

The Nature of the Religious Firm

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This article applies general principles of the firm to religious organizations. First, I offer a short account of the formation of the firm that takes its cue from Ronald Coase, extending that analysis to explain the formation, operation, modification, and liquidation of the firm. Second, I examine how that analysis extends to nonprofit organizations, exploring how religious organizations both follow and diverge from the structure of traditional business firms. Third, I examine the special organizational features of religious organizations. Fourth, I examine what forms of government regulation assist or hamper these religious organizations. In general, the right regulatory answer is a legal regime that respects internal governance norms but protects outsiders against actionable externalities.

Within and Beyond the Coasean Firm

This article examines the nature of the religious firm. The aim is to connect to a literature about the structure of the firm that originated with Ronald Coase's 1937 article, "The Nature of the Firm,"¹ which reoriented the way in which economists and lawyers look at the formation and structure of business organizations. In one sense this is an odd endeavor, given that Coase was concerned with the operation of profit-making entities, and not with the wide range of religious, social, charitable, or government institutions. How, it is fair to ask, can the insights in the one arena be transferred to the other?

I think that this transference is indeed possible. The answer requires making certain adjustments to the Coasean theory—which applies in principle to both commercial and noncommercial organizations alike, albeit in different ways²—to

take into account these factors: the role of transaction costs, the binding external constraints under which the organization labors, the aims of the organization (whether financial or not), and the competence of the various actors who participate in the venture. As Coase conceived of his own inquiry, the sole question was why various actors use discrete transactions (often, contracts) in some cases and diffuse relationships (firms) in others. He did not follow up that insight, however, by asking the further questions of how it is that firms choose their particular internal governance structure, or how it is that they decide to expand, divide, or liquidate, even though these are some of the many stages in the life of the firm.

As I shall develop further, this set of questions *cannot* be answered by looking solely at the transaction costs that are involved in firm organization. It is also necessary to take into account two additional ingredients that are sometimes brushed aside in dealing with the standard account of the rational economic actor. The first is the simple observation that individuals bring different levels of competence to their various activities, which in turn influence the roles that they assume within a particular firm. The second is that financial ends comprise only part of the objectives of the firm and its various constituents. The objective of profit maximization is a convenient heuristic for dealing with many firms, and it has great power in analyzing economic relationships. But firms may deviate from profit-maximizing behavior because of their commitments to their long-term social cohesion and to other ends. This is especially true for those firms whose management has strong religious or conscientious commitments, such as to the environment, fair trade, or various notions of social justice. The same is doubly true of religious, social, and charitable organizations. It was just those religious constraints, for example, that led Hobby Lobby to challenge (successfully, in fact) the contraceptive mandate imposed by the Obama Administration under the Affordable Care Act.³ The simple insight is that the interaction of these three concerns—transaction costs, individual competence, and organizational objectives—play out in different ways across business, governmental, religious, social, and other charitable organizations. The point here is *not* that all organizations work in the same fashion. It is, instead, that the same general theory helps to explain the differences in observed behaviors across different organizational types.

Subject to these essential caveats, it is useful to ask Coase's initial pointed question before seeking to generalize the inquiry to nonbusiness firms: Why is it that certain forms of business relationships take place through discrete transactions, including by way of example sales, leases, loans, and insurance, while other activities take place within a firm, where the day-to-day duties that arise between business partners tend to be defined in terms of areas of primary responsibility rather than by specific direction given to lower-level employees? When

parties start a firm, they typically set out only a basic business structure—often a partnership or corporation—which governs the stakes of each firm member, a specific governance structure that allocates tasks and functions to different bodies within the firm, and a plan governing the liquidation or disposition of assets in case of dissolution. But within that larger framework, daily decisions are made by an informal system of command and cooperation with details that vary in response to the exigencies of the moment.

Coase's initial set of questions helps explain the organization of religious groups as firms. The standard religious rites governing birth, marriage, and death could in principle be handled by discrete transactions conducted without the benefit of any organized religion. Indeed, today some marriages performed on a single occasion, only by lay persons, fit into just this category. But most people view the solemnity of the occasion as requiring the backing of some permanent organization, whose tenets frame all discrete transactions.

Additionally, one can conduct this Coasean analysis without evaluating the doctrinal or moral soundness of any underlying theological tenets or social commitments. Nor is this analysis meant to displace how members of various religious faiths perceive their organizational structure—their *ecclesiology*—as divinely inspired or otherwise dictated by nonutilitarian considerations. This analysis proceeds from the outside looking in, not from the inside looking out. In so doing, I put aside these ecclesiological commitments to explain the institutional imperatives that shape these various organizational structures—all of which have close parallels to the various forms of business, social, and government organizations.

It is useful at the outset to address one key objection to this venture, which is that certain biblical commands about the governance structure of these organizations are baked into the theological commitments and not therefore subject to contractual variation, which this analysis cannot take into account. I quite agree that these binding constraints are important for understanding religious institutions, but exactly the same point is true in dealing with other governance structures, which also work under certain fundamental binding constraints. To give only one example, the American Constitution also contains its entrenched provisions of which perhaps the most important today is found in Article V of the Constitution that states “that no State, without its Consent, shall be deprived of equal Suffrage in the Senate.” In addition, the Twenty-Second Amendment limits the president to serve two terms only and Article III provides that judges “shall hold their Offices during good Behaviour.” These provisions limit the degrees of freedom for any organization, religious or otherwise, so that at this junction the prediction is that they will seek over time to find ways to minimize

any dislocations that arise from these provisions, including making provisions for removing persons from office when they are no longer able to meet the good behavior standard. At this point, the basic thesis is that the preferred modes of adaption will be similar across different types of organizations.

In making this overall analysis, my motivation is similar to that of Coase, who did not address the particular goods and services that the firm supplied, whether for the sale of an automobile or a can of soup, or the hiring of a professional manager or a line laborer, or a corporate charter. The general rules remain constant, even as the content of individual contracts vary with the wide range of initial conditions, technologies, and other institutional constraints.⁴

The techniques used to deal with business firms, and similar organizations like residential communities, rest on a set of core principles capable of generalization and application to various kinds of nonprofit charitable and religious organizations, which resemble each other in certain ways that separate them both from for-profit businesses. There is a large variety of world religions that differ from one another both on matters of doctrine and principle. But these religions face a set of organizational design choices that are, in the manner noted above, orthogonal to the distinctive theological issues that set one religion, or one sect, apart from another. The point remains true even if particular religious organizations think that their structure is dictated by their theology. Indeed, the variety of structures found in organized religions mirrors the divisions found in business or other kinds of charitable forms, in which issues such as the choice between top-down and bottom-up organizations tend to dictate the size of the entity and its internal organization. This paper's structural analysis in no way depends on the content, let alone the soundness, of any religious doctrine, but solely on the range of organizational structures that are consistent with the stability of religious institutions over time, which often last far longer than profit-making firms, since the latter often operate within a high-risk, high-return organization.

