that says that every marriage is predicated on the assent of the rabbinical court," says Shevitz. "So under circumstances where a divorce is in order but consent is not given [by the husband], [the rabbinical court] can annul the marriage after we have exhausted all other options," he says.

Conversions

When overseeing conversions, rabbinical courts "make sure that the educational requirements have been fulfilled by the potential convert, that the person is doing this of their own free will, and that they are actively involved in the Jewish community," Shevitz says, outlining key requirements for a Conservative conversion.

Other Questions

Like Orthodox and Reform Jews, Conservative Jews also turn to rabbinical authorities for guidance in how to apply age-old Jewish laws to today's issues and problems. The Conservative movement's panel of legal experts, the Committee on Jewish Law and Standards, is made up of 25 rabbis as well as five non-voting lay experts and one non-voting cantor (liturgical singer). The committee sets policy on questions of Jewish law for the movement as a whole. "They receive questions and write legal opinions on everything from big public issues like homosexuality to questions of religious ritual," says Dorff, who currently chairs the committee.

While these opinions occasionally make significant changes in how law is interpreted (for example, a recent opinion allows Conservative rabbis to marry same-sex couples), they also build upon opinions handed down earlier – very much like secular American courts respect prior precedent. "Past precedent is important, when we consider these big issues," Dorff says.

For More Information

[The Rabbinical Assembly \(association of Conservative rabbis\) Committee on Jewish Law and Standards](#)

Reform Judaism

While Jewish law may not play as large a role in the daily lives of Reform Jews as it does for Orthodox or Conservative Jews, halakhah is still an important part of Reform Jewish life. "For us, it's a source of wisdom and knowledge, of values and guidance, but it does not have an absolute claim, in terms of rules or directives," says Rabbi Richard Jacobs, president of the Union for Reform Judaism, the umbrella organization of Reform Jewish congregations in the United States.

Reform Jews turn to religious law to help them think through modern issues, ranging from questions of war and peace to more personal matters, such as whether it is appropriate to use certain devices on the Sabbath, Jacobs and other Reform Jewish leaders say. These types of questions are often addressed by a body known as the Responsa Committee of the Reform Rabbinical Association, which is made up of rabbis who are some of the most respected legal experts in the Reform movement. When a question is presented to the Responsa Committee, its members deliberate, vote on a decision and issue a non-binding legal opinion meant to guide Reform Jews rather than mandate that they follow a certain rule or directive. "In Reform Judaism, personal autonomy is very important," Jacobs says.

Reform Judaism does not require its members to obtain a Jewish divorce document (known as a get) in order to remarry within the movement. Even if the Reform movement issued such documents, they would not have any value outside of Reform Judaism because the Orthodox and Conservative branches of Judaism would not recognize a Reform get, according to Rabbi Mark E. Washofsky, the Solomon B. Freehof Professor of Jewish Law and Practice at Hebrew Union College-Jewish Institute of Religion in Cincinnati, Ohio.

Washofsky says Reform Jews typically do not rely on rabbinical courts to settle financial or other disputes between members of the movement. "We don't have a problem as a movement saying to our members: 'Go to the civil authorities,'" he says. In the United States today, unlike in some countries in centuries past, Jews have the same standing under the law as other Americans, he says, so they have no need to seek redress outside of the civil court system.

According to Washofsky, Reform rabbis generally convene rabbinical courts only for the purpose of formalizing a conversion to Judaism. But, he says, some Reform rabbis will formalize conversions without convening a beit din.

For More Information

[Union for Reform Judaism: Jewish Life](#)

Lutheran Church-Missouri Synod

The Lutheran Church-Missouri Synod gives its 6,100 congregations a lot of autonomy in non-doctrinal matters. However, the national church body does have rules and procedures for resolving disputes within the church and for disciplining clergy.

Disputes Within the Church

The dispute-resolution system is aimed at reconciling the parties rather than "win-lose" adjudication, says Richard Nuffer, professor of pastoral ministry and missions at Concordia Theological Seminary in Fort Wayne, Ind. The system typically addresses conflicts between congregations and their pastors, Nuffer says.

