

## **MEDIATION AND RELIGION: GENERAL ATTITUDES OF THREE MAJOR RELIGIONS IN THE UNITED STATES**

### **Introduction**

In a world where most of its inhabitants belong to one religious faith or another, and where, unfortunately, various religious texts are used to justify both global and personal conflict, it is important to bring to light what these texts instruct on how to live in peace with others. According to a 2014 survey of adults in the United States, conducted by the Pew Forum on Religion & Public Life and was published in 2015, roughly 76.5% of adults self-identify as affiliated with an organized religion and roughly 22.8% of adults self-identify as unaffiliated.<sup>1</sup> Nationally, three of the most prevalent religions are Christianity (70.6%), Judaism (1.7%), and Islam (0.9%).<sup>2</sup> In Louisiana, roughly 87% of adults self-identify as affiliated with an organized religion and roughly 13% of adults self-identify as unaffiliated.<sup>3</sup> In Louisiana, three of the most prevalent religions are Christian (85%), Judaism (0.5%), and Islam (1%).<sup>4</sup> This means that, both nationwide and in Louisiana, there is a high probability that any given party to a mediation will have some religious affiliation. According to a 2013 publication by the Pew Research Center, “many religious groups encourage members who are accused of (non-criminal) moral wrongdoing or who are involved in a financial dispute...to engage in mediation in an effort to come to a voluntary agreement.”<sup>5</sup> Religious values and beliefs have been identified as some of the interests that can motivate a party to settle or create a barrier for settlement.<sup>6</sup> With this in mind, it is important to understand the attitudes that the three religions listed above have toward mediation.

### **Christianity**

The Christian faith has a history of encouraging its adherents to settle matters through means other than litigation. The primary text of the Christian faith is the Bible. The Bible has several verses in both the Old Testament and the New Testament that encourage or model mediation. These passages “promote reconciliation and forgiveness for everyone involved.”<sup>7</sup> Christianity understands the purpose of mediation and mediator as “the activity and person performing it [mediation] of functioning as a go-between or intermediary between two people or parties, in order to initiate a relationship, promote mutual understanding or activity, or effect a reconciliation after a dispute.”<sup>8</sup> Mediation is also defined as the “achieving of fellowship and

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<sup>1</sup> Pew Forum on Religion & Public Life, *America’s Changing Religious Landscape* 4 (2015), available at <http://www.pewforum.org/files/2015/05/RLS-08-26-full-report.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 146.

<sup>4</sup> *Id.*; Pew Forum on Religion & Public Life, *U.S. Religious Landscape Survey* 100 (2008), available at <http://religions.pewforum.org/pdf/report-religious-landscape-study-full.pdf>.

<sup>5</sup> David Masci & Elizabeth Lawton, Pew Research Center, *Applying God’s Law: Religious Courts and Mediation in the U.S.* (2013), available at <http://www.pewforum.org/2013/04/08/applying-gods-law-religious-courts-and-mediation-in-the-us/>.

<sup>6</sup> Douglas N. Frenkel & James H. Stark, *The Practice of Mediation* 35-36, 59 (Vicki Been et al. eds., 1st ed. 2008).

<sup>7</sup> Masci & Lawton, *supra*.

<sup>8</sup> Paul J. Achtemeier, Harper & Row and Society of Biblical Literature, Mediation, Mediator in *Harper’s Bible Dictionary* (1985).

reconciliation between separated parties.”<sup>9</sup> Mediation is acknowledged to be useful in both “innocent circumstances and when people are at odds with one another.”<sup>10</sup> Peacemaker Ministries identifies mediation as a process for “the local church, not a task reserved for professional mediators or lawyers.”<sup>11</sup> Peacemaker Ministries also states the purpose of mediation is to do more than “try to resolve surface issues,” but rather to “seek genuine reconciliation with others.”<sup>12</sup>

The Christian approach to mediation is primarily drawn from 3 passages: Matthew 5:9, Matthew 18:15-17, and 1 Corinthians 6:1-7. Matthew 5:9 states, “Blessed are the peacemakers, For they shall be called sons of God.”<sup>13</sup> This passage encourages Christians to seek to create peace and reconciliation. Matthew 18:15-17 states:

Moreover if your brother sins against you, go and tell him his fault between you and him alone. If he hears you, you have gained your brother. But if he will not hear, take with you one or two more, that ‘by the mouth of two or three witnesses every word may be established.’ And if he refuses to hear them, tell it to the church. But if he refuses to hear the church, let him be to you like a heathen and a tax collector.<sup>14</sup>

It is the second sentence of this passage that speaks to mediation. This passage encourages parties who are disputing and cannot resolve the dispute between themselves to seek a third party (or parties) to help them find a resolution for the dispute. This becomes even more important when read alongside 1 Corinthians 6:1-7, which states:

Dare any of you, having a matter against another, go to law before the unrighteous, and not before the saints?...I say this to your shame. Is it so, that there is not a wise man among you, not even one, who will be able to judge between his brethren? But brother goes to law against brother, and that before unbelievers! Now therefore, it is already an utter failure for you that you go to law against one another. Why do you not rather accept wrong? Why do you not rather let yourselves be cheated?...<sup>15</sup>

This passage encourages believers to avoid taking matters between other believers to court, but rather to attempt to settle things themselves. When all three of these passages are read together they create a strong basis for Christians to attempt to solve disputes through mediation. This principle of encouraging mediation applies in disputes between two Christians, a Christian and a non-Christian, or two non-Christians (if the third party is a Christian).

