

EXCOMMUNICATION AND SHUNNING: THE EFFECT ON KOREAN CHURCHES IN AMERICA AS A SOCIAL NETWORKING STRUCTURE

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I. INTRODUCTION

[1] Churches in America hold a unique position in the lives of Korean-Americans.¹ Although Buddhism still serves as the predominant religion in Korea,² Christians have constituted a large proportion of Korean immigrants to the United States. Millions of Koreans in America have joined congregations because they share the same spoken language, culture, coupled with religious beliefs.³ Further, many first-generation Koreans⁴ attended schools in Korea and own small businesses in America, thus limiting opportunities to socialize and network in America.⁵ For a majority of the congregation

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¹ Pyong Gap Min, *The Structure and Social Functions of Korean Immigrant Churches in the United States*, in CONTEMPORARY ASIAN AMERICA 372-91 (Min Zhou & James V. Gatewood eds., 2000). See also THE KOREANS IN AMERICA 1882-1974, A CHRONOLOGY & FACT BOOK 127 (Hyung-Chan Kim & Wayne Patterson eds., 1974).

² KOREAN OVERSEAS INFORMATION SERVICE, FACTS ABOUT KOREA 164 (1998) (noting that as of 1995 in South Korea, 50.7%, or approximately 23 million Koreans follow a particular religious faith. The number of Buddhists are around 10,321,012 (45.6%); Protestants 8,760,336 (38.7%), and Catholics 2,950,730 (13.1%)).

³ Min, *supra* note 1. See also THE KOREANS IN AMERICA, *supra* note 1, at 127.

⁴ First-generation Koreans are individuals who were born and raised in Korea, and later immigrated to America at an age where individuals would have substantial difficulty in learning the English language (in most cases). “One-point fivers” or the “one-point five generation” are individuals born in Korea, but immigrated to the United States at an early age. And the second generation consists of individuals born in the United States to immigrant parents.

⁵ Pyong Gap Min, *supra* note 3.

members, the church serves as their central or only means of creating social and networking ties.⁶ Since the church experience is so woven into the lives of Korean-Americans, excommunication and shunning negatively affects the individual Korean and his or her family.

[2] Excommunication has negative social and economic effects to the individual, especially when the individual is shunned from larger churches. This effect, however, must be balanced with the “chilling effect” that may occur due to increased liability of religious institutions. The equilibrium that must be struck is a difficult one because protecting religious entities and the individual has long been the subject of scholarly debate. This Note attempts to strike the balance within an admittedly specific context, namely the Korean church in America. It will analyze how the exclusion from their church via excommunication or shunning may exclude Korean-Americans not only from their religious community, but also their cultural and networking community. The line between “religious community” and “community” becomes blurred in the Korean immigrant context. A cultural component or consideration in actual harm analysis may prove to be unworkable because a claim for defamation from church expulsion will not work without a specific, highly factual inquiry that is not feasible.

⁶ STEVE S. SHIM, KOREAN IMMIGRANT CHURCHES TODAY IN SOUTHERN CALIFORNIA 39 (Adam S. Eterovich & Robert D. Reed, eds. 1977) (Mr. Shim notes that community ties with Korean churches differs with that of mainline, or mainstream churches in America. Mr. Shim relies on the work of Clinebell, HOWARD J. CLINEBELL, JR., THE PEOPLE DYNAMIC 148 (1972), to further suggest that Korean churches fall within the 3rd sphere of activity in place of the extended family, whereas the American churches fall within the 4th sphere of activity. This stems from the role of the church as an alternative to traditional modes of social closeness such as extended relatives and friends from school.

[3] Part II of this Note will briefly consider the ecclesiastical abstention doctrine and compelling interest test under the First Amendment. Part III will discuss the historical relationship between Korean-Americans and the church as the principal source of satisfying social, cultural, and networking demands. Part IV will then examine the effect of shunning and excommunication on the social and business spheres of individuals. Finally, Part V describes a short proposal exploring the possible use of a cultural consideration in determining actual harm in tort of defamation suits against religious entities.

II. ECCLESIASTICAL ABSTENTION AND COMPELLING INTEREST TEST

A. *Ecclesiastical Abstention*

[4] The ecclesiastical abstention doctrine protects churches by limiting courts in their ability to delve into religious questions. The doctrine also serves as a powerful buffer to church liability. The First Amendment to the United States Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”⁷ The Fourteenth Amendment demands that this protection’s application to the states.⁸ Under the First Amendment, the ecclesiastical abstention

⁷ U.S. CONST. amend. I.

⁸ See *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (The Court held “that the [state] statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment.”)

doctrine shields churches from tort liability in certain situations⁹ by prohibiting the adjudication of legal actions that “directly or derivatively” require the explanation of religious questions.¹⁰ Courts have been averse to expose religious entities to greater tort liability in that the courts defer to the decisions made by the highest governing body of the particular church,¹¹ or courts can solve issues without delving into “forbidden areas” by applying “neutral principles of law.”¹²

⁹ Under the ecclesiastical abstention doctrine, civil courts may not delve into religious doctrine or issues concerning church polity and administration. The Ninth Circuit Court of Appeals terms this “canon law.” *Paul v. Watchtower Bible & Tract Society*, 819 F.2d 875, 878, n. 1 (9th Cir. 1987). *See also* *Watson v. Jones*, 80 U.S. 679, 729 (1871) (holding that an ecclesiastical hierarchy’s “decisions should be binding in all cases of ecclesiastical cognizance”); *Serbian Eastern Orthodox Diocese v. Milivojevic*, 426 U.S. 696, 709 (1976) (holding that civil courts should not intrude into disputes that involve religious law and polity).