To see how this application of general firm principles to religious organizations works, I proceed as follows. In my first section, I offer a short account of how best to understand the formation of the firm that takes its cue from Coase's lifelong preoccupation with transaction costs, but I extend that analysis beyond the existence of the firm to help explain critical features of the formation, operation, modification, and liquidation of the firm. In my second section, I examine how that argument extends to nonprofit organizations, to explore how religious organizations both follow and diverge from the structure of traditional business firms. In my third section, I examine the special organizational features of religious organizations, sometimes called their "polity," which very generally reflect top-down, bottom-up, or mixed forms of governance. Once a religious organization

establishes its theological commitments, it must generate internal governance norms to manage its leadership and assets, and these norms are reflected in its polity. But the core governance functions of religious organizations are virtually identical to those of other types of organizations. In my fourth section, I examine what forms of government regulation assist or hamper the operation of these religious organizations. In general, the right answer for business and nonprofit organizations alike is a legal regime that respects internal governance norms but protects outsiders against actionable externalities (e.g., pollution).

The Business Firm

In its simplest form, the initial question Coase asked was this: Why do we so often see two polar opposite forms of organizations, firms on the one hand and spot contracts on the other with many other arrangements in between?⁵ Coase's answer was simplicity itself. The price system, which allows for the exchange of goods and services, is not costless to put together, given the inevitable transaction costs involved in the formation, performance, pricing, and enforcement of various contractual duties. When the cost of transacting via contracts gets too high, people look for different ways to facilitate cooperation. The relationships between parties within a firm substitute for simple contracts, clearly setting forth such matters as the weekly wages, or the division of authority between co-owners. It thus happens that a large amount of commercial production can take place within firms, which then use standard market transactions to trade finished goods and services with outsiders. Sales and firm formation are the opposite poles of Coase's framework, but the business world has various intermediate positions, sharing characteristics of both arrangements. A contract for sale could incorporate firm characteristics by including continuing warranties or duties of cooperation. And there is a large space between the simple exchange relationship—cash for goods now—and more complex transactions, such as sales which contain financial and warranty obligations that last beyond the time of exchange or impose duties on both parties to cooperate over the further testing, development, and improvement of products that one side makes and the other side uses.

The Coasean transaction-cost model represents an informative first cut into a very difficult problem, but it leaves open several questions. Just how does one determine the boundaries of a firm? What is the lifecycle of the firm? Why do some firms expand, while others fall apart or fragment into several different firms? And what accounts for the internal organization of given firms?

There are fruitful extensions to Coase's work that help explain the observed variety of arrangements, particularly the two key extensions of competence and

taste, which are also important in the context of charitable and religious organizations. Much of standard economics assumes that all individuals are equally competent, even though common observation reveals a huge difference in abilities. These differences in overall behaviors are manifest in two ways. First, there are simple differences in competence—for example, some people are better at managing risk than others—and those differences tend to reflect themselves in the structure of the firm. The better risk players take the position of managers, and the inferior risk players take the position of employees. But there is no need to have only one boss and many employees, for many firms use partnership-like structures to divide equity risk among many players with complementary skills, and then have an additional, different risk structure for employees. For example, it is common for some employees to work on salary, others on a mix of base salary plus commissions or tips, and others only on commissions, with certain key expenses underwritten by the firm. There is no reason why these forms of specialization should disappear when we move from the world of for-profit to nonprofit firms, including religious organizations.

Differences in taste, broadly conceived, also matter whenever the managers of a firm must make collective decisions. The wider the variation in taste that the group members bring to the venture—whether regarding the choice of ends or the choice of means—the greater the stress on the governance structure of the firm. In my view, the differences are not linear, but exponential, so that when the gaps double, the challenges to governance increase by some exponential amount greater than two. It follows that running a firm in ways that narrow those variances in tastes is key to its overall success, and this often requires (when persuasion gives out) following a strategy of excluding some individuals from the group.

The firm or other organization also deals with potential conflicts by excluding certain individuals from membership, so that they have no say in the governing structure. In some cases, that separation may be complete and total, but in some few cases at least, the split may be more amicable so as to allow for the establishment of more limited contractual relationships with former members through either long-term or spot contracts. That relationship could consist of something as simple as a consulting arrangement for a fixed salary with a former firm member after retirement or reorganization, or it can be as complex as a long-term requirements contract between two firms. There is no way a priori to predict which, if any, form of separation should take place, and no reason for any external analyst to do so. It is easy for outside predictions of firm behavior to go wrong, given that the players themselves have better knowledge of their own positions. So the best response by an outsider is to defend the benign opera-

tion of these choices, even if he or she does not know the exact forces that drive parties to a particular outcome.

By way of analogy, these types of division have much in common with those found in the financial structure of the firm, with different investors holding different layers of equity and debt in capital markets. These markets are often organized in terms of the investor's risk-bearing capacity, which is yet another variation on the theme of competency. Thus, it is common to have firms with common and preferred stock, and with various classes of debt, each with its own priority. The underlying value of the firm's assets is largely independent of the capital structure that it exhibits.⁶ But that well-known proposition must be taken with at least one cautionary note. If the capital structure does not influence firm value, why would firms be so careful about choosing the correct structure, wholly apart from tax considerations (e.g., deductibility of interest payments on debt)? The best explanation is that the governance structure matters because positive transaction costs shape such critical functions as monitoring the behavior of key corporate actors.

The transaction-costs model does not preclude these intermediate solutions, and there is much to suggest that businesspeople, ever searching for superior business strategies, are not indifferent to these possibilities. Nor is there any reason to think that the transaction-costs model does not apply to other forms of organization, including residential associations (embracing gated communities and condominium associations),⁷ labor unions, and large governmental organizations such as the European Union with its recent Brexit challenge, which I have argued is amenable to the same general approach.⁸

Nonprofit Organizations

My next task is to apply this unified framework to explain the key features of nonprofit organizations, of which charitable and religious groups are leading (and overlapping) examples. These groups differ in many obvious ways from the other forms of groups and associations just mentioned. The first and obvious distinction is the difference in classification—they are labeled as nonprofit organizations. In one sense, this means that these organizations do not seek to maximize cash returns to their members, in the way in which the managers of a firm seek to maximize its financial value to shareholders. Instead, these nonprofit organizations typically do not have shareholders at all—for shareholders demand dividend and control rights which make it virtually impossible to raise voluntary contributions dedicated to the ultimate mission of these organizations.