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<sup>9</sup> Martin H. Manser, mediation in *Dictionary of Bible Themes, The Accessible and Comprehensive Tool for Topical Studies* (2009).

<sup>10</sup> Walter A. Elwell, Mediator, Mediation, in *Evangelical Dictionary of Bible Theology in Baker Reference Library* (1996).

<sup>11</sup> Peacemaker Ministries, *What makes Peacemaker Ministries Distinctive?* (2003) available at

[http://www.peacemaker.net/site/c.aqKFLTOBIpH/b.958133/k.852A/About\\_Peacemaker\\_Ministries.htm](http://www.peacemaker.net/site/c.aqKFLTOBIpH/b.958133/k.852A/About_Peacemaker_Ministries.htm).

<sup>12</sup> *Id.*

<sup>13</sup> Mathew 5:9 (New King James).

<sup>14</sup> Matthew 18:15-17 (New King James).

<sup>15</sup> 1 Corinthians 6: 1-7 (New King James).

## **Judaism**

Judaism strongly encourages parties to settle their disputes through mediation.<sup>16</sup> Both “Jewish law, and rabbinical literature...praise...parties who are able to settle their disputes rather than engage in litigation.”<sup>17</sup> Judaism draws upon the biblical text, the Talmud, various other texts, and numerous commentaries when addressing conflicts.<sup>18</sup> These sources focus “on compromise in the context of monetary disputes,” cautious action, and “accept[ing] compromise in order to prevent conflict and preserve the peace and welfare of the community.”<sup>19</sup>

The desire for peace is a central theme in Judaism and flows through every level of Judaism.<sup>20</sup> This leads to principles that encourage peaceful debate and compromise.<sup>21</sup> There is also a strong belief that any judgment imposed by a third party would only continue the conflict, and that the parties through compromise, mediation, and eventual reconciliation can find true resolution of the issue.<sup>22</sup> Compromise and mediation is considered preferable to a ruling imposed by a third party because the compromise reached through mediation serves both “righteousness and justice.”<sup>23</sup> Compromise is also seen as ensuring that there is as little community upheaval as possible.<sup>24</sup> This leads to the conclusion that mediation is encouraged when two Jews are in conflict, but also when a Jew and a non-Jew are in conflict. However, the Jewish tradition does exclude the possibility of mediation “when dealing with external enemies whose behavior is irreparably immoral and whose hostility is uncompromising.”<sup>25</sup>

## **Islam**

The Islamic tradition is supportive of mediation as an alternative to litigation.<sup>26</sup> This tradition springs from the Qur’an, the Sunna, the Ijma, and the Qiyas.<sup>27</sup> These sources encourage “peaceful conflict settlement: within the Islamic community; between Islamic and non-Islamic communities; and between two or more non-Muslim communities.”<sup>28</sup> The Qur’an has several verses addressing mediation principles.<sup>29</sup> Mediation within Islam focuses on “restoring harmony and solidarity and restoring the dignity and prestige of individuals and groups.”<sup>30</sup> According to Sirajudeen, Muslims have a duty to society to resolve disputes, even if that resolution is slightly harmful to the individual.<sup>31</sup> The following principles play an important role in the Islamic view of mediation: fairness, “collaborative problem solving,” attempting to create win-win situations,

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<sup>16</sup> Masci & Lawton, *supra*.

<sup>17</sup> *Id.*

<sup>18</sup> Gerald M. Steinberg, *Conflict Prevention and Mediation in the Jewish Tradition*, 12 Jewish Political Studies Review 3, 3 (2000), available at <http://jcpa.org/wp-content/uploads/2000/10/conflict-prevention.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.* at 5.

<sup>22</sup> *Id.* at 6.

<sup>23</sup> *Id.* at 7.

<sup>24</sup> *Id.* at 7-8.

<sup>25</sup> *Id.* at 9.

<sup>26</sup> Caryn L. Wolfe, *Faith-Based Arbitration: Friend or Foe? An Evaluation of Religious Arbitration Systems and Their Interaction with Secular Courts*, 75 Fordham L. Rev. 427, 440 (2006), available at <http://ir.lawnet.fordham.edu/flr/vol75/iss1/11>.

<sup>27</sup> Abdul Azees Sirajudeen, *Concept of Mediation in Islamic Jurisprudence* 6, available at [http://www.academia.edu/3048074/Mediation\\_in\\_Islamic\\_Jurisprudence](http://www.academia.edu/3048074/Mediation_in_Islamic_Jurisprudence).

<sup>28</sup> *Id.* at 2.

<sup>29</sup> *Id.* at 9.

<sup>30</sup> *Id.* at 2-3.