¹⁰ *Serbian E. Orthodox Diocese v. Milivojevic*, 426 U.S. 696, 709-10 (1976) (quoting *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969)). “To permit civil courts to probe deeply enough into the allocation of power within a (structural or hierarchical) church so as to decide . . . religious law [governing church polity] . . . would violate the First Amendment in much the same manner as civil determination of religious doctrine.” *Id.* at 709 (quoting *Maryland & Va. Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 369 (1970) (Brennan, J., concurring)).

¹¹ Justice Reed defines hierarchical structures of churches as “organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head,” where ordinarily, the court simply defers to the churches’ governing body when a hierarchical structure is employed by the church. *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 110 (1952). Deferential treatment is also exhibited where the church is an independent organization or a congregational church. *Watson v. Jones*, 80 U.S. 679, 724 (1871). As for congregational churches, courts can and usually enforce the rulings made by a majority of the church members or by another “local organism as it may have instituted for the purpose of ecclesiastical government.” *Id.* at 724.

¹² *Jones v. Wolf*, 443 U.S. 595 (1979) is an example of the Supreme Court’s application of “neutral principles of law.” A Georgia church was involved in a property dispute. The Supreme Court of Georgia applied the “neutral principles of law” approach to church property disputes in favor of majority church members in an action brought by minority church members to establish their right to sole possession and use of church

[5] The ecclesiastical abstention doctrine of the First Amendment prohibits courts from delving into issues such as “religious doctrine, belief, discipline, or faith” in order to untangle controversies over “church property, church polity, or church administration.”¹³ When a court finds that the ecclesiastical abstention doctrine is appropriate in the case, the court may decline jurisdiction or apply “neutral principles” of law¹⁴ to resolve the dispute. However, churches often have to rely on the First Amendment and the compelling interest test for protection from tort liability because of the limited applicability of ecclesiastical abstention.¹⁵

property. The minority church members sought review and the Supreme Court held that under “neutral principles of law,” a court could rely “exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges” in resolving a controversy over church property or government. *Id.* at 603. Moreover, Justice Blackman suggests that a paramount advantage of the neutral principles approach is that it is purely “secular,” and “flexible enough to accommodate” religious hierarchical structures and organizations. *Id.* at 603. The Court concluded that if a state, in this case, Georgia, had adopted a presumptive rule that majority representation of its members of a voluntary organization was required, the Court could determine which faction represented the church. *Id.* at 608. The Court also found that the facts of the case allowed an interpretation that enabled judges and lawyers to avoid delving into questions of religious doctrine. *Id.*

¹³ Shea Sisk Wellford, *Tort Actions Against Churches – What Protections Does the First Amendment Provide?*, 25 U. MEM L. REV. 193, 197 (1994).

¹⁴ *Id.* (Wellford notes that because of the limited applicability of the doctrines of charitable immunity and ecclesiastical abstention, churches exposed to tort liability must look to the First amendment for protection in most cases. He further notes that charitable immunity protected churches by providing absolute immunity in some cases, and limited liability in others, depending upon the system of immunity the jurisdiction has adopted. Moreover, the applicability of charitable immunity has diminished because most states and judiciaries have abolished the doctrine. *Id.* (referring to W. Keeton et al., *Prosser and Keeton on the Law of Torts* §133, at 1069-71 (5th ed. 1984)).

¹⁵ Ecclesiastical abstention is the most powerful defense or shield for church tort liability. However, the defense is extremely limited. Limitations to the doctrine exist due to a courts aversion to intrusion into church polity and doctrine. *See Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976).

B. *Compelling Interest Test*

[6] Courts apply the compelling interest test to determine whether the church caused a plaintiff's injury.¹⁶ Through application of a compelling state interest test, the court balances the burden that the state places on the church with competing policies. Until recently, case law established the parameters of the compelling interest test.¹⁷

[7] This changed with the Religious Freedom Restoration Act,¹⁸ which set the standard for determining when the government can burden an individual's right to practice his religion. Under the Act, a court must find that any burden placed on the free exercise of religion¹⁹ is "in furtherance of a compelling governmental interest" and "is

¹⁶ Courts will resolve the case by weighing the interests of both parties, the state and the individual to the case. The State's interest for the church revolves around protection of religious freedom under the First Amendment, whereas, the interest of the opposing party is through a case-by-case factual analysis. *See generally* Sherbert v. Verner, 374 U.S. 398 (1963); *See also* Braun v. Brown, 366 U.S. 599 (1961) (the Supreme Court in holding that Sunday closing laws that in effect forced Orthodox Jews to close their businesses on both Saturdays and Sundays was a state interest, and a non-religious objective that could only be accomplished through uniform enforcement of the statute); Goldman v. Weinberger, 479 U.S. 503 (1986) (holding that the United States had a compelling interest in prohibiting an Orthodox Jewish Air Force officer from wearing his yarmulke indoors due to the strong interest in the state for protecting the "sanctity" of uniformity of apparel in the military).

¹⁷ *See, e.g.,* Wisconsin v. Yoder, 406 U.S. 205, 219-20 (1972), In a "rare" case where the Supreme Court held that the state had not met its "compelling interest" burden. The Court concluded that the First Amendment enjoined the state from requiring the Amish to send their children to high school. *Id.* at 234. The Court determined that the Amish's objection to formal education beyond the eighth grade was central to their belief system. *Id.* at 216. The Court also surmised that mandatory school attendance posed an undeniable threat of undermining the entire Amish community and its religious practices. *Id.* at 218, 227

¹⁸ 42 U.S.C.A. §§ 2000bb - 2000bb-2 (1994).