If a dispute arises, a pastor or his congregation can ask their district president (there are 35 districts in the U.S.) to appoint a "reconciler" who is trained in the church's reconciliation process. The reconciler meets with the parties and tries to work out a mutually agreeable resolution. If no resolution is reached, either party may advance the matter to three ascending appellate bodies at the national level: a Dispute Resolution Panel, an Appeals Panel and a Review Panel.

Dispute Resolution Panels consist of three judges who are in ministerial positions in the church and are trained reconcilers. While the panels' proceedings do not follow the same adversarial process as a civil trial (for example, counsel or representatives for the parties involved do not question witnesses), they have some similar elements: the judges collect evidence, question the parties and, at the end of the process, vote on a resolution to the dispute. After a verdict has been reached, either party can appeal to a three-judge Appeals Panel, which examines the case to determine whether there were procedural errors. A final appeal can be made to a three-person Review Panel, which also looks for procedural errors. The Review Panel's ruling is final; no further appeals are possible.

Disciplining Religious Leaders

In addition to this dispute-resolution system, the church also has a disciplinary process for pastors and other church workers. Grounds that may trigger the disciplinary process include persistent adherence to false doctrine; persistent offensive conduct against members of the congregation or others; actions contrary to the church's core doctrines or to the conditions of membership in the synod; inability to perform the duties of office because of physical, mental or emotional disability; neglecting or refusing to perform the duties of the office; and sexual misconduct.

The district president who oversees the church where the accused works is the only person who can begin the disciplinary process. He may form a Referral Panel, comprised of three local, high-ranking church officials, to provide advice. If the Referral Panel determines that the charges are credible, the case is sent to a Hearing Panel for disposition. The Hearing Panel, administered by the national church, considers evidence and listens to witnesses before coming to a decision. If the accused is not satisfied with the result, he can take the matter to a Final Hearing Panel. The decision of the Final Hearing Panel is binding upon the parties and not subject to further appeal.

The most severe sanction in the disciplinary process is removal of a pastor or lay worker from the synod, in effect firing the individual. Sanctions short of removal include "restricted status" and "suspended status." Pastors or lay workers on restricted status may not serve in a church other than their own. The restricted status can eventually be removed if new exonerating evidence emerges or the person's behavior improves. Those on suspended status are usually one step away from full expulsion. Not surprisingly, suspended employees may not serve in any church (including their own) and will likely be permanently removed from office unless new exonerating evidence is produced.

For More Information

[Lutheran Church Missouri Synod, Reports on Lutheran doctrine and practice](#)

Presbyterian Church, U.S.A.

The Presbyterian Church, U.S.A. (PCUSA), has a hierarchical governance structure comprised of the elders of an individual congregation and its pastor (known as a session), the district presbytery, the

regional synod and the national General Assembly. Each of these institutions within the church is a court.

The rules for church discipline are outlined in the denomination's Book of Order. Individual Presbyterians or governing bodies can be subjected to the judicial process when, in the words of the Book of Order, they are accused of committing "any act or omission ... that is contrary to the Scriptures or the Constitution of the Presbyterian Church (U.S.A.)." This description encompasses a wide range of offenses, from sexual immorality to procedural irregularities during church ceremonies.

Types of Cases

PCUSA courts administer two types of cases: disciplinary and remedial. Disciplinary cases involve trying and correcting individual Presbyterians (usually ministers, elders or deacons) who are accused of behavior that violates Christian scripture or the church's constitution. For example, if a minister is suspected of stealing money or sexual impropriety, he or she may face a disciplinary trial. On the other hand, if one of the church's councils or governing bodies is accused of failing to properly carry out its duties, it may face a remedial trial. For example, if a regional presbytery ordains a minister who openly refuses to marry interracial couples, someone within that presbytery may initiate a remedial charge against it. The process for both disciplinary and remedial trials is similar.

As in many other churches, disciplinary actions against ministers and other church members are not supposed to be motivated by revenge. "The purpose [of church discipline] is not retribution [or] to get even. The purpose is to honor God by preserving the purity of the church," says the Rev. Joyce Lieberman, manager for polity guidance and training in the PCUSA's Office of Constitutional Services in Louisville, Ky.

The Judicial Process

To open a disciplinary case, any member of the church can file an allegation of wrongdoing with a clerk at the appropriate church body, depending on whose jurisdiction is most relevant, according to Lieberman. In disciplinary cases, allegations are then taken up by a group of three to five appointed church members, known as the Investigating Committee. If the allegation seems credible to the Investigating Committee, and the parties have not come to a resolution, the Investigating Committee files official charges against the accused.