The use of the term *nonprofit* is misleading in some ways. First, even a nonprofit organization requires financial solvency, for it cannot operate if its expenses continue to exceed its income. Nor does the term mean that these organizations want to end each accounting period with zero profits. Instead, the key feature of a nonprofit is not its aversion to making profits, but the fact that the organization, in order to attract charitable contributions, does not distribute these profits to a group of members in parallel with the way in which corporations distribute dividends to their shareholders.⁹ Many churches invest their free assets in profit-making ventures, including the sale of religious objects or literature.¹⁰ The profits that are obtained by nonprofit organizations can be used both to finance the annual operation of the organization, including salaries and other expenses, and to put aside some fraction of that retained income into a rainy day fund or into a reserve for capital expansion or improvement. Indeed, in the case of some complex organizations, the shift from a nonprofit to a for-profit organization and back again is a common occurrence, as David Hyman has shown with such hospital conversions. Hyman insists the general hostility toward for-profit institutions is overstated, and notes that these “transactions involved every conceivable permutation of conversion between public, nonprofit and for-profit status.”¹¹

The key difference between the nonprofit and the for-profit firm has to do with the relationship between the organization and its members. Generally, the for-profit firm does not depend on charitable contributions to run. Instead, it depends on the ability to sell its goods and services to third parties to an extent that allows it to cover all its long- and short-term expenses and remain in business. The nonprofit firm cannot rely exclusively on business revenues to operate. Universities often charge tuition, but that amounts to only a fraction of total revenues, and much of it is plowed back into scholarships for able or needy students. Rather, universities rely heavily on a combination of endowment income and annual giving to support their basic missions. To the extent that the creation and dissemination of knowledge is a public good, no one should expect tuition revenues to keep the business afloat as they largely do in for-profit universities, which necessarily cut down on both research activities and social activities such as dorms and sports teams.

The need for contributions is probably greater in the religious organization than in most other nonprofits, but that observation is subject to some important limitations. The need is probably greater, for the religious organization’s intangible good lies in the social or spiritual satisfaction of its members, and that good cannot be easily monetized. For churches and similar groups to survive, they must rely on offerings, tithes, or dues from their members, which are typically

supplemented by charitable contributions from members and other supporters. It is, however, a near impossibility for an organization which pays dividends to seek charitable contributions, and therefore when a firm has excess funds it must find other ways to distribute them which will not scare off possible contributors. Hence the nonprofit organization has to remove that level of discretion from the directors of the firm. This often means that its payments take place in the form of salaries, rent, debt amortization, and the like, which are a combination of fixed and variable expenses that in turn have to be monitored, usually by some board of overseers who often serve without salary (and to whom a professional day-to-day paid manager reports). This structure helps ensure that the other payments by these organizations are made in exchange for fair value. The risk of disguised dividends in the form of salaries (say to tenured faculty or administrators, or family members in the case of family foundations) can undermine the willingness of contributors to donate. It is also this fear that leads many contributors to make restricted gifts for particular purposes, on the grounds that they wish to support some of the activities of the collective but not all of them—a strategy that is similar to how for-profit firms segment funds.

Similarly, the compensation often supplied to donors comes from intangibles (like naming opportunities) that do not drain resources but signal, first, that the organization benefits from its association with the donor and, second, that the donor benefits from associating with the organization. These naming opportunities were traditionally in perpetuity, but the decided tendency in recent times is to supply names for more limited periods.¹² The logic of this intermediate position is clear. In at least some cases, the value of the name to both parties lies in its immediate recognition to those people—patrons, patients, customer, other donors—who know and are known by the donor. The physical assets that it creates may, as with land, have a longer durability, so that with time, the name will depreciate. Or the original naming deal could be extended if both parties find it in their interest. The permutations are again manifold. The situation with names is thus a parallel to the common situation with leases for a term of years, for which some provision—lease renewal, arbitrated sale, removal—must be made to secure that the termination of the lease does not result in an unintended transfer of wealth between the tenant and the landlord. To be sure, the gift for a term of years may be less valuable to the naming party than a perpetual lease, which in turn means that the value transferred can be reduced to take that into account. The charitable gift thus combines elements of altruism with the desire to secure fame or recognition, which, in a precise economic sense, money can

buy. The monetization of these intangible assets follows the usual rule that all voluntary agreements work for the mutual benefit of the parties.

Religious Organizations: Top-Down versus Bottom-Up

The next inquiry is whether religious organizations have special features that distinguish them from other types of nonprofit organizations. At one level, the answer is surely no, given that these organizations face the same kind of imperatives to survive by generating revenues sufficient in the long run to cover their costs of operation and to sustain and build their membership. There is, moreover, no unique organizational structure that works for religion, because much depends on the way in which the belief structure is articulated and communicated to its members. At this point, there is a very close parallel to the same issues that arise in general political theory between top-down and bottom-up theories of governance, each of which has its own advantages—which make it highly unlikely that any single form of organization dominates all others.

In political theory, top-down organizations start with a single leader, and in the religious context, that leader often claims that he has the authority of God to support his rule over his flock. The top-down structure requires an extensive hierarchical organization like any extensive corporation, in which there is a strict command-and-control element. The great difficulties with these organizations lie in the need to have ever more layers in the operation as the scope and ambition of the organization increase, which in turn makes it genuinely difficult to determine the proper degree of delegation to inferior officers without review from above. A large organization that hopes to run its operations in this manner, without decentralization, will be slow to respond to particularized or local challenges and may well find it difficult to get able operatives to take intermediate positions today, from which they can learn the skills that are needed to advance to senior positions tomorrow. Thus, the creation of semiautonomous divisions within religious organizations, with large degrees of freedom on all matters except central pillars of dogma, is essential to allowing such organizations to solve the succession problem by having sufficient levels of talent to keep matters going. There is, however, the concomitant risk that decentralization will also lead to some measure of deviation on matters of doctrine, especially if the heads of local organizations think that the central headquarters is too far removed on matters of local pressures. What follows here is a brief account of different churches and the governance strategies that they follow. In my view, much contested by religious persons, none of the key choices that religious organizations make

within their binding theological constraints are dependent on the content of their religious doctrine.