¹⁹ The Act does not explicitly state that it applies to tort actions against churches, but it is likely that courts will apply the Act in tort cases against churches.

the least restrictive means of furthering that compelling governmental interest.”²⁰ This test strives to protect individuals from burdens on the free exercise of their religion by requiring that a compelling interest justify any burden placed on religious practice.

III. THE HISTORICAL RELATIONSHIP BETWEEN KOREAN-AMERICANS, THE CHURCH AND ITS CULTURAL SIGNIFICANCE

A. *The Early Korean Immigrants*

[8] Korean immigration to the United States began as early as 1902. The northwest province of Korea suffered a severe drought. Instead of arable land, the drought seemed only to cultivate disadvantaged peoples complete with economic hardship and widespread suffering.²¹ During this time, Hawaiian sugar plantation owners needed agricultural workers, and many Koreans were available to fulfill this demand.²² Meanwhile, the Korean government sensed various stresses to governmental systems due to the shortage of food and shelter.²³ The idea of immigration for the restless poor, allowed the government a quick-fix solution to the anxiety caused by the drought.²⁴ The first group of immigrants came from the Pyongan and Hwanghae provinces in northwest

²⁰ 42 U.S.C.A. § 2000bb-1 (1994).

²¹ THE KOREANS IN AMERICA, *supra* note 1, at 127.

²² Linda Shin, *Koreans in America, 1903-1945*, in ROOTS: AN ASIAN-AMERICAN READER 202 (Amy Tachiki et al. eds., 1971).

²³ *Id.* at 202.

²⁴ *Id.*

Korea.²⁵ Early in 1903, ninety-three contract laborers entered Honolulu for the sugar and pineapple plantations.²⁶ Approximately 11,000 Koreans had already been admitted into Hawaii before the Korean government halted immigration in late 1905.²⁷

[9] Christian missionaries in northwest Korea also encouraged their converts to immigrate.²⁸ Northern Koreans, with their dire situation, were more receptive to the Christian religious movement because in contrast to the structured forms of society in the conservative south, the northern province lacked “clan and other traditional forms.”²⁹ Thus, the northern province proved to be a virtual petri-dish for growth of religious indoctrination and fervor.

[10] Christianity as a mechanism for structure has dominated the Korean-American experience even during the early immigrant years.³⁰ The early immigrants made religious participation the first major social event of their community.³¹ Korean

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 203.

²⁸ *Id.* at 202.

²⁹ *Id.*

³⁰ Many Koreans are affiliated to the Methodist and Presbyterian church. This affiliation has provided the impetus for the establishment of new churches such as the Salvation Army, Korean Christian Church, and Ch’ondo-gyo (Korean Native Sect). Others have joined the Seven Day Adventists, and Latter-Day-Saint Church.

³¹ Approximately several hundred Koreans entered the mainland United States to work on the railroads connecting Seattle, Washington with St. Paul, Minnesota. From 1900 to 1950, there were never more than 10,000 Koreans living in America. By 1970, only 14 Korean churches existed in America. However, with the loosening of strict immigration laws, large numbers of Koreans began immigrating to America after 1970. With the influx of immigration, church growth exploded and the number of Korean churches grew to exceed 1,000. SHIM, *supra* note 6, at 39.

churches began to take the form of quasi-governmental and cultural centers.³² The building of churches adjacent to Korean settlements effectively endowed the church as the core of social and community dealings.³³ Preachers possessed the dual roles of community leaders, as well as spiritual counselors.³⁴ Such close association between the pastors and early community leadership entrenched the church as the focal point for early immigrants.³⁵

B. Recent Korean Immigrants (1970-Present)

[11] During the 1970s, the Korean immigrant community was in its early stage of development.³⁶ Recent studies have discussed the major functions of Korean immigrant churches in America.³⁷ First, the church provides a locus for fellowship and social gathering for Korean immigrants.³⁸ Also, the church helps foster the Korean cultural tradition³⁹ and provides social services for members and the Korean community as a whole.⁴⁰ Finally, the church enables members to have an opportunity to improve their

³² *Id.* at 39, 40.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Min, *supra* note 1, at 373.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

social status and positions in the community.⁴¹ The structure of the Korean immigrant church invites participation for religious purposes and for practical purposes such as meeting with other Koreans, acquiring useful information for immigrant adjustment, and teaching children the Korean language and customs.⁴² Korean churches in America have been established to function as major social organizations, which meet the needs and provide services for the Koreans.⁴³

[12] Korean churches in America, like their homeland, have been relatively isolated from church organizations in Korea.⁴⁴ The reason for this lack of communication does not lie with geographical distance, but rather the lack of real concern over the affairs of the church⁴⁵ in Korea. In America, besides the given religious component,⁴⁶ the main role of the Korean church revolves around maintaining the Korean cultural identity and

⁴¹ *Id.*

⁴² *Id.* at 381.

⁴³ *Id.*

⁴⁴ Korea's nickname is the Hermit Kingdom, named for its relative isolation from the rest of the world for thousands of years. KOREAN OVERSEAS INFORMATION SERVICE, *supra* note 2, at 11.

⁴⁵ Dr. Daniel Bahk, A History of the Korean Mission in America (1981) (unpublished Master of Divinity thesis, Faith Evangelical Lutheran Seminary)(on file with author) (noting that Korean congregations are relatively independent from denominations in Korea. The reasons for this independence stem from either the minister's inability to accept many of the rules and regulations set forth by hierarchical church structures, or the refusal to work with Western hierarchies in fear of losing a Korean identity).

