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Does Antidiscrimination Law Influence Religious Behavior? An Empirical Examination

Netta Barak-Corren*

What role should the behavioral reality of conflicts regarding gender, sexuality, and religious convictions play in the theory and doctrine of antidiscrimination law? Although the past several decades have seen broadening tension between traditional beliefs and legal and societal norms—the most recent manifestation being Obergefell v. Hodges—almost no empirical work has been done to elucidate the behavioral reality of conflicts between religion and antidiscrimination law.

This Article is the first empirical behavioral study on the decisions made by religious people under norm conflict. Drawing on two decision experiments with over 3500 religious individuals and in-depth interviews with senior religious managers, this Article examines the central theoretical explanations for why people (dis)obey the law. Is compliance more successfully achieved by improving the perceived fairness of judicial proceedings (as predicted by the procedural fairness theory) or by adjusting the outcomes of these proceedings (as predicted by the economic analysis theory)? Conventional wisdom assumes that greater fairness and milder outcomes would facilitate compliance. However, the data suggest that greater procedural fairness has little to no impact on compliance decisions, while milder outcomes that afford monetary penalties as substitutes for legal compliance are not perceived as more acceptable and actually erode adherence to legal norms rather than promoting it. This Article discusses the broader implications of my findings for religious accommodations, offering recommendations to lawmakers who wish to mitigate conflicts between law and religion without relinquishing fundamental legal commitments.

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INTRODUCTION

Every few months, a teacher in the United States is dismissed for becoming pregnant out of wedlock or through in vitro fertilization (“IVF”). For their employers—typically parochial schools—these
pregnancies contradict the values and doctrine they seek to model. Teachers are often contractually committed to upholding the teachings and values of the Church, and schools view the behavior of these pregnant employees—whether they are unmarried or unable to conceive without medical intervention—as a violation of this commitment.

Although Title VII of the Civil Rights Act permits religious employers to give preference in hiring to people of shared faith, it arguably does not permit them to discriminate on the basis of gender or pregnancy, nor does it exempt them from other civil rights laws. This enduring tension between religion and antidiscrimination is rapidly expanding to new frontiers including gay rights and access to IVF treatment to conceive a child with husband may proceed to trial), No. 1:2012-cv-122-RLM, 2015 WL 1439777 (N.D. Ind. Jan. 12, 2015) (finding jury award of $1.95 million, which was later reduced pursuant to Title VII’s cap). IVF treatments typically result in multiple fertilized eggs, only one or two of which are implanted back into the womb. The Catholic Church and others view this selection process as abortion. See Evan Bleier, Teachers Fired from Massachusetts Catholic School for Out-of-Wedlock Pregnancy, UPI (Dec. 9, 2013, 2:56 PM), http://www.upi.com/Odd_News/2013/12/09/ Teachers-fired-from-Massachusetts-Catholic-school-for-out-of-wedlock-pregnancy/1321386618966/. Laura Hibbard, Cathy Sanfor, Texas Teacher, Fired for Out-of-Wedlock Pregnancy, HUFFINGTON POST (Apr. 12, 2012, 12:59 PM), http://www.huffingtonpost.com/2012/04/12/cathy-sanford-teacher-fired-for-unwed-pregnancy_n_1420986.html.

2. This provision is known as “the moral clause.” See, e.g., ARCHDIOCESE OF WASHINGTON, POLICIES FOR CATHOLIC SCHOOLS 4 (2009) (stating in Policy 1244, for example, that “[a]ll school administrators and all faculty shall adhere to Catholic faith, teaching and moral discipline, and shall not contradict the Catholic faith, teaching and moral discipline, and shall not harm communion with the Church”).


4. See, e.g., Woodard v. Jupiter Christian Sch., Inc., 913 So. 2d 1188 (Fla. Dist. Ct. App. 2005) (alleging that a gay student was expelled after his teacher confronted him about his sexual orientation); Pedreira v. Ky. Baptist Homes for Children, Inc., 186 F. Supp. 2d 757 (W.D. Ky. 2001) (discussing action brought by a lesbian therapist dismissed from employment in a Southern Baptist home after a picture of her with her girlfriend was exhibited without her knowledge); Complaint at 2–5, Zmuda v. Corp. of the Catholic Archbishop of Seattle (Wash. Super. Ct. Mar. 6, 2014) (No. 14-2-07007-1), 2014 WL 1377720 (involving a vice principal in a Catholic school alleging he was terminated for marrying his partner, and settling without judgment in 2014).
constitutional protections as well as across a variety of settings spanning educational and commercial, private and public, for-profit and not-for-profit. In the wake of the historic Supreme Court decision on marriage equality in Obergefell v. Hodges, the conflict between religion and antidiscrimination is likely to further intensify. The Supreme Court has not yet clarified the appropriate balance between religious liberty and gender and sexual equality (each backed, of course, by statutory and constitutional protections), and Obergefell’s strong affirmation of equality alongside a vague reassurance of First Amendment “protection”

5. Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014) (noting plaintiffs brought action because for-profit businesses refused to provide contraception coverage to their employees due to owners’ religious beliefs).

6. Some businesses have long sought the right to exclude or deny services to LGBT people based on religious reasons. See, e.g., J. Barrett Hyman, M.D. v. City of Louisville, 132 F. Supp. 2d 528, 532 (W.D. Ky. 2001) (rejecting the “hypothetical” claims of a physician who sought the right to discriminate against LGBT people in his medical practice and remanding with instructions to dismiss without prejudice for lack of standing), vacated, 53 F. App’x 740 (6th Cir. 2002); McClure v. Sports & Health Club, 370 N.W.2d 844, 846 (Minn. 1985) (holding that a closely held sports club and his Evangelical owners discriminated against his employees and customers on the basis of religion, sexual identity, and marital status, in violation of the Minnesota Human Rights Act). These cases multiply as gay marriage becomes the norm. Recently in New Mexico, Oregon, Colorado, and Washington, D.C., businesses were held liable for discrimination for refusing service to marrying LGBT customers for religious reasons. See, e.g., Elane Photography, LLC v. Willock, 309 P.3d 53 (N.M. 2013); Interim Order—Ruling on Respondents’ Re-Filed Motion for Summary Judgment and Agency’s Cross-Motion for Summary Judgment, In re Klein, Nos. 44-14 & 45-14, (Or. Bureau of Labor & Indus. Jan. 29, 2015); Initial Decision Granting Complainants’ Motion for Summary Judgment and Denying Respondents’ Motion for Summary Judgment at 2–3, Craig v. Masterpiece Cakeshop, Inc., CR 2013-0008 (Colo. Civil Rights Comm’n Dec. 6, 2013), aff’d Final Agency Order (June 2, 2014). Notably, while these cases often involve different areas of law and legal distinctions, religious objectors across different settings often raise very similar claims. This similarity, which directly bears on the scope of religious conflict, might warrant a more comprehensive legal approach. See Douglas NeJaime & Reva Siegel, Conscience Wars: Complicity-Based Conscience Claims in Religion and Politics, 124 Yale L.J. 2516, 2544 (2015). The present Article focuses on the context of employment and schools, but considers and provides data on the shared bases of the religious response across legal settings.


8. In the only instance where a religion-based pregnancy dismissal reached the Supreme Court, it sidestepped the issue, although the Court hinted it had sympathy toward the teacher when remanding the case to the local EEOC. See Ohio Civil Rights Comm’n v. Dayton Christian Schs. Inc., 477 U.S. 619 (1986). In the same manner, the Court affirmed the ministerial exception in Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC, 132 S. Ct. 694 (2012), yet expressly limited its holding to the facts of the case, where the teacher was a “called” minister who actively led students to prayer. Id. at 707–09. The Hobby Lobby holding was also restricted to the facts of the case where a ready exemption was available. Hobby Lobby, 134 S. Ct. at 2783–85.


offers more questions than answers. How should courts apply Title VII and the many state antidiscrimination laws that prohibit discrimination on the basis of gender, pregnancy, and sexual orientation? How should courts navigate between different legal outcomes available under their discretion?

Currently, courts’ positions on these cases diverge by a surprisingly large margin. Some courts apply antidiscrimination law broadly and interpret religious exemptions narrowly, whereas other courts take the inverse approach. Meanwhile, constitutional lawyers and scholars are naturally preoccupied with the normative questions that these conflicts raise. They debate how society should safeguard gender equality and individual freedom to express sexuality, and whether courts should confirm or limit religious freedom to condemn and penalize certain

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11. Such “pro-equality” courts apply the law to all religious employers and service providers, whether individual, for-profit or non-for-profit. Under this view, Title VII’s religious exemption does not allow religious employers to escape liability “for discrimination based on race, color, sex or national origin.” Dolter v. Wahlert High Sch., 483 F. Supp. 266, 269 (N.D. Iowa 1980). Discrimination in hiring and treatment of religious ministers (“the ministerial exception”) is allowed. Courts, however, stick to McClure v. Salvation Army, which restricted this exception to the “church-minister relationship” and refrained from “any decision as to other church employees.” McClure v. Salvation Army, 460 F.2d 553, 555 (5th Cir. 1972). Therefore, employees who are not ministers (and most are not) are not barred from raising discrimination claims. See, e.g., Herx v. Diocese of Fort Wayne-South Bend Inc., 48 F. Supp. 3d 1168, 1177 (N.D. Ind. 2014) (holding that a lay language arts teacher with no role in religious education is not a minister); Dias v. Archdiocese of Cincinnati, No. 1:11-CV-00251-SJD, 2013 WL 3695355 (S.D. Ohio Jan. 30, 2013), appeal dismissed, No. 13-3759 (6th Cir. Aug. 30, 2013) (holding that a computer and technology instructor is not a minister); Vigars v. Valley Christian Ctr. of Dublin, Cal., 805 F. Supp. 802 (N.D. Cal. 1992) (holding that firing a school librarian after she became pregnant out of wedlock is per se discrimination). Plaintiffs still need to demonstrate that moral standards are not neutral as religious respondents argue, but discriminatory as is or as applied. See, e.g., Herx v. Diocese of Fort Wayne-South Bend Inc., No. 1:12-CV-122 RLM, 2015 WL 1013783, at *2 (N.D. Ind. Mar. 9, 2015) (providing evidence that three male employees who were thrown out of a strip club after harassing one of the performers were reprimanded but not fired); Ganzy v. Allen Christian Sch., 995 F. Supp. 340, 344, 359–60 (E.D. N.Y. 1998) (holding that a private sectarian institution “has the right to employ only teachers who adhere to the school’s moral code and religious tenets,” but a factual determination would be necessary to see if a neutral policy against premarital sex may be discriminatory as applied because sexual activities of females are easier to discover); EEOC v. Fremont Christian Sch., 781 F.2d 1362, 1364 (9th Cir. 1986) (holding that providing health insurance plans only to men and single women and not to married women is a sex-based discrimination, notwithstanding the organization’s belief that a woman cannot be “head of household”).

12. Such “pro-religion” courts typically interpret religious exemptions broadly. See, e.g., Little v. Wuerl, 920 F.2d 944, 945 (3d Cir. 1991) (holding that “Congress has exempted religious institutions from much of Title VII’s prohibition against employment discrimination on the basis of religion” and rejecting the discrimination claims of a Protestant lay teacher who was dismissed from a Catholic school after failing to remarry pursuant to the “proper canonical process”); Pedreira v. Ky. Baptist Homes for Children, Inc., 186 F. Supp. 2d 757, 762 (W.D. Ky. 2001) (holding that a Christian charity did not discriminate against a lesbian therapist in dismissing her after her sexual identity became public); see also Alicea-Hernandez v. Catholic Bishop of Chi., 320 F.3d 698, 704 (7th Cir. 2003) (holding that a communications manager responsible for media releases and community involvement is a minister, barring sex and ethnicity discrimination claim); EEOC v. Roman Catholic Diocese of Raleigh, N.C., 213 F.3d 795, 805 (4th Cir. 2000) (holding that the cathedral’s director of music ministry and part-time music teacher is a minister, barring sex discrimination claim).
preferences and behaviors.13 At the centerpiece of the debate is the question of religious accommodations: when should the state accommodate religious beliefs and when should it not?14

These are difficult and important questions, yet they rest on empirical assumptions that—notwithstanding the burgeoning literature they have generated—remain buried and ignored. This Article uncovers these assumptions and examines empirically key questions that they currently hide. In so doing, it offers a deeper understanding of religious conflicts and the way in which they can be reconciled.

The first tacit empirical assumption to uncover is that religious individuals will inevitably seek to be exempt from antidiscrimination law whenever it conflicts with their beliefs.15 This assumption, often turned into an explicit argument by religious advocates, has steered the legal discourse to focus on the need and demand for religious accommodations and exemptions, and on determining their justifiable scope.16 But what if

14. See infra notes 15–19 and accompanying text. A parallel philosophical debate focuses on whether individuals have a duty to obey the law and under what conditions they should be allowed to disobey a law that conflicts with their beliefs. Although the debates are clearly connected, the legal discourse on whether states should accommodate moral objections to the law is rarely concerned with the core limitations that philosophers placed on such objections. Examples of these considerations include the requirement that previous legal efforts to change the law have been made, or that the law itself be unjust, or that the act of disobedience would be peaceful, or that the disobedient person would be willing to submit to punishment. See, e.g., Kent Greenawalt, Conflicts of Law and Morality 25–30 (1987); Michael Walzer, The Obligation to Disobey, 77 Ethics 163 (1967).
many (or even most) individuals who find pregnancy out of wedlock immoral or object to same-sex marriage do not seek an exemption? What if they reconcile their conflicts differently? In this case, both sides of the debate must reexamine their positions. Proponents of exemptions must explain why legal accommodations ought to be carved out if the tension between faith and law can be mitigated without them. After all, if religious liberty is not unduly burdened, then surely the preferred course should be to uphold the law equally for all people, religious and nonreligious alike. At the same time, opponents of exemptions will have to explain why these accommodations are truly worrisome if the demand for them is small and derives from a religious minority. (Of course there is always the question of impact, which I discuss next.)

A second key question asks what effect accommodations that are made today might have on future compliance with the law and on the tension between church and state more generally. Current debates often allude to the impact of accommodations on civil rights law and particularly on third parties. Professor Hamilton has long argued that accommodations encourage religious “narcissism” and further disobedience, and Professors NeJaime and Siegel recently argued that

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20. Hamilton, supra note 18, at 33, 35 (“In effect, though never explicitly, religious entities have been lobbying for the right to hurt others without consequences . . . . The RFRA legislative history is filled with paean to religious liberty, but precious little analysis of what would happen if religious individuals and institutions had the power to overcome all laws on a routine basis.”).
“religious accommodation may extend, rather than resolve, conflict.”
For all of their intensity, these arguments remain largely theoretical, as little empirical evidence is brought to support them. The lack of relevant data directly bears on the persuasiveness of a compelling state interest in not providing accommodations, especially in light of the Religious Freedom Restoration Act’s (“RFRA”) least restrictive means test.

An equally important and related question regards the behavioral impact of outcomes that are not exemptions—particularly, antidiscrimination remedies. The current focus on accommodations shifts attention from other possible legal outcomes, but in practice, whenever courts decide that the ministerial or other exemption does not bar the application of antidiscrimination law, the question of remedies arises. Courts typically assume that monetary damages offer a “nonintrusive remedy,” as the D.C. Circuit once stated, which is best suited for cases of religiously based discrimination. In contrast, performance and reinstatement are almost never granted or seriously considered for fear of “excessive entanglement” due to “court oversight.” This doctrine has deep roots in contract theory, with its emphasis on the autonomy of the discriminating party and the belief that damages provide the fiscal worth of performance,

21. NeJaime & Siegel, supra note 6, at 2544.
22. Under RFRA, the government has to pass two tests to burden the free exercise of religion: it must show a compelling interest justifying the burden and that the least restrictive means was chosen to advance this interest. The Hobby Lobby decision demonstrated that direct evidence on the impact of accommodations could be crucial to pass these tests. Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2787 (Ginsburg, J., dissenting). In Justice Ginsberg’s dissent, she cites several studies showing that contraceptives have a positive impact on women’s participation in the workforce but no study on the extent to which religious accommodations would actually reduce workforce participation or access to contraceptives. Id. at 2789. At the same time, the majority opinion heavily relied on the lack of evidence regarding such disparate impact to establish that Hobby Lobby’s beliefs should be accommodated. While relevant studies might not have existed at the time of the judgment, these opinions demonstrate the need for direct, relevant evidence on the projected impact of accommodations.
23. Throughout this Article, I use “damages” as a general term for monetary awards, focusing in Part II.E on compensatory and punitive damages. Payments may also include compensations for emotional pain and suffering and so on.
resolving the need of oversight.\textsuperscript{25} Yet, this doctrine is also fundamentally at odds with general antidiscrimination doctrine, which prefers reinstatement when feasible and views damages as complementary or substitute.\textsuperscript{26} Indeed, against this background damages in lieu of reinstatement can be best understood as a form of religious accommodation. But whether damages are actually more religiously acceptable than reinstatement is unclear,\textsuperscript{27} and the behavioral impact of damages versus reinstatement is therefore an important question. The societal interest in promoting equality through antidiscrimination law requires effective enforcement that can correct the outcomes of discrimination and discourage further civil rights violations. The behavioral impact of each legal outcome must be studied if we are to understand whether one outcome promotes these goals better than the other.