<sup>31</sup> *Id.* at 6-7.

looking to the future, respect for others, avoiding assigning blame for past issues, acknowledging that an individual's feelings of anger allows that individual to move past their anger, "the belief that Allah is watching over everything," common-sense, introspection, and the independence of the parties.<sup>32</sup>

### **Application**

In the modern world, religion is often seen as a point of division, but though mediation, the commonalities of religious beliefs can be a way to bring parties together. All of the above religions embrace the belief that one should live peaceably with their neighbor and that conflicts should be resolved between the parties if possible, and that resorting to the legal system is the last resort if an agreement cannot be reached. The use of religious principles in mediation should constitute one of the mediator's tools, but the use of religious principles cannot replace the process of mediation. According to Bercovitch and Kadayifci-Orellana, "[u]se of religious objects and involvement of faith-based actors in mediation is not a new development."<sup>33</sup> They state that, "a religious dimension...opens a window or a door of opportunity that brings the parties closer to each other. Ultimately, addressing the legitimate needs of the parties and resolving the issues fairly and satisfactorily is *sine qua non* for any successful mediation effort."<sup>34</sup> Restating the same concept, they later suggest that, "[u]sing religious symbolism in the course of mediation can open a window to the deeper emotional and spiritual realities of those involved in conflict."<sup>35</sup> According to Matthews-Giba, "an appeal to religious and transcendent values [can] provide[ ] the motivation to settle a dispute."<sup>36</sup>

Donal O'Reardon addresses the issue of religion in mediation using four rules: "Separate Doctrine from Interpretation," "Separate Christ from Caesar," "Religious Positions Can't be Mediated, Positions From Religion Can," and "Don't Fear the Reaper."<sup>37</sup> He explains that the idea of the first rule is to focus on the "interpretation and application" of a particular doctrine instead of addressing the validity of the doctrine.<sup>38</sup> He states, "the key point here is that belief and action are distinct and that the religious believer almost always understands the difference between the private doctrinal formulation and the public behavioural [sic] expression of that belief."<sup>39</sup> He later that "it is the mediator's task to remind the religious believer that, if they think the only expression of their faith is practical and not theoretical, then such practicality is necessarily fractured, imperfect or, at least, partial."<sup>40</sup>

O'Reardon's second rule explores the fact that all religions take place in reality.<sup>41</sup> O'Reardon explains this principle by stating that, "the main point is that all actions which proceed from religious convictions have to take place in an imperfect world. In addition, these actions are themselves interpretations. That is, they flow from a particular understanding of the

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<sup>32</sup> Khalid Iqbal, Rahmaa Institute, *Islamic Mediation*, available at <http://www.rahmaa.org/domestic-violence/islamic-mediation/>.

<sup>33</sup> Jacob Bercovitch & S. Ayse Kadayifci-Orellana, *Religion and Mediation: The Role of Faith-Based Actors in International Conflict Resolution*, 14 *International Negotiation* 175, 183 (2009).

<sup>34</sup> *Id.* at 196.

<sup>35</sup> *Id.* at 197.

<sup>36</sup> F. Matthews-Giba, *Religious Dimensions of Mediation*, 27 *Fordham Urb. L.J.* 1695, 1700 (1999).

<sup>37</sup> Donal O'Reardon, *Can Religious Differences Be Mediated?* (2010) available at <http://www.mediate.com/articles/oReardonD2.cfm>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

religious teaching.”<sup>42</sup> He adds that the very selection of mediation to attempt to settle the dispute signals that the parties “recognize the value of a process premised on [“autonomy and self-determination”]...And it is in this very recognition that there are grounds for conflict resolution.”<sup>43</sup>

O’Reardon’s third rule reemphasizes his first rule in a different manner. The concept behind this rule is that the religious beliefs of an individual are not what are being mediated, rather it is the application of those beliefs to the situation that is being mediated. He states that, “it is not the mediator’s role to address the theological content of the believer’s faith and that we are talking here about the actions that follow from that content.”<sup>44</sup> He adds that, “it is beyond the remit of the mediator to explore the cognitive and intellectual content of a faith statement, it is not, however beyond their remit when the interpretative method used by the believer to relate to that faith statement is then deployed in another context.”<sup>45</sup>

O’Reardon’s final rule focuses on not fearing the role religion can play in a mediation. He adds that:

...religious worldviews are part of the family of human experience and expression. Ignoring them does them an injustice. But it is an injustice as well to those of us in the field of dispute resolution and it denies us the experience of engaging in dispute resolution that speaks to people at the level of their fundamental beliefs and values.<sup>46</sup>

Religion can be another tool mediators can use to help people reach an agreement by appealing to their core values and beliefs. However, this tool must be used with caution due to the possibility of creating an unnecessary point of contention instead of creating a point of agreement. Appealing to religious beliefs in a mediation involving liability cases with lawyers and insurance adjusters may not be positively received by the parties. The use of religious beliefs in mediation seems most appropriate when dealing with individuals who either enter into the mediation understanding that those beliefs may be discussed or who bring up religion on their own during the course of the mediation. Mediators must tread carefully in introducing religious beliefs. Where appropriate, however, those beliefs can be a powerful tool for mediators to assist parties in reaching a resolution.

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*