⁴⁶ THE KOREANS IN AMERICA, *supra* note 1, at 129. The authors point to a rather dramatic example of an inner church dispute within the church polity. Note that the history of the Korean church in America has been riddled with strife and in-fighting. Disputes were usually over policy on church administration, financial matters, and relative social tactics in order to gain leadership positions.

providing a social structure.⁴⁷ Thus, the Korean church provides many social services that other churches may not provide because of the paramount importance of the church in the members' lives.

[13] To both the early Korean settlers and recent Korean immigrants, the church has served as the “center of social gatherings and activities.”⁴⁸ Moreover, the church provides the central location for Korean women and senior citizens to meet other Koreans.⁴⁹

1. Networking

[14] The most important social function of Korean ethnic churches revolves around social interactions and friendship networks. Religious institutions foster a sense of

⁴⁷ Min, *supra* note 1, at 381. Social interaction is of paramount importance to Korean churches. In order to cultivate this social interaction, Korean churches employ several approaches. According to Min, all Korean immigrant churches have a fellowship or a meeting hour after the Sunday service. During the fellowship hour, church members exchange greetings and enjoy informal conversations with other members. A fair number of Korean churches are relatively small. This seems to have a lot to do with the practical needs of Korean immigrants for fellowship and a sense of belonging. Although large congregations provide more service programs, the advantages of the small church reside with the role of “pseudo-extended family” that Kim has pointed out. See I.S. KIM, *NEW URBAN IMMIGRANTS: THE KOREAN COMMUNITY IN NEW YORK* (1981). However, large congregations solve the alienation dilemma by breaking down congregation members by location of residence. The church designates specific areas with which *Kuyok Yebaes*, or district meetings are held. A district meeting combines a religious service and a dinner party at a member's private home, which provides district members with an opportunity for informal social interactions. Church members belonging to the same district rotate hosting the meeting. Korean immigrant churches also provide members an escape for recreational activities and sporting events. The majority of Korean churches organize numerous sporting events, picnics, retreats, and vacation bible school to foster social interaction. Min, *supra* note 1, at 382.

⁴⁸ SHIM, *supra* note 6, at 39.

⁴⁹ *Id.*

belonging.⁵⁰ Separated from their relatives and friends with whom they maintained primary social interactions in Korea, most new immigrants feel a sense of alienation in a foreign environment.⁵¹

[15] In fact, the Korean church, whether large or small have similar tools with which to foster this environment.⁵² This role is evident with Korean immigrant churches. Respective churches use house visitations to members of the congregation to facilitate social networks. An economic component also exists within this networking structure, namely, that economic harm may arise from the effects of excommunication. When a congregation member is shunned from a church, dependent upon the size of the church,⁵³ excommunication could negatively affect that individual's economic interests.⁵⁴

⁵⁰ Min, *supra* note 1, at 383. In a relevant parallel, W.E.B. Dubois states that “[I]ts family functions are shown by the fact that the church is center of social life and intercourse; acts as a newspaper and intelligence bureau, is the center of amusements- indeed is the world in which the Negro moves and acts.” W.E.B. DUBOIS, *THE PHILADELPHIA NEGRO*, (Schocken Books, 1967).

⁵¹ Min, *supra* note 1, at 381. Although approximately one-fourth of Korean immigrants are affiliated with one or more ethnic associations other than churches, such as alumni or occupational associations, Pyong Gap Min suggests that non-religious ethnic organizations are less effective than churches in creating social interactions and maintaining networks with other Koreans because the meetings for such associations are rather infrequent. *Id.*

⁵² SHIM, *supra* note 6, at 45. Although tides may be changing, the Korean church has historically exhibited voluntary segregation in conducting their church services and activities exclusively for Koreans for the greater part of the last 75 years of their history in America. Factors include the lack of the “melting pot “ theory to Korean immigrants in the U.S. For example, Korean immigrants, even those here for several generations, have kept a continuing interest in their cultural heritage and have seen the church as a means of maintaining this facet.

⁵³ Min, *supra* note 1, at 382.

⁵⁴ Justin K. Miller, Comment, *Damned if You Do, Damned if You Don't: Religious Shunning and the Free Exercise Clause*, 137 U. PA. L. REV. 271, 294 (1988). Shunning

2. *Maintaining the Korean Cultural Tradition*

[16] Another important social function of the ethnic church, closely related to the function of meeting the need for primordial ties, is the maintenance of ethnic identity and the native cultural tradition of a minority/immigrant group.⁵⁵ The Korean immigrant church fosters group identity in several ways. First, the Korean language and customs are more strictly observed inside the church than outside of it.⁵⁶ Ministers present sermons in Korean for a majority of adult church services. Further, many churches also provide

can produce real economic harm by destroying an individual's business. *Id.* In *Lide v. Miller*, 573 S.W. 2d 614 (Tex. Civ. App. 1978), a dentist brought an action against church elders for tortious interference with business relations. The church elders alleged instances of Lide's misconduct via a reading of statements to their congregation. The dentist suffered reputational harm indicative by a severe drop-off of business in his dental practice. The Texas Court of Civil Appeals stated that it had "no jurisdiction over and no concern with purely ecclesiastical questions and controversies," but that it did "have jurisdiction as to civil, contract, and property rights even though such rights are involved in, or aside from, a church controversy." *Id.* at 615 (citing *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976)). Justin K. Miller further comments that the significance of the *Lide* case "is that it compels members of a religious group to exercise the same standard of care as an ordinary person when making statements that are likely to affect a former member's standing in the community." Miller, *supra*, at 294. "This places former church members on an equal footing with those who remain in the group." *Id.*