In remedial cases, any member of a church council may file a complaint. No investigation is required and the case proceeds directly to trial.

According to the Rev. David McCarthy, professor of religion at Hastings College in Hastings, Neb., trials may take place either at the session level or before a higher-level body known as a Permanent Judicial Commission. The parties can bring lawyers, but everyone who participates in the trial must be a church member.

In disciplinary trials, the accused is presumed innocent unless at least two-thirds of the Permanent Judicial Commission or session votes for a guilty verdict. In remedial trials, the complaint "must be proven by a preponderance of the evidence to a majority of the [commission] members," says Laurie Griffith, manager of judicial process and social witness for the PCUSA.

The Appeals Process

Parties may appeal, usually on procedural grounds, McCarthy says. Procedural problems are not uncommon, he adds, because trials are rare and participants are often inexperienced. In addition, misconduct can be difficult to prove, so Investigating Committees dismiss many allegations without filing formal charges. Some cases also are dismissed when witnesses refuse to participate in the investigation. In addition, McCarthy says, pre-trial resolution efforts often are successful. And when charges do make it to the level of the Permanent Judicial Commission, the accused frequently quits the church.

For More Information

[Presbyterian Church's Constitution and other Official Documents](#)

[Presbyterian Church, Pacific Synod, Information & Procedures Relating to Allegations of Sexual Misconduct](#) (PDF)

Southern Baptist Convention

The Southern Baptist Convention (SBC), the largest Protestant denomination in the United States according to Pew Research's 2007 U.S. Religious Landscape Survey, is less hierarchical than many other Protestant denominations. Although the SBC is organized at three levels – local, regional and national – the national leadership has no authority over individual congregations or the local and regional associations of churches, according to Malcolm Yarnell, professor of systematic theology at Southwestern Baptist Theological Seminary in Fort Worth, Texas. Southern Baptists "believe in local church autonomy," he says. "We don't make law in the strictest sense of the term. ... Because we believe Christ is present to the local church, they have all the guidance they need."

Disciplining Religious Leaders, Congregations and Church Members

In lieu of ecclesiastical law, Southern Baptists maintain a doctrinal statement, the Baptist Faith and Message, by which member churches must abide. Because Southern Baptist churches are self-governing, a pastor who preaches or practices something that other Baptists believe contradicts that document must be held accountable by his congregation, which is expected to either censure or remove him. If they do not, the members of the local, regional or national association to which his church belongs can vote to expel his entire church.

Short of expelling a church from a Baptist association, there is no uniform mechanism for disciplining individual congregants, pastors or churches for failing to abide by their commitment to the Baptist Faith and Message, Yarnell says. Rather, the denomination's focus on church autonomy means each congregation elects its own leaders, who have the authority to write their own disciplinary and dispute-resolution procedures.

Disputes Over Church Doctrine

According to Bob Welch, professor of church administration at the New Orleans Baptist Theological Seminary, the action most likely to earn a church or pastor a dismissal from the SBC in recent years has been affirming that homosexuality is a valid lifestyle. Voters at the annual meeting of the church's top governing body, the National Convention, added a statement against homosexuality to the Baptist Faith and Message in 2000. After this action was taken some churches left the convention while others joined it.

If, in the future, a consensus builds within the denomination that this position or any other element of Southern Baptist doctrine should be changed, Welch says, members can remove it from the statement of faith the same way it was added – by bringing the issue to the floor at the annual convention and winning a majority of the votes.

For More Information

[Baptist Faith and Message](#)

[The Charter, Constitution and Bylaws of the Southern Baptist Convention](#) (PDF)

Unitarian Universalist Association

The Unitarian Universalist Association (UUA) has very little church law because its structure is largely congregational rather than hierarchical, says the Rev. Richard Nugent, director of the Unitarian Universalist Office of Church Staff Finances. Congregations are fully autonomous and set their own standards for choosing ministers, disciplining church leaders and resolving disputes. "The one exception," Nugent says, "is clergy credentialing."