Lacking answers to these empirical questions, antidiscrimination law proceeds to tackle religious conflicts on dubious footing, exposing the very individuals it is supposed to protect to potentially severe ramifications without sufficient justification. Religious objection and deviance from antidiscrimination law is not an inevitable outcome and should not be assumed or implied. While some aspects of religious doctrine may bring people into direct conflict with the law, other aspects—particularly those emphasizing compassion, mercy, humility, love, and support—may converge with antidiscrimination law on the outcome, if not the contested norm.\textsuperscript{28} And while religious objection cases are certainly salient, the image of widespread nonadherence could be the result of a selection bias.\textsuperscript{29} Such


\textsuperscript{27} The preference of damages over reinstatement is an open debate for additional reasons, such as the question whether damages succeed in fully compensating injured parties. See Paul G. Mahoney, Contract Remedies: General, in Encyclopedia of Law & Economics 117 (Bouckaert & De Geest eds., 2000); Thomas Ulen, Specific Performance, 3 New Palgrave Dictionary of Law and Economics 481 (Newman ed., 1998); Wilkinson-Ryan & Hoffman, supra note 24. The argument that damages better preserve the parties’ autonomy is also debatable. An internal critique points to autonomy as the reason to hold people to their ex-ante commitments rather than to free them from these commitments. See, e.g., Charles Fried, Contract as Promise: A Theory of Contractual Obligation (2015). An external critique asks why the autonomy of the injuring party—particularly religious groups—should be preferred over the rights and interests of the injured party. I draw here primarily on Susan Moller Okin’s canonical challenge of multiculturalism. Okin, supra note 13.

\textsuperscript{28} See infra Part II.C.

\textsuperscript{29} Put in simple terms, the only cases that ascend the judicial ladder are those that feature religious individuals who argue against the law, while religious individuals who obey the law have no reason to engage in litigation, and indeed, they rarely do. See generally George L. Priest & Benjamin
bias could mask the actual frequency of compliance with antidiscrimination law and prevent the motivations and modes of reasoning of religious law-abiders from reaching the courts and public attention. Selection bias could also obscure the broader question of which factors impact decisionmaking in conflicts between antidiscrimination law and religious convictions.30

To understand the impact of antidiscrimination law on religious behavior, this Article goes beyond the biased sample of cases that reach the courts to look at how a general religious population reacts to the law, as well as to alternative legal means of enforcement.31 To date, there has been almost no attempt to research these questions. I draw on two decision experiments with over 3500 religious individuals and in-depth interviews with senior religious managers to empirically simulate and examine religious decisionmaking at two important junctions: first, at the outset of conflict, before any litigation takes place, and second, in the aftermath of litigation. This design allows me to carefully examine religious objection before and after judicial intervention and explore how different legal outcomes and fairness in court proceedings impact religious decisionmaking in further instances of conflict.

While this project is informed and influenced by the traditional constitutional analysis of the conflict as a clash between religious values on one side and liberal values on the other, my approach is fundamentally different. Rather than assuming that civic values are foreign to a faith-based perspective and that law and religion only meet in court, I examine how normative conflicts are perceived and handled by religious individuals. My data reveals that the conflict of values is internal to religion, in that it is found across all religious denominations and levels of practice. Two competing religious approaches appear to be at play: a “firm hand” approach that emphasizes religious prohibitions and is likely to cause tension with antidiscrimination law, and a “kind heart” approach that emphasizes religious compassion and substantially reduces conflict with antidiscrimination law. I subsequently find that most religious individuals


30. Such concerns have been raised, but have not been empirically addressed. See Hamilton, supra note 18; Okin, supra note 13; Marshall, supra note 15, at 312.

are not inclined to defy the law, even as they believe the behavior protected by antidiscrimination law to be religiously forbidden.

I also find that religious decisionmaking in conflicts between antidiscrimination law and religious doctrine is significantly shaped by the legal response to these conflicts. I find that even religious participants disposed to defy antidiscrimination law are more likely to comply after they learn what outcomes antidiscrimination law dictates. Contrary to prevailing expectations, they are particularly more likely to do so after an order of reinstatement than after a damages award or even a punitive damages award, and they do not appear to find reinstatement less acceptable than damages. This effect appears to be attributable to the different meanings people construe of alternative legal sanctions: while damages are interpreted to mean that antidiscrimination values can be legally traded for money, reinstatement is interpreted as affirmation of antidiscrimination values and their binding power. Strikingly, punitive damages fare worse than both reinstatement and compensatory damages. Their higher cost is not translated into higher deterrence. Instead, they backlash, lowering intentions to obey the court and raising intentions to resist the law in future conflicts with religion. Based on these findings, I challenge the existing doctrine regarding religion and antidiscrimination, and I discuss potential implications for the design of religious accommodations.

Now that the cornerstones for the discussion are in place, this Article proceeds with Part I to present the theoretical background for this Article, which is grounded in the literature on why people follow the law or disobey it. Part II empirically applies the theory to the conflict between antidiscrimination law and competing religious norms. Lastly, Part III discusses the implications of my findings.

I. Why Do People Follow Laws: Outcomes, Process, or Norms?

To assess why people follow or do not follow antidiscrimination law that conflicts with religious convictions, one must first examine why people follow the law in general. Several different explanations exist. Economic analysis theory emphasizes the role of outcomes in decisionmaking and argues that people adhere to the law only to the extent they find it beneficial. In contrast, procedural fairness theory argues that costs and benefits are secondary to what really guides people, which is the fairness of the procedures by which outcomes are decided. If legal authorities—legislatures, governments, and courts—operate

according to fair procedures, people will be inclined to obey the outcomes of these procedures even when they bear costs rather than benefits. 33 A third theory suggests that people internalize the values that the law institutionalizes and follow them not for the cost of law or the process by which it was enacted, but out of a sense of moral commitment, if not to the specific value protected under the law then to the normative system as a whole. 34

Clearly, no one model can explain behavior for all people, situations, and times; rather, each of these models has some predictive power in some circumstances. 35 Furthermore, it is almost impossible to extricate the incentivizing aspects of the law or its procedural aspects from its normative aspects. In Part I.A, I lay out the basics of the economic analysis theory and point to two ways in which norms complicate this analysis. First, many people consider some values sacred and beyond any cost-benefit analysis. Second, when values are the central motivators of behavior, monetary incentives may crowd out compliance by making normative commitments seem like simple trade-offs. In Part I.B, I lay out the theory that procedural fairness motivates compliance by bringing people to associate just procedures with just laws. I point to the challenge of doing so when the justifications for the law are questioned by a value system as entrenched as religious morality. Two questions emerge from the discussion. First, might monetary remedies such as damages erode legal commitment, and could performance requirements such as reinstatement reinforce it? Second, can procedural fairness encourage adherence to laws that conflict with religious beliefs? These questions are then studied and answered in Part II.

A. Compliance with the Law: A Question of Costs or Norms?

The most pervasive approach to analyzing behavior in legal writing is the economic analysis of law, according to which the individual is a rational maximizer who makes decisions based on a cost-benefit analysis.

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This theory assumes that each individual has a utility function reflecting her preferences, desires, and personal taste—a function that the individual seeks to maximize. To decide whether to obey a particular law, the individual assesses the benefits (material or other) and costs (shame, stigma, incarceration, fine, and so on) she is expected to incur as a result of compliance or noncompliance, and she weighs them against each other. Economists assume that as long as the legal system provides sufficient (dis)incentives, individuals will obey the law. Importantly, any incentive structure depends not only on its magnitude but also on the probability of its application, since a high penalty has zero value if it is never enforced (at least in economic terms).

The assumption that people engage in a rational calculus has been roundly criticized in recent years by behavioral scientists. For our purposes it is sufficient to point out that no one disputes that legal sanctions, whether monetary or nonmonetary, are likely to play a deterring role. Indeed, people do not exhibit “perfect” rationality in their cost-benefit analyses, but their behavior nonetheless reflects the tremendous impact of economic considerations. Abundant studies have demonstrated that many people willfully break rules when it benefits them to do so, and that social sanctions alter payoff structures and reduce antisocial behavior. This influence, however, deviates in predictable ways from neoclassical economic predictions. To name a couple, people are more heavily influenced by the probability of enforcement than the severity of the sanction, and they observe reality through a screen of self-serving biases and are overly optimistic that they will not be caught.

36. Becker, supra note 32.
41. See Ernst Fehr & Urs Fischbacher, Third-Party Punishment and Social Norms, 25 EVOLUTION & HUM. BEHAV. 63 (2004); Ernst Fehr & Herbert Gintis, Human Motivation and Social Cooperation: Experimental and Analytical Foundations, 33 ANN. REV. SOC. 43 (2007) (describing evidence that many individuals do not cooperate if no punishment mechanisms are operative and that individual self-interest largely dominates behavior in lab experiments).
42. This violates Becker’s equal weight assumption. See Becker, supra note 32; see also Raymond Paternoster, Decisions to Participate in and Desist from Four Types of Common Delinquency:
More central to our topic is the manner in which norms and identities challenge the economic analysis model. From an economic perspective, norms are typically conceptualized as external incentives that motivate or discourage behavior through shame, pride, stigma, spiritual uplifting, and so on. In this model, individuals comply with norms (legal or religious) based on whether these norms maximize personal utility. From yet another economic perspective, norms can be thought of as internal preferences that shape how people value different outcomes. For example, differing normative commitments (such as early wake ups on the weekend) would make church attendance extremely costly to one individual but a significant source of gain (spiritual, social, or other) to another.

The external and internal economic accounts of norms appear reductive to many. They also do not grasp some of the primary mechanisms through which norms and laws impact behavior. People follow norms and laws even when they derive no apparent benefit as a result—not even nonmaterial gains such as reputation or meaningful relationships. Two examples are particularly relevant. The first is sacred values. Ample evidence demonstrates that for many people, some values are considered beyond any cost-benefit analysis. People do not calculate the price of honor, responsibility, or loyalty. They resist opportunities to trade these values for money or other concrete utilities, and they also condemn and punish others who attempt to commit such trade-offs.

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44. See generally Louis Kaplow & Steven Shavell, Moral Rules, the Moral Sentiments, and Behavior: Toward a Theory of an Optimal Moral System, 115 J. POL. ECON. 494 (2007) (examining how a “social planner” would associate moral feelings with acts to induce behavior fostering social welfare); Shavell, Law Versus Morality, supra note 31 (examining the various intersecting roles of law and morality in controlling behavior).

45. Gary S. Becker, Accounting for Tastes 225 (1996) (“Norms are those common values of a group which influence an individual’s behavior through being internalized as preferences.”). The idea was expanded and formulated in George Akerlof & Rachel Kranton, Economics and Identity, Q.J. ECON. 715 (2000); George Akerlof & Rachel Kranton, Identity and the Economics of Organizations, 19 J. ECON. PERSP. 9 (2005).


47. See Jonathan Baron & Mark Spranca, Protected Values, 70 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 1 (1997); Daniel Kahneman et al., Shared Outrage and Erratic Awards: The Psychology of Punitive Damages, 16 J. RISK & UNCERTAINTY 1 (1998); Robert J. MacCoun, The Costs and Benefits of Letting Juries Punish Corporations: Comment on Viscusi, 52 SYAN. L. REV. 1821 (2000);
This behavior is antithetical to the economic concept of norms. Using the words of moral psychologist Philip Tetlock, “[o]ur commitments to other people require us to deny that certain things are comparable. Even to contemplate attaching a finite monetary value to one’s friendships, children, or loyalty to one’s country is to disqualify oneself from membership in the associated moral community.”

The general aversion for valuating sacred norms in economic terms may also serve to avert the influence of economic incentives in normative contexts. Under standard economic analysis, incentives should either yield the expected behavioral change or leave behavior intact. But incentives can also backfire. Payment can reduce the propensity for volunteering or donating blood and fines can increase the propensity for being late to pick up one’s children from daycare. In contexts where virtues, care, and love are the central motivators of behavior, monetary incentives “crowd out” desirable behavior by making normative commitments seem like crude trade-offs. Hence, there is more to incentives than their sheer value: they convey messages about the norms to which they are linked. Attaching fiscal value to norms reduces their behavioral impact by eroding legal commitment.

Scholars have long emphasized that the law has an expressive function beyond its coercive function. It signals that certain actions are wrong and other actions are permissible, and these normative messages alter values, norms, and behavior. Some data indicates that laws that challenge moral convictions might even cause people to adjust their values to reduce the cognitive dissonance between the law and their moral beliefs. The research on how laws—and sanctions—influence


50. Frey, supra note 49; Frey & Jegen, supra note 49.


54. See Leonard Berkowitz & Nigel Walker, *Laws and Moral Judgments*, 30 SOCIOLOGY 410, 413 (1967) (describing an experiment that surveyed participants on the morality of various behaviors and then informed them on “laws recently enacted” that either prescribed or proscribed these behaviors;
intrinsic normative commitments yields intriguing questions regarding conflicts between law and religion. Might monetary sanctions erode legal commitments? Can upholding the law—for example, with performance sanctions—strengthen these commitments?

Part II.C presents novel empirical data that answers these questions. It also provides data on the second model that seeks to explain adherence to the law—to which I shall turn now.

B. Compliance with the Law: A Question of Procedure or Content?

Can the quality of legal processes—in particular, their fairness—impact decisions in conflicts between law and religion? Based on the vast literature on procedural fairness, the answer should be affirmative.

In contrast to economic theory, the procedural fairness theory argues that costs and benefits are secondary to what really guides people—the morality of the law and the fairness of the procedures by which laws are enacted and legal decisions are made. In a series of influential works, legal psychologists Tyler, Darley, and their colleagues argue that compliance is mostly not a function of legal or social sanctions, but rather of an internal “feeling of obligation or responsibility to act appropriately.”\(^55\) Such internal obligation reflects the extent to which the law is perceived as legitimate,\(^56\) and when legitimacy exists, individuals are willing to suspend their personal judgment and defer to the judgment of the lawmaker, believing that the law is entitled to determine standards for behavior.\(^57\)

What motivates people to accept the law or defer to the judgment of legal authorities? Early processes of socialization and education, legal culture, and direct assessments of the morality of the law are clearly formative. Yet psychologists discovered that legitimacy judgments also hinge on factors other than direct assessments of the authority—factors to which they refer as the determinants of procedural fairness.\(^58\)

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“Fairness” in this context encompasses several different concerns about justice and equity. Its first psychological determinant is trust in the authorities’ motives and intentions. The second is believing that authorities act and promulgate laws based on nonbiased, neutral consideration of the facts. The third is feeling that the authorities treat individuals with dignity and respect. The more individuals feel that legal authorities demonstrate these procedural qualities, the more they perceive them as legitimate, and the more they are willing to accept and follow the law as applied to their cases. Many studies demonstrate that fairness concerns often trump outcome concerns. For example, participants in various economic games are willing to incur personal costs to reject outcomes that they believe have been achieved through unfair procedures. A host of surveys report that people evaluate their legal interactions based on whether they perceive the courts that presided in their cases as procedurally fair, and that the fairness impact is greater than the impact of the outcomes of the proceedings, be they favorable or unfavorable.