⁵⁵ See W.L. WARNER & L. SROLE, *THE SOCIAL SYSTEM OF AMERICAN ETHNIC GROUPS* (1945) (noting the experience of European immigrant groups in that "the church was the first line of defense behind which these immigrants could organize themselves and with which they could preserve their group, i.e. system, identity," as quoted in Min, *supra* note 1, at 374.) See also HARRY H. L. KITANO & ROGER DANIELS, *ASIAN AMERICANS: EMERGING MINORITIES* 123 (2d ed. 1995) (noting that Korean churches provide for many needs—"religious involvement, identity, and a resource for newly arrived immigrants. They also serve as a place for meeting people, obtaining peace of mind, and achieving self-improvement").

⁵⁶ Bahk, *supra* note 45, at 18.

Korean language programs for children, and in reality, there are few community-wide Korean language schools not affiliated with the church.⁵⁷

3. *Social Services*

[17] Korean immigrant churches provide social services to congregation members. New immigrants need information. This information consists of normalization and adjustment services for immigrants in the United States. Korean immigrants have few options when looking for assistance from social service agencies.⁵⁸ Due to this service shortage, the Korean church appears as the central, if not only social institution that most immigrants can turn to for useful information⁵⁹ and services.⁶⁰ According to Steve Shim, social services for their respective congregations may include employment guidance, legal advice, welfare, transportation, child-care, etc.⁶¹

[18] Services are not only geared towards new immigrants. With the lack of formal social service agencies, most Koreans, if not most immigrants encounter two primary dilemmas--the language barrier and the difficulty in finding a job. Generally, the Korean church employs two methods of providing social services to new and existing members.

⁵⁷ There are exceptions to church/language school combinations. Some Korean language schools are not affiliated with a church structure, however, there are very few. The few separate language schools are located in large metropolitan areas where high numbers of Koreans reside and the numerosity of Koreans could economically sustain a private Korean language school.

⁵⁸ Min, *supra* note 1, at 384.

⁵⁹ SHIM, *supra* note 6, at 46.

⁶⁰ Min, *supra* note 1, at 384.

⁶¹ SHIM, *supra* note 6, at 46.

First, the head pastor and other religious leaders help church members informally on an individual basis by providing information and counseling on such matters as employment, business, housing, health care, social security, children's education, etc.⁶² Second, the church provides services for members through a number of formal programs such as Korean language schools, Bible schools, seminars, conferences, and day-care. Thus, the conduits of the church are deeply involved in helping members with formidable obstacles.

4. *Church used as a Springboard for Social Status and Positions of Power*

[19] Korean churches provide social status and social positions for Korean immigrants. Since the early 1970s, the church's initial focus of immigrant adjustment has also shifted toward providing social status for Korean immigrants. Prior to immigration, and due to factors such as language barriers and other disadvantages, most Korean immigrants experience downward mobility upon arrival in the United States.⁶³ Although many

⁶² *Id.* at 39. (noting that Korean ministers are in an integral position to know about the "physical, psychological, and spiritual conditions of their church members" through their regular home visits. Shared experiences of being newcomers to an unfamiliar country make the relationships of Korean ministers and their congregation highly intimate and meaningful).

Bok-Lim Kim also recognizes the role of Korean churches in America saying: They (Korean ministers) "fill the existing void in Korean communities in America in the absence of kinship ties and other networks of service available in the home country." Bok-Lim Kim, *Service Needs of Asian Immigrants as Seen by Ethnic Churches: Korean Example*, 8 UNIVERSITY OF ILLINOIS, SCHOOL OF SOCIAL WORK JOURNAL, August, 1973.

⁶³ See W.M. HURH & K.C. KIM, KOREAN IMMIGRANTS IN AMERICA: A STRUCTURAL ANALYSIS OF ETHNIC CONFINEMENT AND ADHESIVE ADAPTATION (1984). See also I.S. KIM, *supra* note 47; P.G. Min, *From White-Collar Occupations to Small Business:*

Korean immigrants realize economic mobility through self-employment in small businesses, blue-collar small businesses do not enhance their social status within the community.⁶⁴ Few Korean immigrants have found leadership positions in American voluntary organizations.⁶⁵ As a result, dissatisfaction with low social status and position continues to remain a major problem of Koreans in America.⁶⁶

[20] The church provides this opportunity for leadership positions, albeit within the micro-enclave of the particular church. Thus, most Korean immigrants must find this status satisfaction within a Korean church community. In order to facilitate this demand for improved social status, every Korean church provides a number of religious and non-religious positions. First, Korean ministers are hired and many other religious positions exist such as elders and deacons.⁶⁷ Other than the pastors, Koreans who hold such titles usually are not paid, and contribute more money and time than other members.⁶⁸

However, such positions meet their needs for social status, which cannot be met in the larger society as a whole.⁶⁹ The title indicating a church position such as an elder or

Korean Immigrants' Occupational Adjustment, 333 *SOCIOLOGICAL QUARTERLY* (1984); E.Y. Yu, *Korean Communities in America: Past, Present, and Future*, 23 *AMERASIA JOURNAL* (1983).

⁶⁴ See Min, *supra* note 1, at 387; See also P.G. Min, *supra* note 63; P.G. Min, *Ethnic Business Enterprise: Korean Small Business in Atlanta*, *CENTER FOR MIGRATION STUDIES* (1988).