Clergy Credentialing

Clergy credentialing, also known as "fellowshipping," is distinct from ordination. It is the process by which the national association of Unitarian Universalists gives a minister or potential minister its stamp of approval. This process usually precedes ordination, which is "a privilege and a right of congregations," says Nugent.

While most ministers receive their credentials from the national church before being ordained, fellowshipping is not a requirement for ordination. Indeed, a small number of ordained UUA ministers have not been fellowshipped.

The body that administers clergy credentials is called the Ministerial Fellowship Committee, which consists of at least 14 ordained and lay Unitarians appointed by the Board of Trustees of the Unitarian Universalist Association. The committee may choose not to grant fellowship to a candidate because of problems with the candidate's temperament and ability to form healthy relationships, according to Nugent. The committee also can terminate the fellowship of a minister who exhibits, in Nugent's words, "abuse of ministry."

When the committee revokes or denies the fellowship of a minister or potential minister, he or she may appeal the decision to the committee's Board of Review. The board has eight members – some ordained and some lay – who are elected by the General Assembly of the UUA. According to the UUA Bylaws, the Board of Review is not charged with examining new evidence but only reviewing the process to make sure it was carried out properly. Once the board makes its decision, the result is final.

For More Information

[Unitarian Universalist Bylaws](#)

[Unitarian Universalist Congregational Governance](#)

United Methodist Church

The United Methodist Church uses its internal legal system mainly to adjudicate charges against ministers and other church officials. Though the denomination's Book of Discipline also includes instructions for disciplining laypeople, this element of Methodist law is rarely if ever applied today, says the Rev. Tim Rogers, pastor of Mt. Hebron United Methodist Church in West Columbia, S.C.

Disciplining Religious Leaders

The church's judicial procedures typically do not come into play unless a minister or church employee has "violated the covenants of the church in a serious way," Rogers says. Such offenses include theft, adultery, sexual, racial and other kinds of harassment, and spreading teachings incompatible with Methodist doctrine. According to Rogers, the vast majority of cases center on alleged sexual misconduct or financial impropriety. United Methodist Church leaders defer to civil authorities to investigate serious criminal charges, such as child abuse.

According to Rogers, the legal system within the American wing of the denomination resembles the U.S. judicial system, with juries, an appeals process and a supreme court called the Judicial Council. Any person, including someone who is not a member of the United Methodist Church, can file a complaint against a Methodist minister. The minister's immediate supervisor, normally a district superintendent, then

initiates a process of gathering evidence.

According to Lewis Parks, professor of theology, ministry and congregational development at Wesley Theological Seminary in Washington, D.C., the church provides opportunities for the accused to confess or to reach an agreement with the accuser. But if a Committee on Investigation finds the charges are credible and the accused does not confess, the case may go to a trial.

Methodist trials are overseen by an active or retired bishop who does not preside in the same geographic region (conference) as the accused. The jury consists of 13 ministers who are selected using rules similar to those employed when secular courts choose a jury, giving both sides opportunities to strike potential jurors they feel are inadequate to the task. If the accused is found guilty by the jury, he or she can appeal the decision to a Committee of Appeals and, finally, to the church's highest judicial body – the Judicial Council. If the conviction is not overturned on appeal, the severest punishment, according to Parks, is the revocation of ministerial credentials.

For all its complexity, this trial system is rarely used, according to Rogers and Parks, who say their respective conferences handle only about one case per year. Rogers estimates that there are no more than five cases per year among all 66 United Methodist Church conferences in the United States.

Reviewing Church Laws

In addition to hearing appeals from convicted church officials, the Judicial Council also has the authority to hear appeals against laws passed or decisions made by the church's highest governing authority – the General Conference. If a majority of the church's bishops or one-fifth or more of the members of the General Conference request such an appeal, the Judicial Council will determine whether the law or decision in question comports with the church's constitution.

For More Information

[Book of Discipline of the United Methodist Church](#)

[United Methodist Church Judicial Council Decisions](#)

This report was researched and written by David Masci, Senior Researcher, and Elizabeth Lawton, former Research Assistant, Pew Research Center's Forum on Religion & Public Life.