Clearly, procedural fairness is not the only way by which people come to feel obligated to social institutions and norms. People also seek “to behave in accord with one’s sense of what is appropriate and right to do in a given situation”—their moral values. Quite often, morality drives individuals’ behavior, irrespective of legality. For instance, when individuals refrain from punching someone who insulted them, they do so because they perceive this act as “morally wrong,” regardless of its legality. Conversely, when they do punch the insulter, they often do so because they feel she “deserves it,” again irrespective of the law. Laws that do not rest on clear moral grounds—like traffic laws, substance abuse laws—are frequently violated, at least partially because people see

59. This Article follows the body of literature on procedural fairness, particularly pertinent to compliance decisions. Yet fairness can also be a direct attribute of the outcomes, as a matter of distributive justice. For a meta-analysis comparing the impact of procedural fairness, distributive fairness, and outcome favorability, see generally Linda J. Skitka et al., Are Outcome Fairness and Outcome Favorability Distinguishable Psychological Constructs? A Meta-Analytic Review, 16 Soc. Just. Res. 309 (2003).


61. Huo et al., supra note 60, at 40; Tyler, Multiculturalism, supra note 60, at 991.

62. Huo et al., supra note 60, at 40; Tyler, Multiculturalism, supra note 60, at 991.

63. These perceptions need not be based on firsthand experience, but can also be shaped by the media and informal reports of others. See Tyler, Psychology, supra note 33, at 35; Tyler, Multiculturalism, supra note 60, at 990.

64. For a helpful review, see Stout, supra note 46.


66. Tyler, Legal Design, supra note 33, at 27.
no wrong in breaching them.\textsuperscript{67} Not surprisingly, the evidence shows that people are more willing to comply with laws that are congruent with their moral values.\textsuperscript{68} They also rate morality as the chief reason for compliance—far above legitimacy and the risk of detection.\textsuperscript{69} 

Like assessments of legitimacy, assessments of morality denote an internal feeling of responsibility to follow the law. But unlike assessments of legitimacy, assessments of morality pertain to the substantive content of the law, rather than the characteristics of its authority.\textsuperscript{70} Tyler and his colleagues do not explore factors that directly influence perceptions of morality in relation to the law, noting that such perceptions are usually traced to early childhood.\textsuperscript{71} However, fully aware that compliance that hinges on moral congruency might be limited to morally congruent laws,\textsuperscript{72} they argue that procedural fairness not only renders the law more legitimate, but also promotes the view that the law is congruent with one’s morality. In Tyler’s words: “[P]eople’s views about the morality of rules are responsive to procedural justice. If legal authorities make decisions and implement rules following fair procedures . . . people are more likely to view the law as consistent with their own moral values.”\textsuperscript{73} The mechanism at work here is individuals’ association of the quality of the treatment they receive with the appropriateness of the law—the treatment reflects back on the law and establishes it as moral.\textsuperscript{74} Furthermore, 

\begin{quote}
procedural justice judgments . . . shape the reactions of those who are on the losing side of cases. If the person who does not receive an outcome that they think is favorable or fair feels that the outcome was arrived at in a fair way, they are more likely to accept it.\textsuperscript{75}
\end{quote}

Therefore, procedural fairness not only impacts perceptions of morality and legitimacy, it also mitigates utility considerations.

Should these striking findings hold true for situations where laws are not only inconsistent with moral values but also conflict with deep-seated
values (and beliefs and norms), they give us cause for optimism about mitigating tensions between law and religion. If legal authorities keep legal proceedings fair, benevolent, neutral, and respectful, people will be more willing to defer to laws they would otherwise perceive to be incongruent with their beliefs and social tension will decrease. In addition, if procedural fairness is a key to adherence, perhaps the role of accommodations has been overstated in the literature.\textsuperscript{76}

The prospect of encouraging compliance through procedural fairness is particularly appealing considering that conflicts between law and religion involve, in addition to divergent normative standards, a significant legitimacy gap. Whereas the legitimacy of legal authorities and the law itself is always debatable, religious commandments and commitments are inherently legitimate—if not sacred—from the perspective of their adherents. How does procedural fairness fare then, compared to and in conjunction with legal outcomes and moral values? The question becomes pressing when law’s normativity is at odds with people’s normative commitments, destabilizing and perhaps suspending their internal commitment to the law. This is the focus of the next Part.

**II. Decisionmaking Under Conflict: Qualitative and Experimental Evidence**

The following presents first-of-its-kind qualitative and experimental data on how people perceive and resolve conflicts between their religious and legal commitments. The data provides both theoretical understandings and practical lessons, but they also consist of multiple layers and methodologies that might occasionally be difficult to digest. The following paragraphs outline the main findings and provide a roadmap for the rest of the Part.

I begin with an explanation of my methodology in Part II.A—how I interviewed religious managers to learn about their conflicts and how I designed and collected data for the decisionmaking experiments presented here. I proceed to present my analysis of the interview data in three parts. First, I analyze how religious managers view conflicts between antidiscrimination law and religion—what instances they refer to and what they emphasize about them. I find four elements that tie the majority of conflicts together and argue, in Part II.B, that a conflict is made of (1) a claim for autonomy, (2) which centers on the regulation of people other than the religious objector, (3) for engaging in a religiously proscribed behavior which is protected by antidiscrimination law, (4) typically involving sex and sexuality. I acknowledge this unifying structure to clarify the scope of conflicts relevant to this Article and the possible reach of the empirical conclusions.

\textsuperscript{76} See supra notes 16–18 and accompanying text.
Second, I shed light on how religious managers handle conflicts at the religious (not legal) level, namely what they do in the face of behavior that is at odds with religious norms. In Part II.C, I identify two dominant (religious) approaches to such conflict: a “firm hand,” which seeks to exclude the moral offender, versus a “kind heart,” which seeks to include the moral offender. I show that both approaches lean on religious values and reasoning, yet the latter largely avoids conflict with antidiscrimination law. This phenomenon will help explain the findings of the experiments later on.

In Part II.D, this Article turns the focus from the religious to the legal realm and shows that, when conflicts reach the court, religious managers are willing to pay for their normative autonomy and seek financial settlements to avoid complying with substantive antidiscrimination obligations. This raises an intriguing—and troubling—question: can damages really reconcile conflicts between law and religion or do they erode the normative and instructive weight of the law?

Two experiments in Part II.E test this question and the additional role that procedural fairness might have in shaping the answer. Experiment One examines a sample of 1300 American Christians for how damages versus reinstatement, ordered by a standard versus particularly fair court, influence the decision to adhere to antidiscrimination law. I find that outcome and procedural fairness exert no direct impact on obedience to the court decision, but damages engender substantially lower adherence to the law than reinstatement. I argue that this result is due to the normative message conveyed by each outcome. While a monetary award signals that the law can be traded off, reinstatement upholds the law’s normativity. I further demonstrate with data how a judgment of reinstatement serves as a teaching moment that moves some individuals from the “firm hand” approach to the “kind heart” approach.

In Experiment Two, I replicate and expand these results. I show how decisionmaking is produced by religiosity, religious affiliation, and pertinent religious beliefs. I show that the advantage of reinstatement over damages holds for punitive damages. I further advise against punitive damages, as the data show that they reduce obedience to the court and reduce support in the rule of law and democracy. This is the thrust of my empirical argument, which I will now establish and support with the data.

A. Methodology

How can we examine the impact of a fair court or a strict sanction on behavior? Multiple empirical methodologies exist and each has its own benefits and limitations. As others have expansively discussed, diverse methodologies should be pursued to triangulate social science problems and maximize external validity (the ability to draw inferences
from the research to real world settings). The complexity of normative conflicts between religion and law in particular requires mixed methods research. Firstly, obtaining conclusive information on decision processes pertaining to discrimination and civil rights disputes is very difficult, particularly for decisions made in relatively insular and intimate settings like religious organizations. In addition, many discrimination disputes do not even reach the courts, rendering a systematic empirical study of court decisions unsatisfactory for the purposes of studying decisionmaking in these conflicts. While in-depth interviews may provide rich observation of the motivations and experience of religious decisionmakers, the result does not often lend itself to generalization and causal inference. The golden method to answer questions of causality is to conduct field experiments, but in the present case, serious ethical concerns advise against such experimentation.

In light of the above, experiments outside the field (for example, lab or web-based studies) offer a fruitful alternative; they avoid the ethical concerns of a field experiment while sharing some of the key advantages, namely the ability to determine causality and provide the basis for generalizations (on condition that they use sufficiently large samples drawn from populations relevant to the questions asked). They are also capable of capturing real time decisions and control for important variables of interest. Their main drawback is that they usually present only a rough sketch of the situation and are criticized for lacking realism.

This Article introduces a methodology that takes advantage of both qualitative and quantitative experimental methods in an effort to deal with many of the problems outlined above. While each method has its pitfalls, they complement each other to construct a rich portrait of decisionmaking under normative conflicts between law and religion. I use this approach to make several empirical and theoretical contributions.

79. Imagine that litigants were randomized to receive different sanctions and procedures, reinstatement or damages, fair or unfair, based on study needs rather than merit and equality. Randomization is the one absolutely necessary requirement underlying any field experiment, yet it would deem an arbitrary application of the law per the individuals involved. It would therefore fail any ethical board review. This is not to undermine or advise against the use of field experiments in law in other contexts; the particular problem lies in experimenting with court outcomes, not in the very idea of experiment.
My methodological approach is twofold. First, in-depth interviews were conducted with a diverse set of religious decisionmakers to understand the range of conflicts they experience and how these are handled in practice. First, in-depth interviews were conducted with a diverse set of religious decisionmakers to understand the range of conflicts they experience and how these are handled in practice. The sample was recruited using the snowball method and consisted of seventeen religious school managers: principals, presidents, superintendents, and education administrators from across the United States, primarily from New England, the Midwest, the South, and the West Mountain region, all of whom are Catholic. The interview data produced over twenty hours of audio and 400 pages of transcripts, which were then coded and analyzed using the grounded theory approach. Additional data was collected from relevant websites, public documents, and Christian media and forums.

Secondly, a decisionmaking experiment was designed, focused, grounded, and animated on the basis of the main trends revealed in the qualitative analysis. In particular, the interview data revealed that conflicts regarding sexual norms are among the primary tensions that preoccupy religious educators (often to their stated dismay), and that the dilemmas typically involve a choice between tolerating violations of religious doctrine (for example, out-of-wedlock pregnancy or gay marriage) and taking adverse action against the “perpetrators” (usually by terminating their employment). In short, these were dilemmas between enforcing religious doctrine and refraining from doing so. I therefore focused the experiment on a scenario that involved all of these elements: sexuality, religious doctrine, antidiscrimination law, and questions regarding the application of religious doctrine and the fear of condoning its violation. These elements were embodied in the paradigmatic scenario of a teacher who becomes pregnant out of wedlock.

The vignette and all other materials used were designed based on the detailed descriptions of the religious educators, producing highly realistic and culturally precise decisionmaking dilemmas. To ensure cultural appropriateness and maximize external validity, the experiments were reviewed by multiple religious individuals and administered by a large national survey company, and only individuals identifying as

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81. Interview transcripts are on file with the author who assumes full responsibility for cites.
82. The snowball method is a common technique used to gain access and study insular populations. The sensitivity of the issues discussed (which included details on potential breaches of law) and the rank of the targeted pool of interviewees required the use of snowball sampling. Prior to that, several attempts were made to recruit religious managers on a broad basis through publicly available contact information, to no avail. See Patrick Biernacki & Dan Waldorf, Snowball Sampling: Problems and Techniques of Chain Referral Sampling, 10 Soc. Methods & Res. 141, 152 (1981).
84. That company is Survey Sampling International, Inc. See Kahan, supra note 80 on the inappropriateness of the conventional online labor markets (for example, Amazon Mechanical Turk) for a study that seeks to examine conservative religious decisionmaking.
Christian were recruited to participate.\textsuperscript{85} The interview data further assisted in the interpretation of several experimental results.

This hybrid, multistage approach transmits the depth and validity of qualitative research into the breadth of quantitative studies, generating decisionmaking experiments from in-depth, contextual, and culturally sensitive qualitative data.\textsuperscript{86} The resulting experiments presented in Part II.E make innovative contributions to the literature. First, they expand current theories on the relative importance of outcomes and procedures to a context of compliance that had not been studied previously through these methods. Second, the results challenge the conventional wisdom of both the economic and procedural fairness of compliance. I begin by contextualizing these studies within the experiences of my interviewees with respect to how they view and act in conflicts between antidiscrimination law and their faith.

B. What Makes a Conflict

“[R]ules against birth control, rules against abortion, rules against gay and lesbian. Those all get to the sexual instincts . . . . Our sexual practices, our control of those sexual practices.”

–Manager #2

In the 1980s, some Christian groups believed that mothers of young children should not be allowed to work outside the home;\textsuperscript{87} others believed that God proscribed interracial relationships.\textsuperscript{88} These beliefs were institutionalized into employment and admission practices in schools and affiliated universities, which then dismissed employees who became pregnant, and conditioned, denied, and terminated the enrollment and employment of black people who did not comply with interracial dating bans. Today, few people of faith would disagree that these practices constitute discrimination and indeed, they are no longer in place.\textsuperscript{89} But other moral controversies, old and new, are still burning, pervading workplaces and businesses: premarital sex and pregnancies; same-sex

\begin{itemize}
\item\textsuperscript{85} Descriptive data on the sample is provided in Part II.E \textit{infra}. To examine whether the dilemma presents a specific conflict to religious individuals rather than an instance of general bias which is not necessarily religious, Experiment Two recruited a sample of nonreligious individuals based on the same characteristics, in addition to the religious sample.
\item\textsuperscript{86} Though field experiments would be ideal were there not substantial ethical concerns, previous research demonstrated that real life materials significantly improve the external validity of decisionmaking experiments and achieve similar results to those reported in field studies. \textit{See} Shelley J. Correll et al., \textit{Getting a Job: Is There a Motherhood Penalty?}, 112 Am. J. Soc. 1297, 1327 (2007).
\item\textsuperscript{87} \textit{See} Ohio Civil Rights Comm’n v. Dayton Christian Sch., Inc., 477 U.S. 619, 623 (1986).
\item\textsuperscript{88} Bob Jones Univ. v. United States, 461 U.S. 574, 580–81 (1983).
\item\textsuperscript{89} Only in 2000 did Bob Jones University revoke its ban on interracial dating and cease conditioning admission of students of color upon committing to abstain from interracial relationships, following renewed public attention and criticism. \textit{See generally} Minow, \textit{supra} note 3. Dayton Christian Schools, like most other religious schools in the country, employ young mothers today.
\end{itemize}
marriage; abortion and contraceptives. As Manager #2 bluntly explained, most tensions evolve around sex and sexuality.

While the controversies that feed the tension between religion and antidiscrimination law have changed over time, their general characteristics have remained similar. Though conflicts take place in a variety of legal contexts—dismissing pregnant or gay teachers, denying service to gay customers, or refusing health care coverage of contraceptives—many religious managers were likely to think about these conflicts as instances of the same problem. What, then, are the elements of the conflict?

Firstly, each conflict presents a claim of autonomy, and specifically the right to administer one’s affairs—of whatever type and scale—according to one’s beliefs, and to avoid “the federal government telling [one] what to do” (Manager #9). Traditionally, religious claims of autonomy have centered on schools and other institutions designed to carry out their religious mission. Yet, as recent cases demonstrate, other entities—including for-profit businesses—may develop ambitions to carry the mission and seek the autonomy to do so. Many managers viewed the educational and commercial claims as similarly justified: “I support what they’re [Hobby Lobby] trying to do, with the government telling them what they can—I mean, forcing them to do something against the beliefs of the owner” (Manager #7). The nomos (normative world) that religious managers discussed included canon law, but was not limited to it. Rather, it often comprised an intricate set of hard and soft commitments and convictions. This nomos, like any law (including civil law), was open to competing interpretations and was inherently indeterminate and case-specific—as Manager #2 noted: “decisions in these cases are very local . . . they can come down on any side.”