⁶⁵ Min, *supra* note 1, at 387

⁶⁶ See *Id.*

⁶⁷ See Min, *supra* note 1, at 384 (noting that American churches, when in comparison to Korean churches, are not as hierarchical among lay members).

⁶⁸ *Id.* at 388.

⁶⁹ *Id.*

deacon is carried not only inside the church, but also outside of it by members of the “home” church, as well as from members of other Korean churches. For example, Mr. Kim is called, “Elder Kim” by church members and by other Koreans. The only exception is if Elder Yoon possesses a “better” title,⁷⁰ such as one affiliated with a professional degree or something similar.⁷¹

[21] Korean immigrant churches also provide a number of non-religious administrative and organizational positions. Church members are divided into a number of groups based on ages and districts of residence, and each district group has elected presidents and vice-

⁷⁰ *Id.*

⁷¹ WON MOO HURH & KWANG CHUN KIM, *KOREAN IMMIGRANTS IN AMERICA* (1984) (quoted in Harry H. L. KITANO & ROGER DANIELS, *supra* note 55, at 123) (noting that the Korean church “also [has] negatives-too much gossip, self-interest, schisms and conflict, and the constant solicitation of money.” In juxtaposition, the authors also note “Korean churches are central to the Korean community.”)

Another example of a schism and conflict in a Korean church can be found in *Korean Presbyterian Church of Seattle Normalization Committee v. Lee*, 880 P.2d 565, 566-69 (Wash. App. 1994), where the excommunicated sued the church for defamation for announcing the excommunication to the entire congregation. The controversy stemmed from a division among the Korean Presbyterian Church of Seattle’s members. The church’s bylaws contained provisions of the constitution through its affiliation with the Korean Presbyterian Church in America. The Washington Court of Appeals further noted that the Korean Presbyterian Church in America has a “hierarchical structure with a general assembly, intermediate bodies, and the local body, called a Session.” The head pastor requested an intervention from the regional body, and after investigation, the Commission asked the acting Session to resign and appointed a temporary Session while allowing the head pastor to continue. After much in fighting, the Commission ruled that thirteen of the most fervent protesters would be excommunicated. As part of the punishment of excommunication, no members of the congregation were to have any association with the excommunicated.

The former members subsequently formed the Korean Presbyterian Church of Seattle Normalization Committee in order to file suit against their former church seeking declaratory and injunctive relief and damages for the tort of defamation. The *Lee* court applied an actual malice analysis concluding that the plaintiffs had failed to raise a genuine issue of a material fact as to whether the Church’s conduct during announcement of excommunication was religiously motivated.

presidents.⁷² Many churches have a number of task-oriented committees, such as the Publication Committee, Fellowship Committee, Education Committee, Financial Committee, and Social Chairs, each with elected chairpersons. In addition, most Korean churches have specialized subdivisions such as the choir, the Korean language school, and the children's Bible school, which requires the services of many administrators and professionals. Thus, many positions exist for appeasing the desires of church members for social status.

IV. ECONOMIC AND SOCIAL NETWORKING HARM

[22] Shunning and excommunication may induce real economic and social injury. Several cases illustrate this proposition. For example, in *Bear v. Reformed Mennonite Church*, the members could not associate or have any business involvement with the shunned ex-member according to church precepts.⁷³ The Church ousted the ex-member

⁷² See Taek Yong Kim, *History of the Korean Church in America, 1903-1978*, 149 SEOUL KOREA: THE WORD OF THE LIFE PRESS (1979). Professor Kim's article describes the routine patterns of most Korean churches in America:

5:00 a.m. Prayer meeting every morning
11:00 a.m. Sunday morning service
7:00 p.m. Sunday evening worship
7:00 p.m. Friday evening local worship (Bible study)

According to Professor Kim, many churches have a revival meeting twice a year for a one-week period. At least twice-a-year church members visit homes of other members for social interaction. Further, the parish minister attempts to visit each family once a month. *Id.*

⁷³ *Bear v. Reformed Mennonite Church*, 341 A.2d 105, 106 (PA 1975)

because of his criticisms of church doctrine.⁷⁴ The community-wide ostracism affected the ex-member's ability to conduct business and familial relationships as well.⁷⁵ The Supreme Court of Pennsylvania recognized that shunning to this level interferes with business relations and familial relationships.⁷⁶ Although the *Bear* court stated that shunning may cause unnecessary intrusion into traditional areas of "paramount state concern," the courts may have authority to regulate, despite church protective defense clauses in the First Amendment.⁷⁷

[23] In *Paul v. Watchtower Bible and Tract Society of N.Y., Inc.*,⁷⁸ the plaintiff alleged "disfellowship," or shunning from the church causing similar effects as the plaintiff in *Bear*.⁷⁹ The United States Court of Appeals for the Ninth Circuit recognized the real

⁷⁴ *Id.* at 106.

⁷⁵ *Id.*

⁷⁶ *Id.* at 107.

⁷⁷ *Id.* at 107. See Miller, *supra* note 54, at 271 (Miller in quoting *Bear* emphasizes "may," more specifically, "i.e. the tortious interference with a business relationship, which the courts of this Commonwealth *may* have the authority to regulate, . . ." thus emphasizing as the author notes, that the first amendment is not a complete or "absolute defense to common law liability for shunning activities." *Id.* at 287.

⁷⁸ *Paul v. Watchtower Bible & Tract Soc'y, Inc.*, 819 F.2d 875, 877(9th Cir. 1987). The court defined "shunning" as a form of ostracism in which the entire congregation are prohibited from having contact with the shunned person. The court noted that the practice had its roots in early Christianity and that other groups, including the Amish and the Mennonites, engaged in the practice. *Id.* at 876-77. For a discussion of constitutional protection afforded to the practice of shunning, see generally Miller, *supra* note 54, at 137.