Before turning to an examination of a limited set of specific churches, it is useful to set out some of the permutations, which, as will become apparent, often parallel the governance structures for political organizations.¹³

Of course, religious organizations typically make use of traditional legal structures such as the “charitable trust, the unincorporated association, the corporation sole, the religious corporation, and not-for-profit corporations.”¹⁴ But these formal legal categories do not capture the internal dynamics of religious and other charitable organizations. Indeed, they are less important than the structural arrangements that churches develop at various stages of their lives to address the same kind of pressures that face conventional, secular organizations. Religious organizations have a set of functions which are remarkably consistent with those of nonreligious organizations. These include “means to choose leadership, make corporate decisions and to create, divide, merge or terminate organizations, congregations, institutions and other kinds of their collective societies.”¹⁵

In general, it is possible to divide organizations into those that are top-down and those that are bottom-up. The analog to political theory for the state is quite close. In good Lockean fashion, the bottom-up approach depends on individual acquisition of particular bits of property. Those individuals then establish via a social contract a governance structure that derives its consent from the governed. Congregationalist and Baptist churches are bottom-up institutions. In contrast, feudalism is a top-down system where all individual property rights are obtained by a grant from the Crown or some other authority. The Mormon Church and the Roman Catholic Church are top-down institutions. But, as with commercial arrangements, other religions have compound structures in which functions are divided between higher and lower bodies, as is the case with Presbyterians and Methodists. And in between lies a federalist alternative, called a “connectional polity” in Protestant circles, where that power that starts from the bottom is then exercised from the top.¹⁶

Next, there is the selection of leadership, which again can be organized in multiple ways. Congregationalists tend to rely on direct democracy for the selection of their leaders. Yet other churches adopt a form of representative democracy, being governed by elected boards, such as a board of elders. Still others place their executive power in the hands of a charismatic individual, at least at the level of the individual church. In more complex organizations, it is possible to use a strict top-down appointive system for the higher levels of authority, whereby self-perpetuating boards can add new members, while continuing to use democratic procedures for local issues of importance to individual churches.

Clearly these various choices have important consequences for the success or failure of given institutions. In religious organizations, as with business and political ones, there is no escaping the various trade-offs that have to be made in selecting the dominant mode of organization. Each of these systems has distinct advantages and disadvantages that determine its success in what is, in the end, a competitive market to both keep existing members and attract new ones. It is impossible here to go into all the many variations, but it is useful to consider a few examples that indicate how these pressures typically emerge. In so doing, I shall start with top-down organizations (Roman Catholic, Mormon), move on to mixed operations (Presbyterian), and conclude with bottom-up organizations (Congregationalist, Baptist). I make many conspicuous omissions of other Christian denominations, as well as Judaism, Islam, and a wide variety of other forms of modern religion. These omissions should not be understood as an implicit concession that some religious denominations lie outside the basic framework, which in my view is universal. Rather, as a concession to the limits of space, I have concentrated on those religions that share many theological features to better illuminate the differences among them.

Roman Catholic Church

The largest Western church that falls most clearly into the top-down category is the Roman Catholic Church.¹⁷ Yet even the control of doctrine by the center will not long endure unless there is some high level of buy-in from people at the periphery; even if power is concentrated in the hierarchy, support for its mission must be widely distributed throughout the organization. (Indeed, it may well be that the failure to accommodate these views has led to the rise of lay challenges to the hierarchy's authority.¹⁸) The Church also faces the tough question of which of its commands should be universal and which are subject to variation by region. Both kinds of rules are necessary. Again organizational, not religious, imperatives are at work. Too much control from the center cannot as readily account for variable conditions. But too much variation means that there is the Church only in name, as the autonomous units see less and less reason to remain affiliated with the defining core. Hence the most religious components of canon law have a worldwide application that is promulgated by the Holy See.¹⁹

Within this structure, some delegation downward is necessary to account for local variations. The Roman Catholic solution to this problem is to have delegation of some administrative operations via a set of episcopal conferences, which have no official doctrinal authority, but nonetheless are influential in setting out norms applicable to their own territory.²⁰ That power to promulgate these norms is then subject to review by the Holy See to make sure that delegation of authority

does not lead to unacceptable deviation from basic principles of church doctrine and canon law. The episcopal conferences' decisions in turn become binding in the dioceses of the nation if adopted by a supermajority of two-thirds, subject to a favorable response from the center. The norms in question involve a trade-off between local responsiveness on the one hand and oversight on the other, which is not a trade-off that has to be made by local organizations who do not answer to higher authority. It is easy to see how tension can be raised when the local initiatives are rejected or altered by the center. Indeed, there is a third layer of control involving norms and rules applied at the level of the local parish (which, however, has no formal legislative authority). It is difficult to imagine any other way in which a huge monolithic organization could survive and prosper, even if other forms of organization could prove quite viable for smaller organizations.

As with all such organizations, careful attention must be paid to the selection of the dominant figure at the head of the operation. This function is reserved to a deliberative body: the College of Cardinals. Although the cardinals are often archbishops with distinct and extensive administrative responsibilities, the College as such has no other duty than electing the next pope. And no matter how divine the inspiration, the selection in question is done by vote after deliberation. The monolithic nature of the Church explains why these deliberations are done in strictest confidence, to discourage second-guessing by those outside the hierarchy. But the use of the vote is not unique to the Church; nor is it followed by all other religions. Nonetheless, this same voting mechanism is common in universities and other organizations, as well as in general political elections that rely on the secret ballot. The system does have a serious weakness in that the greatest power is concentrated in the senior members of the group, which could well leave it out of touch with the rank and file, in the same way that lifetime tenure shapes the Supreme Court. But, whether wise or foolish, every organization needs to devise a mechanism that minimizes the dislocations for succession—consistent, of course, with its fundamental constraints.

The Catholic Church has proved amazingly durable with its composite organization, for its unified structure allows it to resist popular pressures, at least in the short run. At the same time, its top-heavy structure runs two kinds of risk. The first is that, given its administrative complexity and its core of doctrinal commitments on which it refuses to bend, it is less able to make accommodation to individual tastes; it thus runs the risk of forcing individuals who reject any portion of the orthodoxy to face the hard choice of staying within an organization of which they disapprove or striking out on their own. The Church itself has a form governing defection, which in good contractual fashion requires a concordance of “an internal act of will, an external manifestation of the act,

and communication of the defect in writing to the bishop.”²¹ Formally, these procedures are more onerous than the standard letter of resignation sent to most secular organizations. But at the same time, no Catholic is under secular legal compulsion to perform these actions, so that it is possible simply to become a lapsed Catholic without meeting the formal exit requirements.²² These people can exit the Church just by stopping attendance, by joining other faiths, or by making overt their opposition to the Church. The Church can try to persuade potential defectors of the error of their ways. Indeed, its lack of willingness to change on matters of faith carries two messages. First, those individuals who have no desire to leave the Church know that on matters of faith they are bound to adhere to the common line, thereby preventing internal fragmentation. Yet by the same token that strong precommitment strategy gives the Church little leverage to respond even to reasonable individual demands by tailoring doctrine and authority relationships.