The second cornerstone of the conflict is the relationship between the religious person and the morally disputed act, which is typically indirect: it is someone else who violates religious norms by engaging in premarital sex, wedding a same-sex partner, or using contraceptives. Nevertheless, most religious managers believed they have a duty to condemn these violations and not to abet them. They did not view their moral responsibility in these cases as remote or attenuated. Rather, they viewed requirements to provide services to moral offenders and/or

91. The “attenuation” argument was made by Justice Ginsburg in her dissent in Hobby Lobby. Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751, 2790 (2014) (Ginsberg, J., dissenting) (“I would conclude that the connection between the families’ religious objections and the contraceptive coverage requirement is too attenuated to rank as substantial.”). Similar points were made by the federal appeals courts that rejected recent challenges to the Health and Human Services (“HHS”) contraceptives accommodation. See infra note 158 and accompanying text.
prohibitions against removing them from employment as coercion into violating their own values and rules.

The third element from which conflicts between faith and law evolve is related to the indirectness of the act: the regulation of other people—religious or nonreligious, employees, students, patients, or customers. The attempt to regulate others is clearly the core of the problem from a legal perspective.” Yet from a religious perspective, this is the crux of the religious enterprise and the very justification for its existence. As Manager #7 explained, “[Jesus] didn’t say to his apostles, ‘serve your own’, and not ‘only hire your own.’ He said, ‘Go out!’ Right? And baptize all people, and teach all people.”

The detrimental impact that such regulation might have on its subjects occupies a more peripheral place in religious argumentation. Loss of employment or health insurance is rarely discussed, nor are the implications of being excluded, denied service or access. Instead, the perspective focuses on the offender’s moral responsibility for “breaking these values” (Experiment One, Participant #936) or “[going] against the standards,” and on the rights and freedoms of other religious stakeholders or the community as a whole (for example, “schools should protect students [from promiscuous teachers] at all costs” [Experiment I, Participant #936], or “parents are paying their money to send them to a school with certain views and morals” [Experiment One, Participant #864]). Penalty and exclusion seem like an inevitable consequence of violating religious norms (“she should have kept that in mind when she got pregnant” [Experiment One, Participant #673]). The enforcers of religious mores, in their view, are not harming innocent others. Rather, the people affected have sinned and should accept the consequences; they should certainly not expect religious people to “pay the price for their lack of moral fiber” as one participant put bluntly (Experiment One, Participant #814). These quotes best capture the normative divergence under which what seems like discrimination from one point of view is a justified (even necessary) exercise of religious authority from another.

The fourth and final element is the diverging legal and religious standards regarding sexuality.93 “[M]ost of these things have to do with . . . gay marriage, contraception, out-of-wedlock motherhood. Or it could be abortion issues, things of that sort,” said Manager #10, and similarly #17.94 The typical conflict involved teachers’ pregnancy out-of-wedlock, or less often, teenage students, or pregnancy that resulted from IVF, which is forbidden for Catholics.95 Another frequently described dilemma involved a homosexual or lesbian teacher whose sexual identity became known, voluntarily or by anonymous informants, for instance, by “disgruntled” parents or concerned colleagues.96 The admission of students from gay families also raised some conflict (“when the pastor found this out, he withdrew the admission” [Manager #2]). Issues of contraceptives—birth control education or health insurance coverage—also featured regularly. The interviews were conducted shortly before the Supreme Court decision in the Hobby Lobby case of which most educators were very cognizant, describing how the Affordable Care Act (“ACA”) directly affected their institutions or dioceses.97 These dilemmas were familiar to all principals, and those who did not encounter them personally had advised others on such matters, or simply followed the social trend with concern, noting that “Catholic schools are counter-culture” (Manager #5) and that “part of the cultural problem, issue, struggle, is that the Church has always lived in a pluralistic world” (Manager #14). The intensity of the conflict between society and the Church regarding sexuality was almost a source of anxiety. A president of a Catholic high school in the Midwest was particularly apprehensive of the day he would have to deal with a public coming-out of a gay teacher:

93. There are exceptions, however—sexuality was not an issue in the Hosanna-Tabour case, for example—at least not to the extent evident in the decision and in the memorials submitted to court on behalf of the parties.

94. Other tensions were sporadically mentioned—general tensions arising from hiring nonreligious individuals or catering to a religiously diverse student body (many Catholic schools today admit a significant number, in some schools even a majority, of non-Catholic students), strict vaccination policies that allow for no exemptions, and undocumented students and other immigration issues (primarily in the South).

95. Interview with Manager #1 (Feb. 2014); Interview with Manager #2 (Feb. 2014); Interview with Manager #4 (Mar. 2014); Interview with Manager #5 (Apr. 2014); Interview with Manager #8 (May 2014); Interview with Manager #9 (May 2014). IVF was a “huge one,” according to Manager #9, as “the church rejects in-vitro surrogacy, all those kinds of methods. They only endorse natural conception and adoption. People who want to have babies using other methods, then, that can cause them to lose their job.” Id.

96. Interview with Manager #2, supra note 95; Interview with Manager #13 (June 2014).

97. Interview with Manager #1, supra note 95; Interview with Manager #5, supra note 95; Interview with Manager #7 (May 2014); Interview with Manager #13, supra note 96; Interview with Manager #14 (June 2014); Interview with Manager #16 (June 2014); Interview with Manager #17 (July 2014).
There is going to be in [the area] a precedent-setting case, and I think every Catholic school, and this has come up through the Association of Catholic Schools Presidency in the area [refers to the local Catholic Education Association, N.B.C.] and in conversation, I think every school hopes that it’s not their school that is the first to see what that precedent will result in, but we all know that we’re facing this same dilemma.  

C. HOW TO SUSTAIN RELIGIOUS ORDER: A FIRM HAND OR A KIND HEART?

In studying these conflicts, it became clear that there were two typical modes of response to them: a “firm hand” and a “kind heart.” “Firm hand” managers argued that removing the offense or offender is imperative, because the organization cannot succeed in instilling the Church’s teachings while having “in the building” an individual (for some, only employees; for others, also parents and students) who violates these teachings (“that would speak in direct conflict to what you’ve been teaching the students” [Manager #5]). From this perspective, dismissing the individual is not disparate treatment, but an appropriate reaction; the person is no longer able to perform her job because her ability to serve as a role model for students is substantially compromised by her behavior.  

Managers’ use of language illuminated how they perceived their moral obligations in these cases: not dismissing was equal to “condoning” (Manager #2). Keeping the person was framed as an active choice to “enable” the individual “to continue to teach” (Manager #13), while dismissing her was a passive “letting go.” This framing changed the moral reference point, such that the salient consequences became those for the community (how school, students, and parents are affected) rather than those for the person losing their job (who was merely being “let go”). This logic was applied to all “employees in the building,” even cafeteria employees (Manager #9), and certainly was not limited to ministers.

“Kind heart” managers framed the dilemma and the values and interests at stake very differently. For them, there were more religious values bearing on the decision than merely the one being violated including love, compassion, forgiveness, support, humility, and refraining from judgment. In addition, the consequences for the moral offender were salient to them. Manager #9, an administrator overseeing many school districts, said: “We have bishops that say, ‘No, we are going to forgive them. They can still teach. They have health insurance. They didn’t have an abortion. That’s a good thing. So we’re going to fully support them.’” Manager #2 also emphasized the complexity of the

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98. Interview with Manager #13, supra note 96.
99. Interview with Manager #1, supra note 95; Interview with Manager #2, supra note 95; Interview with Manager #5, supra note 95; Interview with Manager #6 (May 2014); Interview with Manger #7, supra note 97; Interview with Manager #9, supra note 95; Interview with Manager #12 (June 2014); Interview with Manager #13, supra note 96; Interview with Manager #14, supra note 97.
dilemma as various doctrines regarding premarital sex and abortion lead in different directions. Describing a change of heart in a diocese that dismissed unwed and pregnant teachers, leaving them empty-handed, but then offered them a full year’s pay and maintained their health insurance, she said: “I just feel as though, they felt like maybe we need to have a little more of the milk of human kindness in our legal decisions as well.”

Manager #8 had a record of not expelling or dismissing individuals for pregnancy out of wedlock, abortion, or gay relationships. Her philosophy was that: “Although we cannot support the decision that you made, we can support you” and “[w]e believe that God may not love the sin, but he always loves the sinner. And, we can do no less.” Notably, managers taking the “kind heart” approach did not believe that sex out-of-wedlock or gay marriage is religiously permissible, yet they prioritized the teachings emphasizing kindness, collegiality, and support.

One factor that informs the divergence among religious managers in their use of a “firm hand” or a “kind heart”—and, ultimately, the likelihood of compliance with antidiscrimination law—is whether they perceived the conflict of norms as internal or external to their communities.

Indeed, most managers viewed the trend toward sexual equality and antidiscrimination as emerging from the general nonreligious society, and therefore external in nature. Yet the ideas and values it brought forth were gradually penetrating religious boundaries, transforming the conflict from external to internal and the values at stake from secular values of equality and pluralism to religious values of compassion, forgiveness, inclusion, and humility—the very values that guide the “kind heart” approach. The parallel process by which (1) the arena of conflict relocates from the outside to the inside, and (2) antidiscrimination norms are appropriated and transformed into religious values appears to underlay the shift from “firm hand” to “kind heart” for many managers. The point along the spectrum from external to internal where the conflict was perceived to exist was closely tied to its mode of resolution: divorced from antidiscrimination law or aligned with it. Perhaps counterintuitively, the conflict needed to be perceived as internal to religion in order to ultimately yield adherence to antidiscrimination law. Absent an internal normative anchor, conflict with the law was much more likely.

The first point on this spectrum is at the external and secular pole, where antidiscrimination norms are external to religion and the conflict takes place at the membrane separating the religious society from the outside world. Statements like “Catholic schools are counterculture” (Manager #5), “the struggle comes in between canon law and civil law” (Manager #13), or “[i]t’s not easy being a Christian or a Catholic in today’s world. Our faith asks us to do things that right now are not popular with society”—from a Montana superintendent’s press statement
regarding the dismissal of an unwed pregnant teacher—reveal a view of the conflict as external and antithetical to religion. Under this view, antidiscrimination norms that are based on alternative sexual standards are religiously irrelevant.

At some point, however, antidiscrimination norms might penetrate the religious membrane and begin resonating with members of religious communities. The conflict then relocates to inside the religious community, where it confronts the religious establishment, the inculcator and enforcer of religious norms. While the clergy and schools feel committed to sustaining the traditional normative order, their faith community no longer necessarily shares this commitment. These internal discrepancies can be extremely stressful (a “nightmare,” in the words of Managers #5 and #13) for managers who adopt a “firm hand” approach and make decisions that, though traditionally religious, are nevertheless perceived as discriminatory in their communities. These managers may suffer disapproval and critique for what they often feel is a religious necessity. Manager #10 described an episode in Seattle where a gay teacher married his partner and was dismissed. This decision “created a firestorm for [the principal] and the school community because all of the pushback they got from the stakeholders, you know, the parents, the kids, and so on.” The pushback from the community was so intense that the principal who dismissed the gay teacher eventually resigned.

The third level of internalization occurs when antidiscrimination norms penetrate to the core of the religious establishment itself, and conflict is characterized by divergent positions of administrators and clergy members, or by a struggle that takes place within the individual. Manager #12 described the dilemma of expelling a pregnant teen as one where “your faith kind of gets in the way of what the handbook, per se, states.” At this point of internalization of the conflict, antidiscrimination norms—or, more accurately, the values they protect—seemingly transform. It is hard to separate cause from effect, but managers who described conflicts over unwed pregnancies and same-sex couples as internal (in the sense described here) also perceived them as conflicts between competing religious norms, instructive and calling for opposite decisions. Under this narrative, equality, pluralism, liberalism, and

100. Kelley Christensen, Diocese Stands by Firing Decision; Teacher’s Lawyer Won Similar Case, Mont. Standard (Feb. 6, 2014, 12:00 AM), http://mtstandard.com/news/local/diocese-stands-by-firing-decision-teacher-s-lawyer-won-similar/article_c12a4e44-8dc7-11e3-808b-001a4bc8b7a.html.

antidiscrimination were not primary motivations. Rather, antidiscrimination was reasoned in terms of forgiveness for sin (Manager #9), humility (“we are all sinners” [Manager #2]), evangelism (requiring inclusion [Managers #2, #9, and #11]), compassion (Manager #5), kindness (Manager #2), and love (Manager #15).

While the two spectra I described—conflict internalization and normative transformation—are tied to one another, individuals were not necessarily tied to a single point along these spectra. Indeed, individuals often manifested multiple levels of conflict internalization as they shifted between narratives reflecting different times, communities, or teachings. Yet where the managers narrated a certain conflict as an internal religious debate, they were more likely to describe it in terms of competing religious values, to adopt a “kind heart” approach, and to resolve it in a way that aligned with antidiscrimination norms. In these instances, religious and civic norms converged and their conflict was largely mitigated.

At a more general level, the multiple ways in which the conflict is perceived, processed, and eventually determined reveal two crucial facts. Firstly, religious decisionmaking is dynamic and responsive to external trends and forces that push for change. Secondly, this dynamic takes the specific form of competition between religious values. In this competition, traditional norms regarding sexuality are balanced against more general and widely applicable principles that are used to interpret and justify a nonmoralizing and nondiscriminatory approach. In the debate between a firm hand and a kind heart, one approach tends toward condemning religious violations and excluding religious offenders, whereas the second is inclusive and rehabilitative. These insights become particularly informative when considering the experimental results.

D. Money Can Buy Me Freedom

“My first instinct would be to offer to buy out the contract.”
–Manager #8

In the aftermath of the competition between rival religious approaches, a decision is made. Deciding to dismiss employees for violating religious doctrine or withdrawing enrollment of students from gay families can have legal ramifications. Yet these ramifications were not a salient factor for the managers, perhaps because the course of events rarely led to the courtroom (even in cases of employee dismissals). And for some, they were not even a concern. One conservative manager noted incidentally that “it’s an issue when you have people who are taking advantage of civil rights, but it is not a right that extends to the Church.” (Manager #9). Even liberal managers mentioned civil rights among their lowest

102. In response to a question about what she would do if a court ordered her to reinstate a teacher fired for pregnancy out of wedlock.
concerns (if at all), after “PR nightmare,” “protesters and picketers and students who walk out,” school reputation and enrollment, “people [leaving] the Church,” the extinction of the Church if “the next generation doesn’t buy into the teachings of the Church,” and then finally, “it also gets into civil rights. It’s also a violation of civil rights” (Manager #13). Many educators, regardless of their basic approach—“firm” or “kind”—were confident that should such cases ever reach the courts, the Church would win—if not due to religious freedom, then due to contract law: “in most of the instances, at least in Catholic schools, when word ever came to my attention, the court has found in favor of the school because the school had not been disingenuous. You know, it was spelled out in a contract” (Manager #8). When a court rules in your favor, there is no further dilemma to consider. But what would religious decisionmakers do should the court rule against them? “I would fight till the end a decision to reinstate [the person], which I would see as an interference in our ability to run our schools freely,” said a prominent New England bishop. While other interviewees did not repeat this stance as strongly as Interviewee #1, reinstatement—as well as other impositions of performance duties—was perceived as unrealistic. Yet the managers frequently referred to damages as an acceptable resolution to the conflict (the New England bishop included), and even described instances in which they proactively sought financial settlement, often despite being certain of the morality of their stance.

Manager #8, a former president of several Catholic schools who currently holds a senior administrative position, said: “if the school was ruled against, they would create a financial settlement, in order for the teacher not to return to the classroom.” Referring to the dismissal of a gay teacher, another senior superintendent noted that though the teacher was asked to resign: “it was a very fair letting go . . . you know, with compensation” (Manager #5). Educators also noted that the Church is usually willing to reach financial settlement in these cases, effectively avoiding a lawsuit: “[T]hese teachers were going to sue. But in the end, the Church gave them everything they would have been entitled to,”

103. Interview with Manager #2, supra note 95; Interview with Manager #4, supra note 95; Interview with Manager #5, supra note 95; Interview with Manager #6, supra note 95; Interview with Manager #8, supra note 95; Interview with Manager #14, supra note 97.

[I]t doesn’t happen real often, but if we’re taken to court we’ve always been able to say, ‘Your Honor, here is what we’re trying to do, and here’s the reason for that rule. And here’s how we follow through on it.’ So we have a contract in the very broad sense of the term. The contract we made with our parents, with our faculty, and with our publics.