⁷⁹ See Miller, *supra* note 54, at 291-92 (According to Miller, although the effects were similar, many distinctions can be made between both *Paul v. Watchtower Bible & Tract Society, Inc.*, 819 F.2d 875 (9th Cir. 1987) and *Bear v. Reformed Mennonite Church*, 341 A.2d 105, 106 (PA 1975) based on factual assertions such as the plaintiff in *Bear* sued for alienation of affection, whereas, the plaintiff in *Paul* did not).

harm suffered by the plaintiff, but stated that “permitting her to recover for intangible or emotional injuries would unconstitutionally restrict . . . the free exercise of religion.”⁸⁰

[24] Since *Paul* involved church members’ practice of their beliefs by shunning the plaintiff, the court applied the compelling interest test.⁸¹ The *Paul* court found that no sufficient compelling interest to justify the burden of tort damages on the church, a burden that could lead the church to abandon part of its mandated religious practices.⁸² Further, if the church is held liable for its shunning practices it may be required to abandon the practice since repeated suits could result in insolvency.⁸³

[25] Shunning behavior ruined an ostracized ex-member’s dental practice. In *Lide v. Miller*, a dentist sued church leadership for tortious interference with business relations.⁸⁴ The church elders alleged examples of Lide’s misconduct via a reading of statements to their congregation.⁸⁵ The dentist suffered harm to his reputation as indicated by a severe drop-off of business. The Texas Court of Civil Appeals stated that it had “no jurisdiction over and no concern with purely ecclesiastical questions and controversies,” but that it did “have jurisdiction as to civil, contract, and property rights even though such rights are involved in, or aside from, a church controversy.”⁸⁶

⁸⁰ *Paul v. Watchtower Bible & Tract Society, Inc.*, 819 F.2d 875, 876 (9th Cir. 1987).

⁸¹ *Id.* at 883.

⁸² *Id.* at 881.

⁸³ *Id.*

⁸⁴ *Lide v. Miller*, 573 S.W.2d 614 (Tex. Civ. App. 1978).

⁸⁵ *Id.* at 615-16.

⁸⁶ *Id.* at 615-16.

V. THE FEASIBILITY OF A CULTURAL CONSIDERATION TO THE TORT OF DEFAMATION IN THE RELIGIOUS CONTEXT

[26] The church is an institution where spirituality meets fellowship. For Koreans in America, however, the church also serves as an all-encompassing place for social and cultural networking. When a congregation member is ousted from the ranks of membership, reputational costs coupled with the loss of social ties negatively affects the ex-congregation member. Reputational costs are dependent upon such factors as the length of service in the congregation as a member, participation levels, and economic and social commitments to the church.

[27] The practice of shunning involves the “complete withdrawal of social, spiritual, and economic contact from a member or former member of a religious group.”⁸⁷

Drawing from the absence of cultural implications in defamation law, I propose that the application of such would enable immigrants in ethnic churches the greater ability to

⁸⁷ Miller, *supra* note 54, at 271. Several religions currently practice this extreme form of shunning. An example includes the practice of “Bann und Meindung, a moral principle in the Amish community. Translated, the words mean “excommunication and shunning.” As a requirement of “Meidung,” current members cannot receive any support or favors from the ex-member, “that they do not buy from or sell to an excommunicated person, that no member shall eat at the same table with an excommunicated person, and if the case involves husband or wife, they are to suspend their usual marital relations.” *Id.* at n. 5. See J. HOSTETLER, *AMISH SOCIETY* 63 (1963); see also R. BEAR, *DELIVERD UNTO SATAN* 1-4 (1974) (comparing a like custom in the Reformed Mennonite Church).

Jehovah’s Witnesses shun members after a process called “disfellowshipping.” Members of the Jehovah’s Witness community are prohibited--under threat of their own disfellowship--from having any contact with disfellowshipped persons and may not even greet them.” *Paul v. Watchtower Bible Tract Soc’y of N.Y., Inc.*, 819 F.2d 875, 876 (9th Cir.).

show actual harm in excommunication and shunning cases. With that said, cultural considerations would most likely prove unworkable because the application of such considerations would be extremely tedious and move away from the aim of courts towards the continuum of objectivity and stress the already stressed, the judiciary.

[28] The feasibility of a cultural consideration in religious oriented defamation cases depends upon competing policy arguments. In realization of the cumbersome nature that a cultural inquiry would entail, courts could utilize this consideration when factual nuances indicate its usefulness. Thus, the consideration could be applicable in cases where the operative facts dictate a complete entrenchment of the individual's social and business ties with the church affiliation and no alternative social outlets such as other ethnic churches are available. Since so few shunning cases arise with applicable facts, the subjective and cumbersome nature of such inquiry would be lessened by the infrequency of the claim.

[29] In smaller communities where alternative Korean churches are not an option, the importance of a cultural consideration could take this factor into account in assessing actual harm. However, tort liability insurance may not exist for churches in smaller communities, and the threat of litigation may not only deprive the excommunicated, but also church members in maintaining the solvency of a small church.⁸⁸ Further, with the explosion of Korean church growth, attending another church is usually a viable option in

⁸⁸ Many Korean churches lack insurance policies that cover tort claims. In fact, most Korean churches lack health care, vision, and dental plans for church employees, including the presiding pastor. Larger churches have more of an ability to pay legal fees and tort damages. On the other hand, would smaller churches suffer in membership numbers if larger churches were covered by tort insurance? *See generally* James A. Hempill, Note, *Libel-Proof Plaintiffs and the Question of Injury*, 71 TEX. L. REV. 401 (1992).

accessing services, social networking, and cultural awareness⁸⁹ that is desired by the Korean immigrant, only in a different religious arena. Thus, if there is a reasonable likelihood of obtaining membership in another Korean church, the cultural consideration need not be applied.