There is also a larger risk that afflicts all organizations, namely the risk of schism, which is what may happen once its single-minded position becomes controversial. The strong structural unity of any organization also gives rise to the risk of monopoly power that itself can become the source of complacency, nonresponsiveness, or corruption. This structure in turn leads to the risk that defections from the religion will not take place by individual departures, but by a conscious split of the organization, such as the Protestant Reformation led by Martin Luther, or the Great Schism between the Eastern and Western forms of Christianity. Unlike business associations, differences on matters of faith are not resolvable by balance sheet adjustment. Thus, once disagreement emerges on any doctrinal issue, it is usually difficult for one faction to persuade the other faction that it is in error. Hence it is quite likely that key spiritual divisions will create secular divisions that take a long time to heal. In other types of organization, it may be possible to paper over differences by making transfer payments from one group to another to slow down or stop the risk of departure. But on matters of faith, the compensation option does not seem to have much value to the parties, which in turn increases the risk of separation. It is precisely this risk that makes buy-in at the ground level so critical, for once the divisions become deep the exit option will be exercised, even if the two separate groups have less clout than the one. The social gain from that decision is that each of the two groups will have greater homogeneity, so that its governance problems will be less acute than those of the single umbrella organization whose membership consists of persons with diverse views and needs. But even here there is no reason to think that fragmentation is a one-time phenomenon. Further splits can surely take place, as happens with the many variations of Protestant denominations which do not

have the same top-down authority. In the end, the Catholic hard line allows it to retain a critical mass of members, so long as it uses its local antennae to detect dissatisfaction before it fully mobilizes. It is easier to command strong loyalties by standing for something beyond the ordinary and mundane.

The Mormon Church

The Church of Jesus Christ of Latter-day Saints (LDS), commonly known as the Mormon Church, operates under a top-down, self-proclaimed hierarchical structure, dominated exclusively by men.²³ The Church is led by a team of fifteen Apostles, divided into two groups. The inner group of three function as the First Presidency, whose President selects two others as his chief advisors. That inner team is augmented by the Quorum of the Twelve, which is the Mormon Church's second-ranking body. As is the case with the Catholic Church, the center group is supported by regional associations called Seventies, of which there are eight worldwide, each with a managing group of up to seventy members. Below these lie the local congregations which consist of stakes, headed typically by unpaid local officials, which in turn are broken down into wards, which operation is commonly undertaken by church members who provide support in kind for the operation, which in turn brings them closer to the LDS in their daily lives.

The role of women receives a great deal of special attention in LDS promotional materials. From the outside, it is impossible to gauge the informal influence that women, as part of close-knit families, have on governance issues. But what is clear from the organization charts is that women run a variety of relief organizations that have important outreach and charitable functions, but which formally do not influence the decisions that the male governing hierarchies make with respect to doctrinal and administrative matters. This form of separation has important institutional advantages that offset, at least in part, the male hierarchy, as total female control of some key units probably does better to secure female participation than a subordinate role in the governance structure, or so the success of the LDS in keeping its high level of female participation suggests. The percentage of female Mormons was 52.4 percent overall in 2008, but reached 59.7 percent in Utah at the same time, creating a potential marriage imbalance in a Church that places huge pressure on its members to marry at a relatively young age, preferably within the faith.

The Church also runs a variety of other outreach programs, including its Sunday schools, which involve heavy participation from both young men and young women between the ages of twelve and eighteen, and its missionary programs that typically involve men between nineteen and twenty-one years of age and

women who are somewhat older. Both feature hierarchical structures intended to prepare their membership for advancement within the Church governance system when they reach full age. It seems clear that the Mormon Church is a more hands-on operation than the Catholic Church insofar as it makes greater daily demands on its members, young and old, and does not allow any of its members to take passive roles inside the organization. For many individuals, their extensive involvement in the Church can create a personal investment that remains for the rest of their lives. But, once again, these demands are a double-edged sword that helps account for the conspicuous numbers of defections from the Church by those who find its demands too high. At the same time, given the tightness of the overall governance structure, schism does not seem to be a high probability.

Presbyterians

The Presbyterian polity lies midway between the top-down and bottom-up structures. The key division here is between the overarching or “denominational” structures on the one hand and local interests on the other.²⁴ Grossly simplified, there are four levels, which, starting from the bottom, are the congregation, the presbytery, the synod, and the General Assembly.²⁵ At the congregational level, there are the deacons, trustees, and the “session.” The session consists of the ruling elders and is responsible for the order of services and the exercise of local discipline. On a day-to-day basis, the deacons are responsible for the practical administration of the church, including caring for the poor and taking care of such tasks as building administration. For their part, the trustees retain general oversight over the activities of the deacons, bearing as well primary responsibility over the financial operations of the congregation.²⁶

The presbytery fulfills such key functions as the ordination of ministers and the appointment of pastors, while leaving the creation, relocation, or closing of churches to the central authority, or synod whose members consist of all ordained ministers within a given area (whether or not pastors of individual churches), coupled with an equal number of lay elders who are elected by each of the congregations in accordance with their number of members. The terms and conditions of approval are left unstated, so, in practice, these could vary from a routine stamp of approval to an exhaustive review of the appointment or anywhere in between. The potential for tension is always there. In recent years, this issue proved very difficult as hundreds of local congregations voted to withdraw from one of the the national denominations, the Presbyterian Church (USA), because of deep division “over issues of Biblical authority, Christology, and sexuality.”²⁷

The synod consists of several presbyteries, but its functions are to act as a final arbiter of judicial matters, and as a source of coordination among the presbyteries, where the real power lies. The synod's primary function is to run church institutions such as colleges. Above that is the national organization, the General Assembly, which is the chief policymaking body of the denomination, and the ultimate decision-maker in disputes within the church.²⁸ The General Assembly meets every other year, and consists half of lay persons (elders) and half of ordained ministers, some of whom are administrators rather than congregational pastors. The Stated Clerk is the denomination's only chief executive, and he is primarily an administrative figure, with no ecclesiastical authority (but he can do things like sign the church onto *amicus curiae* briefs).

Congregationalists

The last group that I wish to discuss is the various churches who practice congregational forms of polity, of which the Congregationalists, as such, are only one variation.²⁹ These churches got their start in the mid-seventeenth century, both in England and in the New England colonies. The distinctive organizational feature of these churches is that they are governed democratically by the members of the congregation, with no ecclesiastical control from higher bodies.³⁰ Consistent with that general belief, they all supported separation from the Church of England, which was organized along lines similar to the Catholic Church, from which it separated during the reign of Henry VIII. As with New England town meetings, which sprang from the same cultural milieu, the Congregationalists have a system of direct participation of all its members in connection with the operation of the firm.