Footnotes:

1 Canon Law Society of America. 2011. "Proceedings of the Seventy-Third Annual Convention." Page 337. ([return to text](#))

2 See, for example, Goodstein, Laurie. Sept. 7, 2012. "[Defying Canon and Civil Laws, Diocese Failed to Stop a Priest](#)." The New York Times. For background on the clergy sexual abuse scandal in the Catholic Church, see [BishopAccountability.org](#) and [AmericanCatholic.org](#). ([return to text](#))

3 See, for example, Horwath, Justin. July 1, 2011. "[The Trial of Pastor Amy DeLong: Methodism and Same-Sex Unions](#)." Time magazine, and Egelko, Bob. Feb. 25, 2012. "[Presbyterian Pastor Rebuked for Same-Sex Weddings](#)." San Francisco Chronicle. For background on the denominations' official positions on same-sex marriage, see Pew Research's 2012 report "[Religious Groups' Official Positions on Same-Sex Marriage](#)." ([return to text](#))

4 See, for example, Oppenheimer, Mark. Jan. 3, 2011. "[Religious Divorce Dispute Leads to Secular Protest](#)." The New York Times. ([return to text](#))

5 For more information, see Pew Research's 2011 report "[Churches in Court: The Legal Status of Religious Organizations in Civil Lawsuits](#)." ([return to text](#))

6 For more information on the most recent court decision in this case, see Boorstein, Michelle. Jan. 11, 2012. "[Va. Judge Rules Against Conservative Churches in Property Case](#)." The Washington Post, and The Associated Press. Jan. 11, 2012. "[Episcopal Church Wins Long-Fought Lawsuit Over Control of Historic Churches in Virginia](#)." ([return to text](#))

7 See Sunan Abu Dawud 24:3566. ([return to text](#))

8 For instance, the Quran 4:35 states that if there is dissension in a marriage, an arbitrator should be appointed from both sides to promote reconciliation. ([return to text](#))

9 For information about the number of Assemblies of God congregations in the United States, see [U.S. Assemblies of God Churches Opened and Closed 1965-2010](#) (PDF). ([return to text](#))

10 Bhikkhu is the title for an ordained Buddhist monk. It is sometimes used before a name and sometimes after a name. Abbot is the title given to the leader of a Buddhist monastery or temple. ([return to text](#))

11 While bishops traditionally have the authority to grant dispensations, they sometimes transfer this power to tribunals. ([return to text](#))

12 Canon Law Society of America. 2011. "Proceedings of the Seventy-Third Annual Convention." Page 337. ([return to text](#))

13 Mormon doctrine teaches that priesthood is the authority to act in God's name and that it is necessary to govern the church and to perform ordinances, such as baptisms, blessings of healing and administration of Communion, which Mormons call the sacrament. All worthy male members of the church may begin their priesthood service when they reach age 12, and they may hold various offices in the priesthood, such as deacon, teacher, priest, elder or

high priest, at different stages in their lives. Women are not ordained to the priesthood. For more information on Mormon beliefs and practices, see Pew Research's 2012 report "[Mormons in America](#)". ([return to text](#))

14 For a discussion of the source of the prohibition on Jews suing each other in secular courts, see Krauss, Simcha. "[Litigation In Secular Courts](#)," Journal of Halacha and Contemporary Society. Volume 3. ([return to text](#))

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Western Europe vs. Religious Freedom

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[Mary Ann Glendon](#)^[2], [Azizah al-Hibri](#)^[3]

December 18, 2012

[Mary Ann Glendon](#)^[2], [Azizah al-Hibri](#)^[3]



When most people picture Western Europe, they envision well-established democracies where fundamental freedoms are vigorously protected. For the most part, this portrait is accurate. However, when it comes to religious freedom, the past year and decade have witnessed trends that challenge this image.

As 2012 draws to a close, a number of countries continue restricting religious practice and expression, from religious dress to fundamental life rituals such as circumcision. Such restrictions not only compromise internationally protected rights, they fuel an environment in which religious people and members of religious minorities in particular are sometimes made to feel like outsiders in their home countries.

These infringements are surprisingly widespread.

For example, France and Belgium bar students in state schools and government workers from wearing “conspicuous religious symbols,” forbidding the Islamic headscarf, the Sikh turban, large Christian crosses, and the Jewish yarmulke.

France and Belgium now ban people from publicly wearing full-face veils while Switzerland, the Netherlands, and other European states have debated similar prohibitions. Islamic dress restrictions for teachers exist in some Swiss and German states.