[30] If no alternatives for attending another Korean church exist for the ousted member, the ousting church is likely located where the Korean population cannot sustain many churches. The ousting church in this scenario would most likely be small, thus litigation would threaten the solvency of the ousting church. Nevertheless, the admittance of cultural considerations would allow the immigrant to show a more realistic picture of actual harm.⁹⁰ Although the number of years as a member,⁹¹ degree of

⁸⁹ Like many other immigrant groups, Korean immigrants arrived in the United States in search of economic betterment and/or political freedom and were faced with tremendous language and cultural barriers. However, the preservation of their heritage remained, thus conflicting with assimilationist forces. Shim, *supra* note 36, at 6.

⁹⁰ See e.g., Taryn F. Goldstein, Comment, *Cultrual Conflicts in Court: Should the American Criminal Justice System Formally Recognize a "Cultural Defense"?*, 99 DICK. L. REV. 141, 141-44 (1994). See also Sharan K. Suri, *A Matter of Principle and Consistency: Understanding the Battered Woman and Cultural Defenses*, 7 MICH. J. GENDER & L. 107, 118 (noting that the premise behind the cultural defense is that recent immigrants have not had sufficient time for assimilation or comprehension of America's social and legal values and thus should be held to the standards of his native country).

⁹¹ The Glenmary Research Center suggests the sometimes ambiguous meaning of what it means to be a "member." Defining membership in churches poses the most "critical methodological problem" in determining church membership. The authors also note the variations within church members as "regular church members with full membership status, or regular participants who partake in all of the churches' formalities and customs, but are not members with full membership status, or simple adherents to the church's religious beliefs." Variations also exist within different faiths. Glenmary Research Center, *Membership in the United States 1990*, xiv (1990).

participation,⁹² and economic contacts within the church all serve as factors in determining actual harm, a cultural consideration would also delve into reasonable alternatives of ethnic churches that provide similar services and support.

[31] If a Korean church has the only Korean language school in the city, the harm also spreads to the children of the excommunicated in the form of lost educational opportunity.⁹³ Further, since Korean churches essentially double as service-oriented agencies, expulsion could also serve to deprive the excommunicated of valuable services. Moreover, with the lack of opportunities for Korean immigrants in the public sphere for leadership, the church serves as the location where leadership positions are attained. Thus, a cultural consideration would also take into account the reputational injury suffered by the excommunicated within the sphere of the Korean community, and not the community-at-large.⁹⁴ Also, the reputational damage could be severe in cases where the member was excommunicated from a large church.

⁹² In *Guinn v. Church of Christ*, 775 P.2d 766 (Okla., 1989), the plaintiff was involved in a church “marking” process because of her infidelities. She withdrew from church membership and separated herself from the church. Despite her disassociation, the church announced her past infidelities anyway. The Guinn court in deciding her intentional infliction of emotional distress claim held that when a church member removed herself from membership, she withdrew her consent, depriving the church of the right to discipline her. *Id.* The court, in dicta, stated that church membership alone is not dispositive of whether the plaintiff consented to church practices and beliefs. The court gave examples of active members of congregations who are not formal members. *Id.* Also, the term “member” is described as an amorphous concept. *Id.*

⁹³ SHIM, *supra* note 6, at 6; Bahk, *supra* note 45, at 30. Korean immigrants have an unwavering desire to perpetuate Korean cultural traditions, customs, and ideals. In order to facilitate these goals, language schools, social and political organizations, and churches were begun.

⁹⁴ Damages in defamation cases are meant to compensate for harm to a plaintiff’s reputation. Since a plaintiff whose reputation was very bad before being shunned or excommunicated may receive only nominal damages. *See* James A. Hempill, Note,

[32] The central issues with a cultural consideration in determining actual harm is that societal standards retreat from the static and are always evolving.⁹⁵ Thus, the difficulty in knowing exactly what the current cultural standards are for a particular group of people at a distinct point in time is a difficult inquiry, if not an impossible task.

VI. CONCLUSION

[33] Essentially, the difficulties in implementing a cultural consideration for determining actual harm in shunning cases is too much of a burden for courts. Further, courts should not be embroiled in religious doctrine or matters of church polity, however, culture effects the way people behave, and in turn, cannot be ignored, even if ignored in shunning cases.

Libel-Proof Plaintiffs and the Question of Injury, 71 TEX. L. REV. 401 (1992); VINCENT R. JOHNSON & ALAN GUNN, *STUDIES IN AMERICAN TORT LAW*, 956 (2d. ed., 1999).

⁹⁵ Suri, *supra*, note 90, at 118. “In essence, the argument that a [cultural] defense promotes cultural stereotypes consists of two points: 1) that a culture cannot be defined accurately as a generalization; and 2) that stereotypes of a minority culture inherently promote inaccurate stereotypes of the majority culture.” She further observes, that the “[cultural] defense is not feasible because it lacks a uniform definition of a certain culture and does not remain static. *Id.* at 125 (citing, Leti Volpp, *Talking “Culture”: Gender, Race, Nation, and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573, 1611-14 (1996)).