Id.

104. Interview with Manager #1, supra note 95; Interview with Manager #2, supra note 95; Interview with Manager #5, supra note 95; Interview with Manager #8, supra note 95; Interview with Manager #9, supra note 95.
which was a full year’s pay and benefits; so there was no case” (Manager #20). In the concise words of Manager #6: “Sometimes the Church I guess is sued. And then you have to pay the damages.”

Rejecting performance as interference with autonomy and liberty is expected.105 The consent to payment, however, is surprising given the confidence that managers had in the morality and legality of their decisions. Nevertheless, the mentality that damages are simply a price one pays for religious autonomy, and a natural consequence resulting from certain decisions, was in fact very common. If so, damages might offer a way to settle the conflict through compensation and acceptance of responsibility (on the part of religion), alongside preservation and acceptance of autonomy (on the part of law)—compatible with conventional economic wisdom.

But if damages are perceived as merely a price that religious institutions pay to act according to their values, damages might also be interpreted as a legal permit to discriminate, increasing tendencies to deviate from antidiscrimination law in the long run. This effect has been previously documented in several more mundane and lower stakes contexts,106 but never in the context of conflicts between law and religion. If damages exacerbate the conflict it clearly escapes the notice of the courts that award them while condemning religious discrimination. I therefore examine the impact of monetary sanctions on religious adherence to antidiscrimination law. I conducted two experiments to study the complex interaction between outcome and norms and to examine potential procedural fairness influences.

E. THE IMPACT OF DAMAGES, REINSTATEMENT, AND PROCESS: TWO EXPERIMENTS

1. Design and Research Questions

How do individuals resolve dilemmas that juxtapose religious teachings and civil rights law, and what impact, if any, do legal outcomes and procedural fairness have on their decisions? Following the interviews, two experiments were designed to examine these questions. The purpose was to examine, firstly, what decisions a broad pool of religious people actually makes when facing such dilemmas, and how those decisions are influenced by their religiosity and general demographic characteristics. To what extent are religious individuals inclined to defy antidiscrimination law that conflicts with traditional religious norms?

105. See supra notes 24–27 and the accompanying text.

106. See Gneezy & Rustichini, supra note 51 (explaining that in a field experiment, imposing fines on late daycare pickups increased the number of parents arriving late, supporting the hypothesis that parents interpreted the fine as a price they were willing to pay); see also supra notes 52–54 and the accompanying text.
Secondly, the experiments examine whether particularly fair courts can secure greater obedience to their decisions, and whether people are more likely to obey a monetary award than a reinstatement order. Thirdly and crucially, the experiments examine the question drawn from the interviews regarding the projected impact of process and outcome—namely, how does a mild or strict sanction today influence adherence to the law in future conflicts between church and state?

Following the methodology described in Part II.A, a questionnaire was designed to elicit and test participants’ intentions to adhere to the law. The questionnaire centered on a vignette describing an out-of-wedlock pregnancy dilemma, chosen for its salience in the case law and in the accounts of religious managers. The vignette was written based on the experiences of the managers to create a dilemma that would be relevant and credible from a religious standpoint. Specific Catholic nuances were omitted to fit a broader Christian sample. Several religious individuals reviewed the entire study prior to launch, to ensure that the language and measures were appropriate and adequate given the purposes of the research. The experiment went beyond the managerial population to examine a diverse sample of 1303 Christian individuals.

107. Notably, procedural concerns were not salient in the interviews, as most conflicts discussed by managers were never litigated. Yet in light of the extensive documentation of procedural fairness effects in other contexts, it was important to examine whether they may affect religious decisions in a more controlled setting.

108. See supra Part II.D, and in particular the last two paragraphs of that Part, for further discussion of the role of sanctions in conflicts between the church and state.

109. Focusing on one scenario was necessary to effectively test the research hypotheses, as additional scenarios would have limited the number of questions asked with respect to each scenario and would have resulted in a rather superficial understanding of the motivations involved. Creating more condition groups for additional scenarios would have required doubling the size of the sample for each scenario added. As statistical power calculations already required large samples—1300 participants in Experiment One and 2200 participants in Experiment Two—testing additional scenarios is left to further research. Importantly, though decisions are expected to vary based on the characteristics of the conflict between antidiscrimination law and religious doctrine, the qualitative analysis and evidence suggest that the various conflicts share much in common. For example referring to pregnancy out of wedlock and same-sex marriage, Manager #10 noted that “in both cases you have sexual activity outside the sacrament of marriage. So, I think the bishops would view it as sort of, the same sort of matter.” These perceived similarities facilitated inferences from one case to the other.

110. Notably, the unwed pregnancy dilemma, as well as gay marriage and most other dilemmas discussed so far, are not unique to Catholic institutions.

111. In addition, a pilot (N = 80) including religious and nonreligious individuals was conducted on Amazon Mechanical Turk’s labor market to ensure clarity and comprehensibility.

112. The experiments were administered online by Survey Sampling International, Inc. (“SSI”), a professional survey company founded in 1977 and offering online samples for fifteen years. Participants were drawn from SSI’s panels and various online communities, social networks and websites of all types in the United States. Sample size was determined to be 1300 based on power calculations (80% power, effect size of d = 1). To minimize the impact of partisan bias, recruitment was stratified such that half of the participants were Democrats and half Republicans. A simple free text check ensured that participants read the survey, screening ninety-one participants (6.5% of the original sample). Screening was performed prior to data analysis and data collection continued until
Broadening the study beyond the interview population added validity to the results and made them more generalizable. It also imposed inevitable limitations, however, as nonmanagers are less likely to be involved in handling the relevant conflicts. This concern is mitigated, however, in light of the managers’ accounts that repeatedly emphasized the impact of their communities, including parents and students, on the decisions made in the various conflicts. If religious managers are attentive to their communities, and community members indeed influence the way conflicts evolve, as demonstrated in Part II.C, we may carefully proceed to survey members of these communities under the assumption that their responses reveal valuable information on the actual dynamics of the conflict.

In order to further enhance the external validity of the study—namely the extent to which it approximates and is compatible with real life settings—the dilemma was written and formatted as a news story (Figure 1 below), based on Christian media observations and the interviews. As such, the dilemma was presented in a way that closely tracked how people actually consume information and form judgments on social and legal issues. 113 Participants were informed that the dilemma was written for the purposes of the study, based on a true story. The text of the dilemma noted both religious values and antidiscrimination law, avoiding technical and formal legalistic terms. The dilemma read as follows:

1300 valid responses were collected. The sample was 54% women and 36% Catholic, and the average age was 48.6 years (SD = 16.6 years).

113. These multiple improvements on the conventional vignette method mitigate many of the criticisms addressed toward vignette studies. The current experiment springs from actual experiences of the relevant population and is sensitive to the language that pertinent individuals use to share their stories, and it situates its vignette in a context and format commonly used for reading and forming judgment.
Following the story, participants were asked what they would do if they were the principal of the school. They answered using a scale ranging from -5 (definitely dismiss the teacher) to 5 (definitely not dismiss the teacher) with 0 as scale midpoint. In this Article’s terminology, this decision reflected participants’ intended adherence to the law.

Participants proceeded to read the dilemma’s sequel: the principal decided to dismiss the teacher, and the teacher filed suit. At this point, participants were randomized to read one of four descriptions of the legal proceedings:

1. The court deployed standard procedures and ultimately decided to reinstate the teacher;
2. The court deployed particularly fair, neutral, and respectful procedures, and ultimately decided to reinstate the teacher;
3. The court deployed standard procedures and ultimately decided to order the school to pay compensations for lost pay and benefits but did not reinstate the teacher;
4. Likewise, only that the court deployed particularly fair procedures.\(^{114}\)

\(^{114}\) The dilemma presented to participants, with the question: if you were the principal, what would you do? Notably, cases of teacher dismissal due to pregnancy out of wedlock span a variety of roles, positions, affiliations, and personal circumstances. To keep the dilemma general, I avoided further teacher specifications.
In all condition groups participants read that the court decided that “it was unlawful to dismiss the teacher” and the only difference with respect to the outcome was in the nature of the order: whether the school was ordered to compensate the teacher for lost pay and benefits or whether it was ordered to reinstate her. Participants were then asked what they would do now (still as the principal), providing their responses on a scale ranging from -5 (definitely not comply with the decision) to 5 (definitely comply with the decision) with 0 as the scale midpoint. They were also given the option to provide additional comments. In this Article’s terminology, this decision reflected participants’ intended obedience to the court.

Finally, the projected effects of the nature of the court decision were tested, as participants were asked to respond to the following situation: “A year after the court’s decision a virtually identical case happens again, this time with another teacher in your school. What would you do now?”

Participants again provided response on a -5 to 5 scale. In this Article’s terminology, this question examined informed adherence to the law, meaning the decision participants intend to make in the aftermath of a judicial decision and in the face of a new dilemma, with all of the information they now possess on the state of the law and the consequences of dismissal.116

The four experimental conditions created a two-by-two matrix where each participant was randomized to see only one combination of outcome and process. As participants were randomly assigned into different groups, identical in all respects except for the experimental “treatment,” any difference in their responses can be attributed directly to that treatment—the different information on process and outcome. This design allowed for a controlled test of four key questions, beyond naïve adherence to the law:

(1) Do varying degrees of procedural fairness result in different intentions to obey an unfavorable court order?

(2) Do different legal outcomes—reinstatement and damages—result in different intentions to obey the court?

115. The description of the procedures and outcomes followed the same methodology used to create the basic scenario. The procedural fairness manipulation was chosen following a pilot that compared several different options of varying court fairness. The chosen description featured all four widely accepted dimensions of procedural fairness discussed in the literature. See, e.g., Tyler & Huo, supra note 65; Tyler, Why People Obey, supra note 33; Tyler & Mitchell, supra note 71; Tyler, supra note 58. I am grateful to Tom Tyler for invaluable advice regarding the design of this study. For the full text of the four descriptions, see infra Appendix A.

116. In the last section of the study, participants were asked about their general attitude toward the courts and were asked to rate various factors which contributed to their decisionmaking. Demographic information pertaining to religious affiliation, belief, service attendance, worldview, legal training, involvement in lawsuit, and previous experience as a schoolteacher was collected on the last screen.
(3) Do fairness and outcome interact such that people are most likely to obey the decision when the court is both particularly fair and the judgment is relatively mild, and contrariwise in inverse circumstances?

(4) Crucially, do different legal outcomes and/or varying degrees of fairness project an impact on future adherence in conflicts between faith and law?

2. Experiment One: Results

How did religious individuals resolve a dilemma between religious teachings and antidiscrimination law? Notably, most individuals were inclined to adhere to the law, whereas one in four participants (circa 23%) was inclined to dismiss the pregnant out-of-wedlock teacher.117

Participants’ frequency of church attendance was the measure with the highest impact on adherence to the law. Participants who frequently attended services were more inclined to dismiss the teacher, but even daily attendees were slightly more inclined to keep the teacher than to dismiss her (Figure 2).118 Men (26.3%), Republicans (27.6%), and Evangelicals (33%) were more inclined to dismiss the teacher (versus 20.3% of women, 18.3% of Democrats, and 20% to 26% of Catholics and other Christians), yet these effects were simply additives to the robust effect of religiosity on decisionmaking.119

117. Most of the analyses below are based on the raw scale responses (ranging from -5 to 5). In some instances such as here, a dichotomous measure is used for simplification (this did not affect the significance of the results). Scale responses were dichotomized based on the scale midpoint (0) for the three decisions of interest: naive adherence to the law and informed adherence to the law were dichotomized into dismissed or not, and compliance with the court was dichotomized into complied or not.

118. The Pearson Chi Square statistic was 65.529 with six degrees of freedom, \( p < .001 \). Also significant were religious identity, a measure adapted from the classic work of Fred Mael & Blake E. Ashforth, Social Identity Theory and the Organization, in 14.1 Academy of Management Review 20 (1989), and identity fusion, adapted from William B. Swann Jr. et al., When Group Membership Gets Personal: A Theory of Identity Fusion, in 119.3 Psychological Review 441 (2012). A regression predicting dismissal intentions from church attendance (Beta = .42, \( p < .001 \)) and integrated religious identity (Beta = .27, \( p = .02 \)) was highly significant.

119. Adherence to the law was regressed on religious participation, religious affiliation, religious identity and belonging, conservatism, political affiliation, gender, age, income, education, and race (the order reflects relevance to the research questions; for example, political affiliation and gender were expected to be highly relevant to decisionmaking, race much less so). In the final iteration of the regression, the beta coefficient of church attendance was .362, the t-statistic was 6.1, \( p < .001 \) and the beta coefficient of religious identity was .22, the t-statistic was 1.95, \( p = .052 \). Evangelism (the t-statistic was 2.8, \( p = .005 \)) and gender (the t-statistic was 3.38, \( p = .001 \)) were both highly significant. Republican affiliation, though significant in a separate t-test analysis, was no longer significant once included in a model with all other variables (\( p = .762 \)). Income, education, and race had no significant impact.
As described above, after making the first adherence decision participants were randomized into one of two-by-two follow-up scenarios: they either read that the court awarded damages or that the court reinstated the teacher (money versus performance). And in each case, the judicial process was either standard or particularly fair. The interesting question became: what would people who chose to deviate from the law do in the face of a court that declared the decision illegal?

To answer this question, the analysis focused on the 300 participants who chose to dismiss the teacher. Notably, their intentions to comply with the court decision were high in all four conditions, despite participants’ initial defiant intentions. The high level of compliance was relatively insensitive to the procedural fairness exhibited by the court and the type of outcome—reinstatement or damages. Participants did not appear to find reinstatement less acceptable than damages and were not influenced by the information regarding the court’s procedural fairness. The immediate impact of both outcome and process was small and insignificant; any preference for or aversion to a particular outcome was not reflected in participants’ decisions at this stage.

A different picture emerged with respect to participants’ informed adherence, namely their decision in the subsequent dilemma regarding the potential dismissal of the second unmarried pregnant teacher. Focusing again on the 300 participants who dismissed the first teacher, an analysis of variance ("ANOVA") revealed that intentions to adhere to the law were higher overall in the second dilemma. Hence the negative court judgment had a general effect of raising adherence intentions. The key finding, however, was that the type of outcome had a significant
effect that nuanced the general increase in adherence (Figure 3). Specifically, participants in the damages treatment (who read that the court ordered the school to pay the monetary equivalent of the employment contract) were more likely to dismiss the second teacher than participants in the reinstatement condition (who read that the court ordered the school to reinstate the teacher), although both groups read that the dismissal was illegal.120

**Figure 3:** Projected Effect of Legal Outcome on Adherence to Antidiscrimination Law in Experiment One

![Figure 3](image)

**Figure 3:** Prior to reading the court decision, participants in the damages and reinstatement conditions did not differ in their intentions to dismiss the teacher ("original decision"). After the "treatment" a significant difference emerged: deviant participants who read that the court reinstated the teacher were on average more likely to keep the second teacher than deviant participants who read that the court ordered damages rather than reinstatement (note that the average of the damages group is higher in the subsequent decision than in the original decision, yet still negative). The difference between the two groups was statistically significant. F=5.414, p = .021, N = 300.

120. In the reinstatement group, average adherence to the law (informed) was +1, well into the adherence zone, versus -0.5 in the damages group (standard deviations were 3.2 in both groups). The analysis was robust and in fact became more significant including the effect of prior decisions—original adherence and compliance with the court—on the informed adherence decision. The F statistic of outcome was 5.414 with 1 and 296 degrees of freedom, p = .021. Notably, the average adherence in the original decision did not differ between the two groups (+2 in reinstatement, -1.9 in damages). A within-subject repeated-measures analysis on first and second dismissal choices while controlling for level of compliance with the court yielded virtually identical results (the F statistic for outcome was 5.638 with 1 and 295 degrees of freedom, p = .018).
This effect was substantial in actual number terms: a small majority (51\%) of participants in the reinstatement condition—regardless of fairness—went on to keep the teacher in the second dilemma, whereas only a minority of participants in the damages condition (36\%) decided to keep her. The rest (64\%) went on to dismiss her.