Clearly, the congregation cannot participate in every small decision but must delegate ministerial, that is, nondiscretionary, tasks to a deacon or some key employee. But the major decisions (however defined) are reserved to the congregation as a whole. This institutional structure can create difficulties because the church board is supposed to have reduced power in order to respect the dominance of their members.³¹ But the range of issues that are left to common deliberation is nonetheless quite large, including the ability to choose its form of worship, select its own officers, and make major budgetary, hiring, and building decisions. The obvious advantage of direct congregational control is that it limits the agency-cost complications that always arise because all individual members do not participate in the governing bodies. But at the same time, as in the political arena, the use of this system necessarily limits the power and growth potential of the church, so that it cannot spread the costs of its operation across

a larger base of membership. In addition, individual congregations can only grow so large, and hence need some way in which to protect themselves from external threats, without losing the benefits of a basic church structure defined by self-representation. It is therefore instructive that the Congregationalists have hit upon what they call “federalism or federal polity.”³²

This innovation comes at two levels. The first involves a group of elders—the same term used in the Mormon and Presbyterian churches—that operate within the church. But for these purposes, the more instructive innovation is the relationship between the church and the denomination of which it is a part. The centralized organization deals with external affairs, including the collection of information that relates to the changes in legal or tax policy that influence the operations of the church, and the governance of colleges, seminaries, and missionary activity. This public information can be easily gathered on a collective basis and can then be distributed down to individual groups which can use it to deal with their own business and compliance activities where matters of confidentiality may well prove to be more important. The massing of resources can also allow for a more effective coordinated effort on various kinds of lobbying or other political activities that create public goods, but only for the members. And it is always possible that the federalized alliance can extend up another level so that the denominational groups can combine with other religions with very different theological beliefs on matters of common concern. These second-level combinations of alliances are quite similar to the work that is done by trade associations in both the for-profit and nonprofit sectors, which essentially serve these same functions. And in both areas, it is more likely that the role of these umbrella organizations will be more pronounced when the individual units are too small to mount their own initiatives. Multiple members often make it difficult to formulate policy.

In order to see how these issues for Congregationalists play out, it is instructive to take a quick look at one family of churches with a congregationalist polity—the Baptists. At one time the Baptists were a unified church. But in 1845, the Southern Baptists split off from the Northern (now American) Baptists over the issue of slavery that less than a generation later resulted in the Civil War in the United States. This conflict was by no means unique to the Baptist, for other Protestant religious groups, including Presbyterians and Methodists, faced the same conflict.³³ (The northern and southern wings of the Presbyterian Church reunited in 1983; the Baptists are still split, though slavery is no longer a point of division.) On an issue that deep there is no way to bridge the differences, thus schism or destruction becomes the only path out, given that neither group could use force of arms against the other. Southern Baptism contains strong Congregationalist

elements, but the Southern Baptist Convention exerts a powerful influence over key matters of faith and policy.³⁴

To this day, the differences between the Southern Baptists and the American Baptists are pronounced, as the latter tend to favor liberal causes such as female ordination and same-sex marriage.³⁵ The American Baptists have about 1.2 million members, and, like other Baptist denominations, their congregations are not bound together by a strict set of norms but instead form a loose affiliation of churches. Generally speaking, the Southern Baptists continue to remain far more conservative on these issues,³⁶ and are today the far larger group, with about 15 million members.

In this context, it remains necessary to examine how these churches face the risk of schism that can arise when different congregations take fundamentally different positions on key social issues—for example, gay marriage or abortion—in which it is difficult for them to compromise. One such notable current crisis involved issuing a church-wide condemnation of white supremacy and the alt-right, which was urged in no uncertain terms by a prominent Southern Baptist pastor, Dwight McKissic. Initially, the Resolution Committee chose not to bring the matter to a vote before the entire convention, and a compromise measure only made it through with much bitterness on both sides in the eleventh hour. The Southern Baptists thus face the possibility of further schism on racial grounds if overall tensions on this issue do not calm down. And they are unlikely given that racial divisions have hardened during the last decade in both the Obama and now the Trump presidencies.³⁷ It is hard for any outsider to appreciate the source and extent of tension over this, or indeed any other source of potential division, given that there is never any possibility of side payments to broker the differences in belief.

Policy Implications

One question that arises from this descriptive account of the firm is what kind of legal regulations should be placed on the activities of these religious organizations. The relevant implications deal with two sorts of issues. The central question is the extent to which courts should inject themselves into the internal affairs of the church. On this point, the position that I would take was simply stated some fifty years ago in *Brown v. Mt. Olive Baptist Church*:

It is a general rule recognized here and in foreign jurisdictions that ordinarily the courts have no jurisdiction over, and no concern with, purely ecclesiastical questions and controversies, including membership in a church organization, but they do have jurisdiction as to civil, contract and property rights which are involved in or arise from a church controversy.³⁸

Nonetheless, the waters on this matter have been muddied by the Supreme Court's 1979 decision in *Jones v. Wolf*,³⁹ which opened the door to allowing evidence of internal church practice to interpret disputed agreements. As ever, in principle, the best response to these uncertain commands is to draft an instrument designed to dispel the doubt. Just that was done by the Presbyterians, whose General Assembly 1983 amended the denomination's constitution to read:

All property held by or for a congregation, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a congregation or of a higher council or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).⁴⁰

Even commands like this are subject to litigation because they are not incorporated into specific trust deeds, including those adopted prior to 1983. Quite simply, no particular denomination has legal authority to declare itself the beneficial owner of property that is titled in other entities. Hence all the litigation. For example, the words of the 1983 declaration were held insufficient to determine whether it applied to pre-1983 disputes based on private correspondence between the parties.⁴¹

It is also the case that many disputes are not governed by such clear directions, and the "hybrid approach" adopted in *Jones v. Wolf*—allowing church practices to vary from written documents—has been subject to a recent forceful critique by Michael McConnell and Luke Goodrich.⁴² The gist of their critique, with which I fully concur, is that it is a mistake to deviate in any way from the "ordinary principles of trust and property law" by having courts look at "internal church rules" that would not be recognized as part of the chain of title under state law. In taking this "strict view," they reject the so-called hybrid approach, which allows reference to various religious doctrines to alter and perhaps override the documents that form the chain of title in these cases.⁴³

This strict approach satisfies all the conditions for comparative advantage. There is, as noted, little that is distinct about the "civil, contract and property rights" of these organizations, given that they parallel those which are found in ordinary businesses. The techniques that judges use in the one context are equally applicable in the other. And the added security of business arrangements that comes from legal enforcement allows these organizations to attract larger amount of capital and superior personnel, and thus to enable more ambitious programs to take place over a longer time horizon. It is consistent with the basic theme of this article that the rules used to decide these critical issues in the life of the

religious firm consciously avoid any reference to theological issues, which can be resolved by religious bodies using the sanctions available to them, such as excommunication or the refusal to ordain ministers.⁴⁴

On the other hand, it is wading into a political thicket of the worst order for the courts to try to resolve ecclesiastical disputes for which the comparative advantage lies elsewhere. Of course, as McConnell and Goodrich acknowledge, if the ownership of given assets depends on the interpretation of religious text, intervention seems clearly required.