France also forbids people from wearing any headgear in official identity document photos. In 2011, the UN Human Rights Committee concluded that this rule violated the religious freedom rights of a Sikh man who refused to remove his turban for a residency-card photo. France has yet to take corrective action.

Sweden, Switzerland, Norway, and Iceland have long banned kosher and halal slaughter. In 2011, the Dutch parliament's lower house also passed such a ban, but an outcry from Muslim and Jewish groups forced the government to forge a compromise allowing religious animal slaughter to continue.

After a similar outcry in Germany this year against a lower-court ruling criminalizing religious circumcisions of male children, the German parliament is considering a law permitting this practice.

Efforts against religious circumcision persist in other parts of Europe. Norway's Center Party, a small party in parliament, has sought to criminalize it, and the ombudsman for children—an independent governmental body—has suggested that Muslims and Jews replace circumcision with “a symbolic, non-surgical ritual.”

In Germany and Sweden, government authorities have told Christian and Jewish parents that they cannot homeschool their children for religious reasons.

Government officials in the United Kingdom are forcing Catholic adoption agencies to shut down because they follow religious criteria in placing children with families.

What is driving this rise in restrictions? At least two factors are at play—one historical, the other demographic.

The first factor is Western Europe's unfortunate history of monolithic state religion. The rise of secular states did little to change the idea of a religious monoculture—it just included secularism as one of the monocultures. Indeed, “lay” states such as France and Turkey have long enforced secularism as the only acceptable form of behavior in public affairs, while countries like Norway treat their official churches as vestigial organs.

The second factor is the region's growing religious diversity, including a rising population of Muslims. The distinctive dress of conservative Muslims has fueled a fear of “the other” as well as a doubling down in already-existing opposition to public religious expression. While governments cite the need for national security, restrictions on religious expression risk creating exactly the opposite outcome. They drive a wedge between governments and their Muslim citizens, dashing hopes for much-needed cooperation to prevent radicalization and promote the assimilation of democratic values and identity in Muslim communities.

Couched as attempts to protect established values, government laws and policies prohibiting religious expression and practice specifically violate human rights. Such actions defy internationally recognized religious-freedom standards established in United Nations treaties and also protected by European human rights documents from the European Union, Council of Europe and Helsinki process.

These standards guarantee the right not just to believe but to manifest one's beliefs, individually

or in community with others, in public or in private, through worship, observance, practice and teaching. This includes the right to wear distinctive symbols, clothing or head coverings, follow dietary rules and practice rituals connected with certain life stages. Any limitations on these freedoms must be narrowly construed and based on grounds specified by Article 18 of the International Covenant on Civil and Political Rights. They must not discriminate in application, destroy guaranteed rights or derive from a single tradition alone.

The increasing restrictions on religious practice and expression in Western Europe both arise from and encourage a climate of intolerance against religious groups, especially those with strong truth claims and vigorous demands on their members. Muslims, in some instances, clearly are being targeted. This increasingly hostile atmosphere in turn triggers private discrimination, and sometimes even violence, against members of these groups.

Indeed, according to the U.S. State Department's *International Religious Freedom Report* on France, the number of anti-Muslim assaults, harassment, and vandalism increased 34 percent in 2011.

If the lamp of liberty is to remain lit, Western Europeans must accept that the age of conformity to an official monoculture—secular or religious—is at an end. In the coming year, their countries should embrace their religiously diverse future and accord religious freedom to all.

Mary Ann Glendon serves as vice chair of the U.S. Commission on International Religious Freedom (USCIRF). Azizah al-Hibri serves as a USCIRF Commissioner.

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[14] <http://nationalinterest.org/tag/circumcision>

[15] <http://nationalinterest.org/tag/freedom-of-expression>

[16] <http://nationalinterest.org/tag/freedom-of-religion>

[17] <http://nationalinterest.org/tag/french-law-on-secularity-and-conspicuous-religious-symbols-in-schools>

- [18] <http://nationalinterest.org/tag/legal-aspects-of-ritual-slaughter>
- [19] <http://nationalinterest.org/tag/religion>
- [20] <http://nationalinterest.org/tag/religion-and-children>
- [21] <http://nationalinterest.org/tag/religious-persecution>
- [22] <http://nationalinterest.org/tag/social-issues>