Procedural fairness did not emerge as a significant factor influencing informed (or subsequent) adherence, although participants in the fair condition were slightly more inclined to adhere to the law than those in the standard process condition.\(^\text{121}\) Participants who did not originally elect to dismiss the teacher (the adherent cohort) were not influenced by outcome or procedural fairness and maintained high adherence intentions.

3. What Does Experiment One Teach Us About Normative Conflict and Adherence to the Law?

Experiment One has several significant findings. First, religious individuals are not unanimous with respect to conflict between antidiscrimination law and traditional religious values. While a substantial group was inclined to defy the law, the majority of religious participants across all denominations and levels of practice (including daily attendees and Evangelicals and Catholics) were inclined to act in keeping with antidiscrimination law. This remarkable finding justifies further investigation as to the specific nature of participants’ beliefs (hereinafter in Experiment Two).

Second, turning the focus to religious objectors revealed that they were nevertheless likely to obey a court judgment that declared their original decision unlawful and ordered measures to reverse it. Contrary to conventional judicial wisdom and the managerial insight, they also did not find reinstatement less acceptable than damages. Learning that people intend to obey the court despite their original decisions and without revealing significant sensitivity to the type of legal outcome is both surprising and reassuring.

Third, contrary to predictions, procedural fairness information had no impact on obedience or adherence in a subsequent dilemma. Perhaps people need to see fairness rather than read about it. But it also raises the possibility that in a charged conflict, it is not enough for legal authorities to be particularly fair—attentive, neutral, respectful, and benevolent—to encourage adherence to the law. At the very least, people appear less sensitive to cues regarding procedural fairness, even when they are highly salient in an experimental setting.\(^\text{122}\)

\(^{121}\) The F statistic was 2.811 with 1 and 296 degrees of freedom and \(p = .095\). Controlling for court compliance rendered procedural fairness less significant (\(p = .19\)). There was no interaction effect between outcome and fairness.

\(^{122}\) See infra Appendix A.
fairness might have hit its ceiling. Importantly, however, the experiment reveals nothing about the floor that adherence may drop to if the court is unfair.\textsuperscript{123}

Finally, the nuanced hypothesis that the outcome rendered by the court would affect decisionmaking in subsequent dilemmas was borne out by the data. Indeed, in the immediate aftermath of a judicial decision, people seemed to obey the court regardless of the outcome. In the longer term, however, declaring the action illegal was insufficient to prevent it from reoccurring. While court intervention did substantially reduce future dismissals across outcomes, reversing the deed and reinstating the teacher yielded significantly more adherence to the law in a subsequent dilemma than awarding damages. This effect is particularly important given that it predominantly impacted the population that was most inclined to dismiss the pregnant out-of-wedlock teacher—the most pertinent decisionmakers.

These results shed light on the “reinstatement aversion” and “damages-seeking” preferences expressed by religious school managers.\textsuperscript{124} Financial awards and settlements might buy religious organizations autonomy and freedom to make decisions that comport with their values, among the options available to them under the law. Yet this freedom comes with adverse effects for individuals protected by antidiscrimination law and compromises antidiscrimination long-term goals. Scholars have written on the undercompensatory nature of monetary damages, and argued that money fails to repair the sense of hurt and injustice.\textsuperscript{125} But beyond local, distributive justice concerns, the results here suggest a more general drawback of monetary damages, a negative projected impact on subsequent adherence to the law. Following the outcome preferences of religious managers by allowing the buyout of legal obligations rather than compliance with the law is likely to result in more individuals being dismissed. This projected impact should not be regarded lightly given that religious tensions (particularly around antidiscrimination issues) are rarely one-time events.

Why does reinstatement yield greater adherence to antidiscrimination law than monetary damages? Two possible explanations should be considered. First, sanctions operate as prices. If the price of deviating from the law does not exceed the foreseen benefit of standing firmly by religious values, people will continue deviating. Reinstating the teacher, under this explanation, has a better chance of discouraging

\textsuperscript{123}. Describing the court as unfair was of little theoretical and practical interest for the present endeavor, in which the research question was whether courts can encourage, rather than discourage, adherence to the law beyond some standard baseline.
\textsuperscript{124}. See supra Part II.C.
\textsuperscript{125}. See supra notes 25–27 and the accompanying text.
future dismissals because it nullifies the incremental benefit of dismissal (over the costs of damages).

Along similar lines, the higher adherence generally found in the second dismissal dilemma can be attributed, from an economic perspective, to participants' adjusted understanding that their decision would likely be subject to legal scrutiny and sanctions. In other words, the unfavorable court decision made the probability of (any) sanction appear higher, encouraging adherence to the law across outcomes, while the variance in magnitude between outcomes drove the specific differences between reinstatement and damages.

An alternative explanation is that monetary awards yield more dismissals because they signal to religious individuals that the values underlying the law are “for sale” and therefore of lower normative status than the competing religious values. The research on sacred values shows that people are not willing to trade values they hold sacred for other values. A natural inference is that if another person is willing to trade her norm for money, then this norm is apparently less important. Furthermore, multiple studies show that fines may encourage a proscribed behavior rather than reduce it, apparently eroding the intrinsic motivation to follow social norms by reframing the situation as a standard transaction in which one buys a permit to deviate. Both perspectives on the relationship between money and norms suggest that should the court—the very entity entrusted with applying and enforcing the law—be willing to trade the prohibition on discrimination for a monetary award, then apparently breaking the prohibition was a valid option to begin with, and perhaps even within that afforded by the law. According to this view, reinstatement encourages adherence precisely because it resists translation into costs and benefits, signaling that the court stands firmly by the law, and that antidiscrimination law is not up for negotiation or trade.

A potential mechanism by which such normative processes gain traction can be seen in the differences between how participants in the damages versus reinstatement conditions reasoned their choices to comply with the court. Participant #787 was randomly assigned to the damages condition. After reading the court judgment (with which she decided to comply), she stated: “This is a good solution. The school did not have to hire her back or compromise their standards.” Unsurprisingly, this participant went on to dismiss the second teacher in the subsequent dilemma, providing an even lower scale response than her original decision.

126. Baron & Spranca, supra note 47; Tetlock, supra note 47.
127. Note that religious decisionmakers cooperating with monetary awards do not engage in sacred trade-offs as the value being traded is not a religious value. Indeed, the payment safeguards religious values.
Now consider the response of Participant #879, a participant randomized to the reinstatement condition. She also decided to comply with the court and said: “ultimately however, the pregnant woman is the one who has to live with the consequences from the choice she made to conceive outside of wedlock.” Recall that refraining from judgment was one of the features of the “kind heart” approach, noted in Part II.C, as a managerial approach that yielded higher adherence to antidiscrimination law. Similarly, Participant #1096 suggested that “helping the individual come to terms with a moral mistake through forgiveness and acceptance is the goal, after she is reinstated into her position again.” Though both these participants decided to dismiss the first teacher, upon reading that the court reinstated her they came to consider other teachings—responsibility, forgiveness, and compassion. They reframed the situation around different religious values, and although this reframing made no reference to equality, it subsequently led to alignment with the law.

This kind of reasoning was fairly common in the reinstatement group, yet absent from the comments of damages participants. The turn to compassion and forgiveness as causes for action can be understood as an emergence of the “kind heart” approach that was first identified in the narratives of religious managers, an alternative to a “firm hand” in applying religious doctrine. Indeed, the approaches taken by managers and participants seem to converge at this point, as both populations use the same values to reach the same inclusive conclusion. Strikingly, Experiment One suggests that externally imposed legal outcomes might influence the religious lens through which people observe the dilemma (“firm hand” or “kind heart”), and might even alter the tendency to decide the dilemma one way or the other. Perhaps, then, the mechanism distinguishing reinstatement from damages is that the two outcomes

128. Another trend found in the explanations of participants in the reinstatement condition was a note of the rule of law as a reason for compliance (for example, “the law is the law” [Participant #407]; “after expressing disagreement with the law it should be followed until or if changed” [Participant #1022]). This is another indication of internalization of the normative message conveyed in a reinstatement decision, albeit less surprising. Notably, some participants in the reinstatement condition also mentioned the law’s coerciveness as a reason to comply with the court decision (for example, “the school . . . had no choice after the court ordered them to” [Participant #371]; “you have to hire her if it is against the law” [Participant #1097]). Yet unlike “kind heart” or “rule of law” explanations which uniquely characterized participants who chose to keep the second teacher, coerciveness was noted by second time deviants as well as adherers (for example, “he doesn’t seem to have an option to comply or not,” said Participant #936 who went on to fire the second teacher; “he has no choice but I side with him on the matter” [Participant #1412]). It therefore seems a less likely explanation for the increase in subsequent adherence in the reinstatement condition. In particular, the frequent note of the court’s coerciveness by people who chose to dismiss the second teacher indicates that although they viewed the law as coercive, they still felt potent to act against it.

129. See supra Part II.C.
provide participants with different takeaway messages; these messages then influence participants when making subsequent adherence decisions.¹³⁰

4. Experiment Two

Experiment One left open two possible interpretations. If subsequent adherence is merely a matter of price, we would expect that raising the price considerably by imposing supercompensatory damages that go well beyond lost pay and benefits would discourage nonadherence more than regular monetary awards, possibly even exceeding the effect of reinstatement if the costs are sufficiently high.

The alternative interpretation of Experiment One is that monetary awards encourage less adherence to the law because they signal to religious individuals that antidiscrimination values are for sale and therefore of lower normative status than the competing religious values. If subsequent adherence is a function of the normative message embedded in the sanction, rather than its magnitude, we would expect that damages, even of a high sum, would still fare worse than reinstatement in encouraging adherence to the law. If people largely view the situation as a conflict between competing values rather than as a balance of costs and benefits, they would be more sensitive to this type of normative message than to the magnitude of the sanction. While punitive damages clearly send a normative message—a message of sanction and punishment—they still signal that buying out of antidiscrimination values is possible. Therefore, under the normative message hypothesis, reinstatement should retain its impact as the better motivator for subsequent adherence, yet we would also expect punitive damages to motivate adherence to the law more than compensatory damages due to the normative condemnation attached to the award.¹³¹

In order to tease apart these two competing explanations, Experiment Two introduced a third “treatment”: supercompensatory

¹³⁰. Future research can consider additional explanations. For example, Asli Bali and David Enoch suggested to me that defying the law might be primarily driven from a need to signal religious loyalty. In that case, once objectors clarified their loyalties, they might prefer a course of action that avoids clashes with the law to a course of conflict. This insight can account for objectors’ general willingness to obey the court and the general rise in adherence under both outcomes, but it does not explain the differences between reinstatement and damages. Somewhat similarly, Ruth Halperin-Kaddari suggested that religious objectors might actually prefer reinstatement to damages if their commitment to the religious norm is not strong and their actual preference is conflict avoidance. Another interesting possibility, suggested by Daphna Lewinsohn-Zamir, is that adherence to the law might be tied to objectors’ perceptions of personal choice. These are all thought-provoking suggestions for future studies.

¹³¹. “Compensatory” is used here in contrast to “punitive” and not necessarily according to Title VII’s definition of compensatory damages, which includes some pecuniary and nonpecuniary losses. 42 U.S.C. § 1981a(b)(3) (2016).
damages. Keeping all other information constant, the new condition ended as follows:

The court decided it was unlawful to fire the teacher and ordered the school to pay her in compensation for lost pay and benefits, and an additional $800,000 in punitive damages, which was more than a year of the school’s entire budget. However, the court did not order to reinstate Ms. Dunham to her position.

The wording of the new outcome was designed to achieve several goals. First, it maximized comparison with the original compensatory damages condition by keeping all of the original wording, adding only the emphasized information (this information was not emphasized in the text read by participants). Second, the new condition included a high, supercompensatory, monetary award designed to be highly burdensome. The specific figure was chosen based on a rough survey of punitive damages awards in employment discrimination cases that showed that damages vary substantially, ranging from $100,000 to millions of dollars per case. The figure was meant to approximate a school’s yearly budget, and the budgetary implications of the award were stated in order to provide a meaningful context to the nominal figure and strengthen its impact. Under conventional economic intuitions, such a high cost—that essentially jeopardizes the entire operation of the school—is expected to outweigh the benefit the institution derives from dismissal, as reinstatement or more. Note that the new condition varied only the magnitude of the sanction but not the probability of enforcement, which was kept constant between conditions.

The design of Experiment Two therefore consisted of three (compensatory damages, punitive damages, and reinstatement) by two (standard court, particularly fair court) conditions. Everything else in the flow and content of the experiment remained identical to Experiment One, allowing for a perfect replication (and expansion) of the results.

132. This included creating two procedural variants for the new outcome treatment in order to match the two procedural variants of each of the other two outcomes, so that each of them had a standard court version and a particularly fair court version.
134. In all three conditions, participants could infer from the evolution of the dilemma into a legal dispute and from the unfavorable court judgment that the probability of enforcement is high. See infra Part II.E.6.
Experiment Two expanded on Experiment One in two additional ways. First, it sought to explore the impact of varying legal outcomes more generally, beyond legal adherence in the particular dilemma and context. Therefore, after the second teacher dilemma, Experiment Two elicited participants’ general perspectives on conflicts between faith and law. Participants were asked to state their level of agreement with statements such as “I believe in democracy, and sometimes we have to compromise values that are important to us for the sake of democracy,” and “I have the right to resort to illegal activities if the court or the government make a decision that contradicts my beliefs.”

Participants rated their level of agreement on a scale of one to six, from strongly disagree to strongly agree. The randomization into different “treatments” allowed for a controlled test of the impact of outcome and process on these general and generalizable attitudes.

Second, Experiment Two sought to provide a richer account of the role of religious morality in the out-of-wedlock pregnancy dilemma and to assess the extent to which deviance from antidiscrimination law in these circumstances is a phenomenon tied to religiosity. This is an important task, because dismissal decisions could theoretically stem from sources unrelated to religiosity, like bias toward pregnant women and unmarried pregnancy in particular. Experiment Two therefore recruited religious and nonreligious participants, with the latter population serving as a control group. In addition, participants’ views on the morality of out-of-wedlock pregnancy and the morality of having an unmarried pregnant teacher in school—capturing the moral layers of the conflict from a religious perspective—were measured. The goal was to examine more closely the prevailing assumption behind the accommodation thesis that religious individuals would necessarily seek to defy a law that conflicts with their religious beliefs.

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135. The other three statements read: “There are laws that take precedence over national laws”; “I should respect the rule of law and legal decisions even if I disagree with them”; and, “Religious laws are more important to me than national laws.” These measures were adapted from sociological surveys on ideological compliance and deviance. Arye Rattner & Dana Yagil, Taking the Law into One’s Own Hands on Ideological Grounds, 32 Int’l J. Soc. L. 85 (2004); Dana Yagil & Arye Rattner, Between Commandments and Laws: Religiosity, Political Ideology, and Legal Obedience in Israel, 38 Crime, L. & Soc. Change 185 (2002).


137. See supra Part II.B, for a discussion of what makes a conflict from a religious perspective, in particular regarding the nature of the moral wrong and the religious responsibility and regulatory aim. Participants were asked to provide their “personal views” on “pregnancy out of wedlock” and “having an unmarried pregnant teacher in school” by selecting one of four descriptions with respect to each: religiously or morally forbidden, more forbidden than permissible, more permissible than forbidden, religiously or morally permissible. The question was presented together with several demographic questions at the end of the study.
5. **Experiment Two: Results**

Experiment Two recruited a total of 2244 participants, 1941 of them Christians and the remaining 303 unaffiliated with any particular religion or simply not religious (agnostic or atheist).  

**Adherence to Antidiscrimination Law.** Similar to Experiment One, 24.4% of the sample (548 participants) fired the unwed and pregnant teacher. However, the rate of dismissal decisions was significantly different between religious and nonreligious participants. Whereas 26.5% of Christians were inclined to dismiss the teacher, only 11% of the nonreligious group were so inclined. Further breakdown into religious affiliations revealed that dismissal rates among the unaffiliated or personal spiritualists, atheists, and agnostics were all between 10.8% and 11.7%. These figures were significantly lower than those affiliated with one of the Christian denominations, which ranged from 21.7% amongst mainline Protestants to 40% amongst Evangelicals, with Catholics at 27% (Figure 4).