But most theological disputes are not of that sort. On the other hand, another clear implication of this principle is that neither the legislature nor courts should take it upon themselves to engage in the direct regulation of religious organizations precisely because these activities can encroach on religious matters of which the courts are ignorant. There are many such areas in which this could happen. One is the question of whether the labor laws or the employment discrimination laws should attach to religious organizations, to which the correct answer in virtually all cases is no.⁴⁵ The issue has rather more doubt than it should because it is taken for granted today that the state can impose heavy regulation on ordinary business firms, even though these can impose massive dislocations on activities. But the specific guarantee of the free exercise of religion in the First Amendment has (or at least has had) great weight in staving off the hands of federal regulation in areas that are likely to influence religious practices through the regulation of employment practices. And most recently, the United States Supreme Court vacated federal regulations under the Affordable Care Act that sought to require the Little Sisters of the Poor to authorize the Department of Health and Human Services to collect payments from their insurance company to cover contraceptive expenses that were against church law.⁴⁶

In all these areas, comparative advantage moves away from the state. If it cannot figure out how to interpret religious doctrine, then it should not impose on parties civil obligations that have the potential to violate that doctrine, as understood by its practitioners.

The point here is not to claim that these organizations are beyond regulation. It has always been the case that religious organizations, like other charitable organizations, can be held responsible for pollution or the creation of other nuisances. Enjoining those activities in no way restricts their proper freedom of internal organization; it merely prevents other individuals and organizations from being forced to make implicit subsidies to the offending organizations, which is a central, valid function of law.

Conclusion

It is impossible to run complex organizations without some form of collective organization. The way in which the individual pieces of these organizations are put together depends critically on inside knowledge about the purpose of the firm, the available resources, and the formation of a strategic plan, none of which are state functions. But these organizations, regardless of their ultimate purpose, be it commercial, charitable, governmental, or religious, must follow certain kinds of basic governance rules in order to flourish. They must know which activities to bring inside the firm and which to keep out, and they have to find a structure that fits their personnel, resources, and mission. That structure tends to have important differences in size and complexity, which exist equally on both domains. It is a given that to govern is to have some hierarchy, because a completely flat organization has a span-of-control problem that makes it impossible for a single leader to govern everyone or for all the group members to function as rough equivalents. By the same token, it is simple suicide to think of an organization of n people, that has n layers, because nothing could get done. So the usual pyramid forms to reduce the span of control on the one hand and the number of layers on the other. Determining how many layers, and their exact interactions, can pose real problems in the design of both top-down and bottom-up organizations, and all those permutations that lie in between. But the main themes for both for-profit and nonprofit organizations are surprisingly similar, given that the mechanisms of these firms are often independent of the precise mission of the firm. Transaction costs, the choice of ends, the competence of parties, and binding institutional constraints are not unique problems for business organizations. Every time two or more people have to join forces, to draft charters, to write contracts, to coordinate activities, transaction costs must be addressed and overcome for the enterprise, including a religious enterprise, to survive. The nature of the firm started with business organizations, but it extends to all charitable and religious organization, proving once again the power of the Coasean approach in areas to which he did not apply it.

Notes

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1. Ronald H. Coase, “The Nature of the Firm,” *Economica* 4, no. 16 (November 1937): 386.
 2. Richard A. Epstein, “Inside the Coasean Firm: Why Variations in Competence and Taste Matter,” *The Journal of Law and Economics* 54, no. S4 (November 2011): S41.
 3. *Hobby Lobby Stores, Inc. v. Sebelius*, 568 U.S. 1401 (2012). For my views, see Richard A. Epstein, “The Defeat of the Contraceptive Mandate in *Hobby Lobby*: Right Result, Wrong Reason,” *Cato Supreme Court Review* 2013–2014: 35.
 4. For exhaustive discussion, see William W. Bassett, *Religious Organizations and the Law* (St. Paul: West Group, 2017).
 5. For the full range, see Oliver E. Williamson, *Markets and Hierarchies: Analysis and Antitrust Implications* (New York: The Free Press, 1975).
 6. The Modigliani-Miller theorem commonly states that the market value of a firm depends on its earning power and the riskiness of its assets, which is said to be wholly independent of the way the firm is financed. Franco Modigliani and Merton Miller, “The Cost of Capital, Corporation Finance and the Theory of Investment,” *The American Economic Review* 48, no. 3 (June 1958): 261.
 7. See Richard A. Epstein, “Positive and Negative Externalities in Real Estate Development,” *Minnesota Law Review* 102 (2018): 1493 (explaining how complex organizations use covenants and other controls to deal with both positive and negative externalities by antecedent consent).
 8. Richard A. Epstein, “The Role of Exit Rights: What the Theory of the Firm Says about the Conduct of Brexit Negotiations,” *Cardozo Law Review* 38 (2018): 825.
 9. “To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an *action organization*, *i.e.*, it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidate.” IRS, Organization Test, available at <https://www.irs.gov/charities-non-profits/charitable-organizations/organizational-test-internal-revenue-code-section-501c3>.

10. See, e.g., *Jimmy Swaggart Ministries v. Board of Equalization of California*, 493 U.S. 378 (1990) (detailing the for-profit activities of the Swaggart Ministries, which the Court held were not exempt from California’s sale and use tax).
11. David A. Hyman, “Hospital Conversions: Fact, Fantasy, and Regulatory Follies,” *Journal of Corporation Law* 23, no. 4 (Summer 1998): 755.
12. Under the terms of one recent high-profile gift, the naming rights will revert to the donee in thirty years. Robin Pogrebin, “J.C.C. Manhattan Gets \$20 Million Gift and Jenny Holzer Artwork,” *New York Times*, October 26, 2017, <https://www.nytimes.com/2017/10/26/arts/design/jcc-manhattan-20-million-gift-jenny-holzer.html>.
13. Much thanks to Michael McConnell who laid out this sketch.
14. Patty Gerstenblith, “Associational Structures of Religious Organizations,” *Brigham Young University Law Review*, no. 2 (1995): 441.
15. See Bassett, *Religious Organizations*, § 3-5, 18–19.
16. See the discussion *infra* at the text, at 156.
17. See “Catholic Church Hierarchy,” Vatican.com, accessed December 30, 2017, http://vatican.com/articles/popes/catholic_church_hierarchy-a1084.
18. For example, one lay dissident group proclaims:

We respect the teaching authority of the Church and recognize the role that the hierarchy should exercise in discernment. It is essential, however, that all the people of God be involved in this process of discernment. We will therefore devote ourselves to advancing meaningful and active engagement of the laity in the life of the Church.