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138. The sample size (religious and nonreligious samples likewise) was determined based on power calculations (power = 80%), taking into account the effect sizes and standard variations that emerged from Experiment One and the research hypotheses of Experiment Two. SSI again administered data collection, and participants in the first experiment were excluded from participating in the second experiment. Identical procedures and methods were used in the recruitment, collection, and treatment of the data. The nonreligious sample consisted of Democrats and Republicans in equal numbers, like the religious sample.

139. The Pearson Chi Square statistic was 33.067, $p < .001$. A t-test on the raw scales measuring dismissal intentions yielded identical results. The mean intention to dismiss in the nonreligious group was -3.93 points with standard deviation of 2.4, versus a significantly higher intention of -2.57 points with standard deviation of 3.05 in the religious group. The t-statistic was -7.420 with 2242 degrees of freedom, $p < .001$.

140. Dismissal rates were high amongst all Christian denominations, including Other Christians (25%) and Latter-Day Saints (38.5%), though the latter group was represented by only sixteen people in the sample.
Again, church attendance was a highly significant predictor of dismissal decisions (Figure 5), as was strength of religious identity.¹⁴¹ In addition, moral views on out-of-wedlock pregnancy and the morality of having an unwed pregnant teacher in school were highly predictive of dismissal intentions, as expected.¹⁴² At the same time, even religious individuals who saw these behaviors as religiously forbidden were not, for the most part, inclined to dismiss the pregnant teacher despite perceiving her behavior as religiously deviant (Figure 6). These findings

¹⁴¹ For church attendance, the Pearson Chi Square statistic was 102.15, \( p < .001 \) (extremely high). A regression predicting raw dismissal intentions from church attendance (Beta = .32), integrated religious identity (Beta = .19), and conservativeness (Beta = .13) yielded that the Beta coefficients of the religiosity measures as well as conservativeness were highly significant, independent of each other. The impact of religiosity on decisionmaking was robust to the inclusion of conservativeness, indicating that the religiosity effect was not an artifact of conservativeness.

¹⁴² The two questions captured views regarding first-order and second-order moral actions, in essence, regarding the proscribed act (pregnancy out of wedlock, in short “POOW”) and its acceptance (having an unwed pregnant teacher in school, in short “HPOOW”). The two evaluations were highly correlated (Pearson’s \( r \)-statistic was .622, \( p < .001 \)) and were each highly predictive of dismissal intentions. The F-statistic for POOW was 36.258 with 3 degrees of freedom, \( p < .001 \), and the F-statistic for HPOOW was 112.25 with 3 degrees of freedom, \( p < .001 \). While, naturally, more people viewed first-order actions as morally forbidden (46% evaluated POOW as forbidden), a sizable group (34%) viewed HPOOW, too, as morally forbidden. Most of those who disapproved of one disapproved also of the other (and those who approved of one also approved of the other), but some people crossed categories, evaluating POOW as forbidden but HPOOW as permissible, and vice versa.
replicate and augment the results of the first experiment. While nonadherence of antidiscrimination law in the pregnancy dilemma is significantly a function of religion and religiosity, the data also unsettles the assumption of necessary religious deviance. Religious individuals across all denominations and levels of practice, and even as they face clear norm conflict, appear to accommodate the conflict on their own.

Gender and political affiliation remained significant factors as well. Due to the scarcity of nonreligious dismissals, the remainder of the analyses focuses on the Christian subsample.

**Figure 5: Teacher Dismissal and Church Attendance in Experiment Two**

The effects were identical in direction and very similar in size to the first experiment. Men and Republicans were more inclined to dismiss the teacher (27.6% of men, comparable to 26% in the first experiment, versus 21.6% of women; 29% of Republicans, comparable to 27.6% in the first experiment, versus 20% of Democrats). In the multiple regression analysis, church attendance was again the strongest and most significant predictor of dismissal decisions (and robust to the inclusion of other variables). In the final iteration of the regression, the beta coefficient of church attendance was .355 and the t-statistic was 8.747 with 2217 degrees of freedom, $p < .001$. Being Evangelical or Catholic was significant (the t-statistics were above 2.8 and $p$ values were .005 or below), as well as being Republican (a slightly weaker effect—the t-statistic was 2.06 and $p = .039$). Income, education, and race had no significant impact.
Figure 6: Teacher Dismissal and Religious Beliefs

Figure 6: Intentions to dismiss the teacher (dichotomized based on the scale responses) conditioned on beliefs regarding the permissibility of pregnancy out of wedlock and having a pregnant out of wedlock teacher in school (grouped into forbidden/permissible). The bars represent the rate of dismissal in each belief group.

Compliance with the court. Recall that participants were randomized into one of three follow-up scenarios: compensatory damages, reinstatement, and punitive damages. In each case the judicial process was either standard or particularly fair. An analysis of the 514 Christian participants who chose to dismiss the teacher\textsuperscript{144} revealed strong similarities to Experiment One.

\textsuperscript{144} Note that the number is higher than the first experiment because of the larger sample. Experiment Two recruited more participants to empower the study to detect an effect despite the addition of new treatment groups. Were Experiment Two to recruit a sample identical in size to Experiment One rather than enlarging it, the study would have been underpowered to detect the effect discovered in the first study because each group would have consisted of fewer participants (due to the higher overall number of groups).
First, Experiment Two replicated Experiment One. Compliance intentions were again high and positive in all condition groups (that is, on average people were inclined to obey the court) despite participants’ initial non-adherence. Second, as in Experiment One, these intentions did not differ between reinstatement and compensatory damages (Figure 7). However, the intention to comply with a punitive damages award was significantly lower on average. Procedural fairness, as in Experiment One, did not improve compliance. In fact, per all outcomes, compliance intentions were somewhat lower when the court was described as particularly fair (a difference that was borderline significant).

The lower intention to comply with a punitive damages award is intriguing. From an economic perspective, it appears that individuals are sensitive to the magnitude of the monetary award and see the supercompensatory damages as an outcome more costly than both reinstatement and damages, reflected in the lower willingness to incur it. It also appears that, unlike compensatory damages and reinstatement,

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145. The outcome effect resulted from the contrast between PD and the other two groups and was highly significant. The F-statistic was 6.2 with 2 and 508 degrees of freedom, \( p = .002 \).
146. The F-statistic was 3.41 with 1508 degrees of freedom, \( p = .065 \).
punitive damages are perceived like a harsher and less acceptable outcome of the conflict.

Will this perception impact the decision to adhere or not to adhere to antidiscrimination law in a repeated occurrence of the dilemma? Two competing hypotheses are at play. The first posits that the legal outcome imposed by the court primarily motivates adherence by reducing the gains of nonadherence. As punitive damages were apparently perceived the most burdensome of all outcomes, they are expected to yield more subsequent adherence to the law than both compensatory damages and reinstatement, as people would like to avoid additional occurrences of this outcome in particular. The alternative hypothesis posits that legal outcomes primarily influence adherence through the normative messages they convey. Thus, punitive damages are expected to yield intermediate adherence to the law: less than reinstatement, which sends a firmer message, but more than compensatory damages, due to the added punitive message.

In short, the results lend support to the second hypothesis (Figure 7). Participants in the reinstatement group were more likely to adhere to antidiscrimination law and keep the second teacher than participants in both the compensatory and punitive damages groups.\textsuperscript{147}

\textsuperscript{147} This finding is both a replication and extension of the first experiment. The average adherence to the law in each group was \(+0.7\) in Reinstatement, \(-0.1\) in Compensatory Damages (CS), \(+0.01\) in Punitive Damages (PS). Standard deviations were 3.1, 3, and 3.3 respectively. The analysis was robust to the inclusion of prior decisions. The F-statistic of outcome was 3.045 with 2 and 506 degrees of freedom, \(p = .048\). A within-subject repeated-measures analysis on first and second dismissal choices, controlling for level of compliance with the court, yielded virtually identical results (the F statistic for outcome was 3.63 with 2 and 508 degrees of freedom, \(p = .027\)). As expected, given that the treatment was only administered after the first dismissal was made, the average scores in that decision did not significantly differ between the groups (\(-1.84\) in reinstatement, \(-1.86\) in CS, \(-2.2\) in PS with standard deviations of 1.7, 1.75, and 1.78). As in the first experiment, adherence intentions were overall higher among previously nonadherent participants, reflecting that the negative court judgment increased subsequent adherence decisions in all outcome groups.
Figure 8: Projected Effect of Outcome on Adherence to Antidiscrimination Law, Experiment Two

Figure 8: Participants who originally decided to dismiss the teacher in contravention of antidiscrimination law (N = 514) significantly differed in their post-court decisions. Participants informed that the court reinstated the teacher were more likely to adhere to the law in a subsequent dilemma than participants in the two damages conditions who were more likely to dismiss the teacher. $F = 3.63, p = .027$. Further analysis revealed that punitive damages fared somewhat better than compensatory damages.

While the analysis of the raw scale responses yielded virtually no difference between the two damages conditions, in terms of actual dismissal decisions the results were more nuanced: 52% of the reinstatement group retained the second teacher in the aftermath of the court decision, whereas only 39% of participants in the compensatory damages group did so (these figures are nearly identical to those of Experiment One). Adherence in the punitive damages group was intermediate, with 48% of the participants retaining the teacher.\textsuperscript{148} Punitive damages, then, fare somewhat better than compensatory damages on this secondary analysis. But despite the evidence that people perceive punitive damages as costlier than reinstatement, and contrary to the

\textsuperscript{148} For this analysis, the raw scale was dichotomized into dismissed or not based on the scale midpoint (0). The result was statistically significant, the Pearson Chi Square statistic was 6.024, $p < .05$. 
price hypothesis, punitive damages do not increase adherence to antidiscrimination norms beyond reinstatement.

Furthermore, analyzing the general perceptions regarding the rule of law of participants in the sample\(^{149}\) revealed that punitive damages yielded the lowest respect toward the rule of law and lowest appreciation of democracy.\(^{150}\) Meanwhile, it yielded the highest willingness to resort to illegal activities in conflicts between law and faith and declare religious law more important than national laws.\(^{151}\) Reinstatement and compensatory damages did not differ.\(^{152}\) Hence, not only that punitive damages fail to increase adherence beyond reinstatement, they also appear to jeopardize respect toward the rule of law and compliance with the law in future conflicts between law and religion.

In sum, Experiment Two replicates the finding that reinstatement is not perceived as less acceptable than damages and projects higher adherence to antidiscrimination law in a subsequent conflict, and reveals that this effect persists and exacerbates for punitive damages that even appear to backlash. Notably, as in the first experiment, participants who did not originally elect to dismiss the teacher (the adherent cohort) were not influenced by outcome or procedural fairness and maintained high adherence intentions.

6. **Discussion**

Two experiments reveal that adherence and nonadherence to the law are largely influenced by religiosity, relevant moral beliefs, and

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149. See *supra* note 135 for a description of the statements. The statements were divided into two composite measures, reflecting positive (“P-RL”) and negative (“N-RL”) views toward the rule of law, Cronbach’s alpha = .532, .523 respectively. P-RL included the statements: “I should respect the rule of law and legal decisions even if I disagree with them,” and “I believe in democracy, and sometimes we have to compromise values that are important to us for the sake of democracy.” N-RL included the statements: “Religious laws are more important to me than national laws” and “I have the right to resort to illegal activities if the court or the government make a decision that contradicts my beliefs.” The fifth statement—“There are laws that take precedence over national laws”—did not fit with either group (perhaps for lack of direct relevance to religion) and was excluded from the analysis. As the question goes beyond the issue of compliance in the specific given case, the analysis looked into the perceptions of all participants irrespective of whether they originally adhered to the law. Yet outcome had a significant effect in each of the nonadherent and adherent cohorts, with respect to positive views toward the rule of law (P-RL).

150. In the Punitive group the average P-RL was 4.27 versus a higher average of 4.43 in both Reinstatement and Compensatory Damages groups (standard deviations were 1.032, 1.053, 1.083 respectively). The F-statistic was 4.74, with 2 and 1935 degrees of freedom, \(p = .009\).

151. In the Punitive group the average N-RL was 3.19 versus lower averages of 3.14 in Reinstatement and 3.01 in Compensatory Damages (standard deviations were 1.295, 1.347, 1.275 respectively). The F-statistic was 2.033, with 2 and 1935 degrees of freedom, \(p = .048\).

152. Procedural fairness had no impact on negative views of the rule of law and a small negative impact on positive views of the rule of law. In the standard court group the average P-RL was 4.44 versus 4.32 in the particularly fair condition. The negative fairness effect persisted within each outcome group. The F-statistic was 6.027, with 2 and 1935 degrees of freedom, \(p = .014\).
religious affiliation. Political conservativeness and gender have an impact, albeit a smaller one. A sizeable group of about 25% of religious individuals is originally inclined to dismiss a pregnant out-of-wedlock teacher—by no means a small minority—but at the same time, majorities in every denominational group, levels of practice, and even people who personally believe that pregnancy out-of-wedlock is religiously forbidden do not seek to dismiss the teacher. These results cast doubt on the assumption that conflicts between legal obligations and religious convictions can only be resolved through some measure of accommodations. Evidence from several directions, from the approaches taken by senior religious managers, through participants’ dismissal decisions, to the processes reflected in their reactions to the judicial decision in the experiments, all suggest that religious people might have various ways to deal with conflicts of values other than defy the law or seek accommodations—ways that are substantially more inclusive.

The results also call into question the common judicial practice of substituting damages for performance in religious conflicts. While judges believe that monetary damages are more acceptable than reinstatement, participants in both experiments did not disclose different assessments of the two outcomes and indicated high intentions to comply with both. At the same time, monetary substitutes were significantly less likely to engender subsequent adherence to antidiscrimination law. Though supercompensatory punitive damages fared somewhat better than compensatory damages, they invoked lower obedience to the court and more negative views of the law than both reinstatement and compensatory damages.

The experiments indicate that religious adherence to antidiscrimination law is shaped and influenced by the court and the normative message that it projects through the outcome it orders. They show that when courts decide cases, they influence not only how people interpret their legal obligations, but also how they approach their religious commitments. Reinstatement affirms antidiscrimination norms and yields higher intentions to adhere to them than damages—compensatory or punitive—that seem to signal that antidiscrimination norms can be bought out. These results correspond with previous studies that found that monetary sanctions could crowd out norms, yet the direction of the effect is different in the present context. With respect to a context that involves competing norms and a cohort for which baseline commitment to the law is low to begin with, damages do not simply crowd out legal commitment; rather, they crowd in less of it.

Considered together, the diverse empirical data presented in this Article invite constitutional scholars and courts to reconsider the basic assumptions underlying the debate on antidiscrimination and religious accommodations. Current legal doctrine risks providing sweeping and
unnecessary religious accommodations that might erode antidiscrimination protections without reducing conflict. The negative impact might not be restricted to potential religious objectors. Overly broad accommodations might also steer otherwise adherent individuals to exclude and discriminate, by weakening norms of compliance and commitment to antidiscrimination values and increasing socioreligious pressure to use the accommodation. Courts should therefore consider, and scholars should study, the projected effects of different legal outcomes in recurring and intensifying conflicts such as the clash between religious convictions and antidiscrimination law. This applies to the effectiveness of substituting monetary damages for legal compliance and is particularly true for high punitive damages. While they might encourage adherence more than compensatory damages, they are still less effective than reinstatement and invoke higher objection to the law. This objection is likely to be translated into appeals or other efforts to avoid compliance.

III. Lessons and Implications

Behavioral research in recent years has demonstrated a growing ability to examine complex social problems and inform policymakers.153 Building on behavioral insights and methods, this Article elucidates the impact of some of the key mechanisms that animate conflicts between religious convictions and antidiscrimination by studying how they are perceived and decided by religious people. While the Article focused on educational settings, the lessons drawn here may be relevant to other arenas of conflict that follow the same basic contours: normative clashes where religious objectors seek autonomy to manage their affairs according to their religious beliefs in a manner that relates to the conduct of people who are suspected or found to engage in a religiously proscribed behavior that is protected by law. As recent years demonstrate, such conflicts are not restricted to sectarian schools (though they are certainly pervasive in that setting). Rather, individuals running small and large for-profit businesses increasingly run into similar conflicts and demand similar exemptions. Acknowledging this trend does not necessarily require to do away with the legal distinctions between public and private, for-profit and non-for-profit, and other settings. Instead, the proliferation of conflict across different legal settings should prompt further investigation as to the mechanisms generating these similarities. The present research brings us closer to understanding the shared foundations and ensuing dynamics of conflicts between religion and

antidiscrimination. Further research would be necessary to understand how these dynamics operate in other settings of conflict.