“Organizational Structures of the Catholic Church: A Primer,” Voice of the Faithful, accessed December 2, 2017, http://www.votf.org/Structural_Change/SCWG-PrimerFINAL.pdf.
19. The canon law, of course, is a comprehensive legal system that covers far more than these issues, and on these collateral matters it often comes into conflict with other legal systems, such as the English common law. The full Code of Canon Law can be found at http://www.vatican.va/archive/ENG1104/_INDEX.HTM. For detailed exposition of the conflicts between canon and secular law, see Richard H. Helmholz, “Conflicts between Religious and Secular Law: Common Themes in the English Experience, 1250–1640,” *Cardozo Law Review* 12 (1991): 707; Richard. H. Helmholz, “Canon Law and English Common Law,” in *Selden Society Lectures: 1952–2001*, (William S. Hein and Co., 2003) (noting the effectiveness of the excommunication sanction in medieval times).
20. See Francis A. Sullivan, “The Teaching Authority of Episcopal Conferences,” *Theological Studies* 63, no. 3 (2002): 472–93 (discussing the longstanding practice of relying on local and regional councils).

21. “Frequently Asked Questions *regarding* HOW TO QUIT THE CATHOLIC CHURCH,” last accessed November 30, 2017, <https://www.catholicdoors.com/faq/qu286.htm>.
22. Francis Phillips, “From ‘shruggers’ to ‘sceptics’: the six different kinds of lapsed Catholic,” *Catholic Herald*, November 6, 2015, <http://www.catholicherald.co.uk/commentandblogs/2015/11/06/from-shruggers-to-sceptics-the-six-different-kinds-of-lapsed-catholic/>.
23. Latter-day Saints, “Organizational Structure of the Church,” <http://www.mormon-newsroom.org/topic/organizational-structure-of-the-church>.
24. See generally, *Encyclopedia Britannica*, Presbyterian Church Government, available at <https://www.britannica.com/topic/presbyterian>.
25. For some measure of the complexity, see *The Book of Church Order of the Presbyterian Church in America* (6th ed. 2006), available at <https://briarwood.org/wp-content/uploads/2012/03/BCO-2006-reprint-6th-Ed-ALL-PARTS.pdf>.
26. For a more detailed statement for the Presbyterian Church, see “Regarding ruling elders: ruling elders and trustees,” November 15, 2015, available at <https://www.pcusa.org/news/2015/11/16/regarding-ruling-elders-ruling-elders-and-trustees/>.
27. See generally, Michael W. McConnell and Luke W. Goodrich, “On Resolving Church Property Disputes,” *Arizona Law Review* 58, no. 2 (2016): 307, 307n1.
28. For discussion, see Office of the General Assembly, General Assembly of the PC (U.S.A.), <http://oga.pcusa.org/section/ga/ga/>.
29. For a brief discussion, see Daniel T. Jenkins, “Congregationalism: Protestant Movement,” *Encyclopedia Britannica*, <https://www.britannica.com/topic/Congregationalism>.
30. “[Congregationalism] emphasizes the right and responsibility of each properly organized congregation to determine its own affairs, without having to submit these decisions to the judgment of any higher human authority, and as such it eliminated bishops and presbyteries. Each individual church is regarded as independent and autonomous.” Jenkins, “Congregationalism.”
31. Sarah J. Hastings, “Cinderella’s New Dress: A Better Organization Option for Churches and Other Small Nonprofits,” *Drake Law Review* 55, no. 3 (2007): 817.
32. Id.
33. See “Slavery and the Churches,” http://www.christianchronicler.com/history1/slavery_and_the_churches.htm.
34. See SBCLIFE (Journal of the Southern Baptist Convention), The Church ~ Considering Congregational Polity, August 2011.

35. On the ordination of women, see “The Bible” at American Baptist Church USA, http://www.abc-usa.org/what_we_believe/the-bible/. On same-sex marriage, on which the church permits local congregations to differ, see David Roach, “Gay Marriage: Mainline Denominations Affirm SCOTUS,” Baptist Press, July 20, 2015, <http://www.bpnews.net/45162/gay-marriage-mainline-denominations-affirm-scotus>.
36. John Coon, “5 Beliefs That Set Southern Baptists Apart from American Baptists,” *Newsmax*, May 7, 2015, <https://www.newsmax.com/FastFeatures/southern-baptists-american-beliefs-set-apart/2015/05/07/id/643337/>.
37. Emma Green, “A Resolution Condemning White Supremacy Causes Chaos at Southern Baptist Convention,” *The Atlantic*, June 14, 2017, <https://www.theatlantic.com/politics/archive/2017/06/the-southern-baptist-convention-alt-right-white-supremacy/530244/>.
38. 124 N.W.2d 445, 446 (Iowa 1968).
39. 443 U.S. 595 (1979). The far sounder textual approach was adopted in *Watson v. Jones*, 80 U.S. 679, 723 (1879) (noting risks of letting a building given to a Trinitarian church be diverted to a Unitarian one).
40. PRESBYTERIAN CHURCH (U.S.A.) BOOK OF ORDER 2015–2017, *supra* note 2, at 62, G-4.0203, cited in McConnell & Goodrich, 58 Ariz. L. Rev. at 320, at note 27.
41. See, for discussion, Paula R. Kincaid, “Judge Rules in Favor of Athens Church,” *The Layman* (Presbyterian Lay Committee blog), February 19, 2017, <https://www.layman.org/judge-rules-favor-athens-church/>. In one key passage, Rev. James Andrews of the Presbyterian Church of the United States wrote “These amendments do not in any way change the fact that the congregation, in the Presbyterian Church in the U.S., owns its own property.”
42. McConnell & Goodrich, *supra* at note 27.
43. *Id.* at 319–27.
44. *Id.* at 322.
45. See *Hosanna-Tabor Evangelical Lutheran Church v. Equal Employment Opportunity Comm’n*, 565 U.S. 171 (2012) (refusing to apply federal antidiscrimination law to selection of religious leaders); *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979) (declining to enforce the National Labor Relations Act against a completely religious institution).
46. See *Zubik v. Burwell*, 136 Sup. Ct. 1557 (2016). For analysis, see “Little Sisters of the Poor Home for the Aged v. Burwell,” SCOTUSblog, <http://www.scotusblog.com/case-files/cases/little-sisters-of-the-poor-home-for-the-aged-v-burwell/>.