A. What Role for Fairness and Punitiveness?

Among the many questions that remain open for future studies, the role of procedural fairness is particularly intriguing. Why did procedural fairness have no positive impact on compliance?

One possibility is that people need to see and experience fairness rather than read about it, and that fairness information is simply not enough to generate an effect. While this explanation is plausible, it is harder to square with previous studies that used similar methods and did find fairness effects.154

Another possibility is that people are more sensitive to a substantial lack of fairness than to the difference between a standard court and an exceedingly fair court. While the absence of an “unfair court” treatment might seem like a limitation of the experimental design, it was driven by the research goals—to examine tools that might aid judges to reduce conflict, not exacerbate it. Pointing out the hazards of unfairness was therefore of little theoretical and practical value compared with uncovering the potential benefits of enhanced fairness. The lack of finding for such benefits, however, suggests limited room for procedural fairness in mitigating conflicts between law and religion.155 Perhaps the effect of procedural fairness has a ceiling. Or, it might be capped or moderated by people’s priors regarding the courts.156 This is not to say, of

154. See, e.g., Tom Tyler, Governing amid Diversity: The Effect of Fair Decisionmaking Procedures on the Legitimacy of Government, 28 LAW & SOC. REV. 809 (1994) (reporting an experiment that randomized participants to read one of several procedural fairness descriptions and found significant effects on participants’ support and willingness to accept the decision).

155. This might be part of a broader limitation on fairness in private law settings, which derives from the fact that the state is not the primary actor but rather a mediator between parties to the civil procedure. As such, the fairness of legal authorities might take a back seat while the fairness of the rival party takes primary focus. I thank Dave Hoffman for suggesting this point. Note, however, that in normative conflicts as the one studied here, the state may nevertheless be seen as taking a direct action against the religious institution when it casts its moral weight behind the rival party. The broad limitation is therefore less likely to explain the lack of fairness effect here.

156. The present study did not measure participants’ priors regarding courts’ fairness for a lack of satisfying ways to do so. If the study would have asked participants for their views prior to making adherence and compliance decisions it would have risked biasing their decisions. If such questions were presented after those decisions, the responses would have likely been biased by the differing descriptions of the court as more or less fair. In light of this difficulty, I conducted a pilot study prior to the experiment where I attempted to examine the impact of fairness priors on obedience to a standard versus particularly fair court (N = 300; the pilot was recruited from Amazon Mechanical Turk and adapted the dilemma to fit a general audience; the fairness treatments remained identical). One might suspect such priors to interact with the experiment in one of two ways. First, if people hold favorable views regarding the courts, they might read them into the description of the standard court and imagine it to be fairer than described, eroding the designed differences between fairness conditions. The pilot study did not support this hypothesis: people who perceived courts as generally fair did not
course, that legal authorities can forgo their fairness commitments; such steps would severely misinterpret the results of the experiments and might have dire consequences (indeed, I did not study the floor to which adherence might drop were the court to be presented as unfair). The experimental results also say nothing of the impact of fairness in legislative procedures—as opposed to court procedures—on adherence with laws that emerged from these procedures.

This Article also leaves open questions regarding the negative impact associated with punitive damages. Unlike compensatory damages, which might be perceived as a mere price that people pay for their religious preferences, punitive damages are likely to be perceived as a price and a normative message combined. If this normative message were as effective as that communicated by reinstatement, punitive damages should have matched or superseded reinstatement in adherence rates. Experiment Two reveals that this is not the case. But one cannot rule out the possibility that punitive damages fare worse than reinstatement because the added message is not the right message. People might be open to accepting the notion that the law should prevail, but not that religion should be punished. Punitive damages might therefore fail to engender higher adherence because their normative message is taken as offensive and derogative. A fine balance needs to be struck when choosing between legal outcomes.

B. Taking Behavior Seriously When Designing Accommodations

The data throughout this Article offer important insight for the debate on whether and how to accommodate religious beliefs. First, the data unsettles the common assumption that the religious position on conflicts between law and religion is uniform, oppositional, and firm. While high religiosity is indeed correlated with greater deviance from antidiscrimination law, the data also uncovers substantial heterogeneity and variation, indicating that the religious attitudes to antidiscrimination law are more complex, nuanced, and dynamic than previously assumed. Among other findings, the experiments show that an impressive majority of religious individuals would not disobey antidiscrimination law even when it directly conflicts with their beliefs, and that a majority of
differ from people who perceived them as generally unfair when responding to a standard court dilemma. A second possibility is that people who hold unfavorable views regarding the courts would read them into the description of the particularly fair court and imagine it to be less fair than described, again leading to an erosion of the designed difference between the fairness conditions, this time from the opposite direction. The pilot provided some support to this hypothesis: people who perceived the courts as generally unfair were slightly less likely to obey a particularly fair court than those who perceived courts as generally fair. This might suggest that negative fairness priors might be harder to overcome in experiments and potentially in real life too. Further research is needed to understand the reasons behind the lack of fairness effects.
religious objectors would tend to accept an unfavorable judicial decision and adjust their behavior in future rounds of the conflict. Some of the data, such as the managerial accounts of a “kind heart” approach and participants’ reactions to the judicial decision, even suggest that convergence between religious and legal norms is possible and is already occurring on the ground. Together, these data propose that one should not be too quick to assume that religious exemptions are the only tool available to mitigate the conflict from a religious perspective, and that other means should be explored and studied. In particular, future research should examine the impact of various forms of accommodations and explore prospects for convergence between law and religion.

The second related insight is that theoretically interchangeable policy measures might vary substantially in practice as a result of their normative interpretation. This insight might assist lawmakers and judges who deliberate between alternative means aimed to reduce conflict, including alternative forms of religious accommodations. The evidence suggests that in such cases, lawmakers, courts and legal scholars should consider and research the perceptions and meanings that accommodations generate. Based on the evidence presented in this Article, I propose that successful accommodations should be constructed, to the extent possible, between three cornerstones: they should affirm legal values, should not signal that the law is for sale, and should not signal that religious beliefs warrant punishment. The most effective accommodations will probably need to walk the fine line between the two normative titans of law and religion, affirming the importance of the law while altering the means by which the law is performed and enforced.

One example for an accommodation that had the potential to follow this formula is the certification made to insurance issuers or third-party administrators under the ACA, which was provided on an expanded basis after the *Hobby Lobby* decision. This accommodation requires

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religious objectors to notify their insurers or the government. The contraceptive coverage is then expressly excluded from the health insurance plan of the objector, and the responsibility for coverage shifts to the insurer (whether responsibility indeed shifted became a major point of disagreement between religious nonprofits and the government, see below). The insurer provides separate payments for contraceptives at no cost to employees, and employees of religious employers are not disparaged.

This form of accommodation aims to affirm the importance of contraceptive coverage and the law that enacted it by upholding the autonomy of women and men to make their own procreative decisions. All employees receive access to contraceptives on the same terms without additional costs. At the same time, this accommodation attempts to alter the means through which law’s standards are met by shifting the moral responsibility from the religious objector to the insurer. This combination appears to strike the appropriate balance between upholding the values that the law seeks to promote while allowing religious objectors to opt out, but not buy out (thereby minimizing the risk of normative erosion). Yet, as I write, controversy and litigation still surround this accommodation. Understanding why would require a separate study. For now, I shall make two careful observations. First, it is possible that if the federal government had negotiated differently with religious leaders and had offered this accommodation earlier and on a general basis (without limiting it to religious nonprofits), it could have preempted some of the conflicts that have since erupted, such as the conflict with Hobby Lobby itself as well as some of the recent court challenges.  

Second, it seems that the ACA accommodation was drafted without sufficient sensitivity to its religious audience. Specifically, with respect to the single most important sentence in the accommodation, the one that describes how the accommodation operates, the law states that the notice of religious objection “shall be an instrument under which the plan is operated, [and] shall be treated as a designation of the third party administrator as the plan administrator . . . for any contraceptive services required to be covered.”  

Surely enough, the accommodation establishes a mechanism that shifts responsibility from employers to insurers. But describing the notice of religious objection as the

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159. Against the background of these challenges, the ACA’s accommodation hardly seems like an exemplar of conflict mitigation. See supra note 155 and accompanying text. At the present time, however, we lack knowledge as to how the accommodation would have been perceived were the government to offer it in the first place, not in response to litigation. As Hobby Lobby was framed as a victory for faith groups, the accommodation that followed the decision was probably perceived as an expression of legal weakness rather than an affirmation of the ACA’s values, and hence plausibly triggered more challenges.

160. 29 C.F.R. § 2510.3-16(a) (2016) (emphasis added).
instrument that facilitates access to contraceptives shows a lack of sensitivity to religious concerns and modes of reasoning. Given the evidence on what makes a conflict from a religious perspective\textsuperscript{161} and the importance of tailoring legal means to reflect a careful normative message,\textsuperscript{162} I expect that the ACA accommodation could have fared better if a more careful set of definitions and words was used. This analysis, of course, is cautiously stated.\textsuperscript{163} The main lesson offered by this Article is that a careful empirical examination is warranted to fully understand the direct and projected influences of alternative policy measures, including religious accommodations.

C. Complicating the Relationship Between Legal Outcomes and Behavior

This Article presented different types of evidence—qualitative and experimental—that, by virtue of their methodological differences, interact to illuminate the dynamics of the conflict between religion and antidiscrimination. This interaction also complicates the account that each method separately provides. Consider the following two sets of findings. On the experimental front, the evidence indicates that religious people who were inclined to dismiss a pregnant out-of-wedlock teacher were willing to comply with a reinstatement decision, a decision which in turn increases their intention to adhere to antidiscrimination law in the future. On the other hand, the qualitative evidence indicates that religious managers who considered reinstatement typically objected to this outcome and thought it unlikely to materialize (indeed, many have not thought it to be a serious option). How can we explain this tension?

One explanation is that managers’ attitudes are shaped by their interactions with courts and lawyers, and are therefore epiphenomenal to the rareness of reinstatement decisions in the real world. Without experiencing reinstatement decisions, it is not surprising that managers are both relatively unaware of this remedy and perceive it as outside the normative spectrum. The experiments, then, provide a window into what could happen should courts shift gears and hold people and institutions accountable to their primary obligations under antidiscrimination law.

An alternative explanation points to the complexity of real life relationships. Manager #11 reasoned her reinstatement aversion in the following words:

I think that in most cases, to be very honest with you, very few teachers want to come back into an environment after they have sued the school. Where relationships have just totally been decimated. And then often, I believe, if you were to do research you would find that, I

\textsuperscript{161} See supra Part II.B.
\textsuperscript{162} See supra Part II.E.
\textsuperscript{163} I develop this issue in a separate work in progress.
can’t help but believe in the overwhelming number of cases there has been a financial settlement in order for the teacher not to return to the classroom.

It is difficult to assess whether this claim (made by a manager) accurately represents the wishes of the dismissed individual. Recent cases demonstrate that teachers and communities sometimes do ask for reinstatement. Nevertheless, it is certainly possible that individuals who initially sought reinstatement would eventually decide not to return to a workplace that previously shunned them, or that managers would attempt to negotiate a settlement to avoid the complexity of rebuilding relationships. Such dynamics could lead to fewer actual reinstatements than those granted, should courts indeed begin granting reinstatements.

Yet such a pattern, if true, should not deter courts from granting sought reinstatement—so long as employees seek this remedy—and the interim orders necessary to keep it feasible. Even if some parties will eventually decide to forgo reinstatement in favor of financial settlement, the lasting impact of the reinstatement decision is likely to hold. This is because, firstly, the affirmation of antidiscrimination values expressed by the court in a reinstatement decision would remain intact. This affirmative message is also likely to transcend the specific parties and reach other institutions in similar situations. Indeed, the interviews reveal that religious managers closely follow the legal experiences of their counterparts across the nation. As relevant news diffuse rapidly, it may not need more than a critical mass of merited reinstatement decisions to communicate a shift in judicial approach and with it a reconsideration of existing practices. Secondly, even if some individuals will eventually decide to settle, a decision that confers the power to make the ultimate decision upon the individual who has experienced discrimination is empowering both for the individual and for the law. Finally, institutions and individuals negotiating in the shadow of a reinstatement award will likely reach higher financial settlements, which

164. Amanda Finelli, Catholic Schools’ “Morality Clause” Is No Excuse for Firing LGBT Teachers, GUARDIAN (Oct. 25, 2013, 9:30 PM), http://www.theguardian.com/commentisfree/2013/oct/25/catholic-schools-fires-gay-teachers. Notably, studies that investigated why employees reject reinstatement found two primary causes: the amount of time that lapsed since discharge, which often made reinstatement infeasible, and fears of employer backlash or retaliation. When employers offered to reinstate the employees, the great majority of employees decided to come back. Martha West, The Case Against Reinstatement, 1988 U. ILL. L. REV. 1, 31 (“In the NLRB figures, if employers offer reinstatement as part of the informal settlement process, employees are more likely to go back to work (73% accept) . . . .”).

165. The importance of interim measures is demonstrated in previous empirical studies that found that unless reinstatement is granted within a few (one to four) months after discharge, employees are unlikely to go back. When tribunals and courts order reinstatement a year or more after discharge, as part of a final resolution, it was substantially less likely to materialize. See Les Aspin, Legal Remedies Under the NLRA: Remedies Under 8(a)(3), 23 INDUS. REL. RES. ASS’N SERIES 264, 267 (1970).
would raise the price of violating the antidiscrimination norm in subsequent conflicts.

In summary, even if reinstatement is ordered but eventually waived for a favorable settlement, increasing reinstatement orders could still encourage greater adherence to the law than awarding damages. Courts interested in promoting equality where religious exemptions do not apply should therefore need to revisit their remedial practices. Doing so would not necessarily endanger compliance with the court or court legitimacy, as this Article shows. Instead, the interaction between the legal message and religious beliefs could actually encourage reconciliation and convergence. Reinstatement might not always materialize, but for many religious decisionmakers like Participant #1538 in Experiment One,

This [could] be a good real-life teaching opportunity . . . . There may be many wonderful things to learn from and grow from this experience (whatever the specific details may be). At the very least (though what I am about to say is far from “least”) the children can learn first-hand about the sanctity of life. The teacher may need her job now, more than ever. That can teach them about God’s love and forgiveness.

166 Further research would be necessary to achieve a more complete understanding of the religious dynamics post-reinstatement. Alongside forgiveness and greater inclusiveness, some employers might be motivated to restore their authority and reaffirm religious values in ways that could complicate the reintegration of the dismissed individual. The dynamics of acceptance, reintegration, and reinterpretation of both legal and religious norms require more detailed examination.
Appendix A: Experimental Conditions

Reinstatement: Standard Court

Two days later, the Principal reached a decision to dismiss the teacher and not to renew her contract.

"Devout schools do not have to compromise their religious standards", Robertson said.

This was a decision Ms. Dunham found hard to accept. She filed a legal complaint against the school, claiming that the school cannot fire her due to her pregnancy. "This is a wrongful discrimination," Dunham said. "They ought to follow the law."

The case had come before the court soon after and both sides were summoned to give testimony and provide evidence.

The much awaited decision came out today. The court decided it was unlawful to fire Ms. Dunham and ordered to reinstate her to her position.

Damages: Standard Court

Two days later, the Principal reached a decision to dismiss the teacher and not to renew her contract.

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The much awaited decision came out today. The court decided it was unlawful to fire the teacher and ordered the school to pay her in compensation for lost pay and benefits. However, the court did not order to reinstate Ms. Dunham to her position.
Reinstatement: Very Fair Court

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The case had come before the court soon after and both sides were summoned to give testimony and provide evidence.

During the trial the parties told Today that the proceedings were conducted in a neutral way. The judge gave everyone the opportunity to make an argument and speak and the arguments received respectful comments. The parties added that the court did not seem predisposed to one side or the other.

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