

“BLESSED ARE THE PEACEMAKERS”: FAITH-BASED APPROACHES TO DISPUTE RESOLUTION

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SUMMARY

This article explores and compares the faith-based dispute resolution philosophies and techniques of Christianity, Islam, and Judaism and examines their interaction with the secular legal system.

I. INTRODUCTION

Whether or not lawyers like to admit it, human beings with scores to settle did not go straight from clubbing each other with rocks and bones to serving each other with summons. Since time immemorial, third parties have peacefully

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intervened in every manner of dispute, and much of this intervention has been rooted the world's countless religious traditions.¹ Before there were courts, there were temples; before there were judges, there were elders and priests, and before there were lawyers, there were clergymen, relatives, and neighbors.

These time-honored institutions did not wither away and die with the founding of the American Arbitration Association. On the contrary, in the United States, traditional, faith-based alternatives to the mainstream legal system are alive and well, and, in many ways, busier and more influential than ever. This article will explore the modern, faith-based dispute resolution philosophies and techniques of the three religions with the strongest presence in the United States: Christianity, Islam, and Judaism. In doing so, each religion's approach will be viewed through the lens of alternate dispute resolution (ADR) as it is commonly practiced and studied in this country. More specifically, the ADR approaches of Christianity, Islam, and Judaism will be compared to the four, basic forms of dispute resolution in the United States: negotiation, mediation, arbitration, and adjudication. Since these forms of dispute resolution are the key to this article's focus, the basic principles and characteristics of each is discussed briefly below, in order from least to most formal.

II. MAINSTREAM FORMS OF DISPUTE RESOLUTION

A. Negotiation

Negotiation is the most basic and least formal means of resolving a dispute.² Essentially, a negotiation is a direct, back-and-forth dialog between the parties with the goal of trying to resolve the conflict.³ Generally, negotiations are quick, inexpensive, private, and controlled completely by the parties.⁴ Because the emphasis of a negotiation is on informality, there are no specific procedures that must be followed.⁵ Each party may bring an attorney, however negotiations do not involve the intervention of a third party facilitator or decision maker.⁶ Moreover, because of the direct involvement of the parties in reaching a mutually acceptable agreement, negotiations can often result in a

1. ADR Group, *History and Theory Papers of Mediation I*, available at http://www.adrgroup.co.uk/training/Med_Hist&Pract_v1.html (last visited Oct. 12, 2002).

2. Oklahoma Bar Association, *Methods for Resolving Conflicts and Disputes*, available at <http://www.okbar.org/publicinfo/brochures/confbroc.htm> (last visited Oct. 12, 2002).

3. *Id.*

4. Johanne H. Goss, *Alternative Dispute Resolution (ADR) An Introduction*, available at <http://www.duhaime.org/adr1.htm> (last visited Oct. 12, 2002).

5. *Methods for Resolving Conflicts and Disputes*, *supra* note 2.

6. Goss, *supra* note 4.

win-win solution.⁷ As discussed below, negotiation is a central element of Christian dispute resolution.

B. Mediation

Mediation is a voluntary, non-binding process in which a neutral third party (the mediator) helps the parties communicate with each other and reach a mutually acceptable agreement.⁸ Typically, mediations are characterized by being voluntary and informal, as well as private and confidential, and are aimed at reducing hostility and preserving on-going relationships.⁹ Likewise, the parties in conflict generally choose their own mediator.¹⁰ The mediator does not render a decision nor does he or she force the parties to reach an agreement.¹¹ As in a negotiation, the parties directly participate in the mediation and are responsible for reaching their own, mutually acceptable settlement or agreement.¹² As discussed in greater detail below, mediations are most common in Christian and Islamic ADR, but are an important part of the Jewish tradition as well.

C. Arbitration

Arbitration is a formal, more trial-like process in which a dispute is submitted to a neutral third party (the arbitrator) for a decision.¹³ Typically, arbitrations are more formal than negotiations or mediations, but may be less formal than going to court.¹⁴ Although more complicated than other forms of ADR, arbitrations are usually faster and cheaper than going to court.¹⁵ Generally, arbitrations take place out of a courtroom setting, but in an environment where the arbitrator, like a judge, controls the process.¹⁶ The arbitrator will listen to testimony from both sides, examine exhibits, and make a decision in which only one side will prevail.¹⁷ The arbitrator's decision can be binding, if, prior to the arbitration, both parties agreed to be bound by it.¹⁸ As discussed below, the Jewish ADR tradition has the strongest focus on

7. *Methods for Resolving Conflicts and Disputes*, *supra* note 2.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Methods for Resolving Conflicts and Disputes*, *supra* note 2.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Methods for Resolving Conflicts and Disputes*, *supra* note 2.

18. *Id.*

arbitration, but arbitrations are also utilized in Christian and Islamic dispute resolution.

D. Adjudication

In a nutshell, adjudication involves parties going to court for a formal judicial proceeding in which all the issues are examined by applying the facts of the case to the applicable law, and a binding decision is rendered either by a judge or jury in which only one side prevails.¹⁹ Adjudications are involuntary, in that a defendant has no choice whether or not to participate, very formal, open to the public, lengthy, and usually quite expensive.²⁰ As discussed in greater detail below, the Jewish dispute resolution tradition is the most adjudicative, while in the Islamic and (especially) the Christian traditions, adjudication of disputes should be avoided if at all possible.

III. FAITH-BASED ALTERNATIVE DISPUTE RESOLUTION IN CHRISTIANITY, ISLAM AND JUDAISM

A. Christianity

Historically, Christian culture has a strong, rich tradition of faith-based dispute resolution. Since the middle ages, Christian clergymen have been called upon to act as mediators in disputes ranging from minor family squabbles to international diplomatic clashes between nations on the brink of war.²¹ As anyone who has ever read or seen "The Hunchback of Notre Dame" knows, Christian churches have always been respected as places of "sanctuary" from the disputes of the secular world.²² However, most people probably do not know that, while fugitives were protected by the sanctity of the church, Christian clergy often acted as mediators between criminals and the authorities.²³

Today, Christianity is, by far, the most practiced religion in the United States.²⁴ Approximately 80% of Americans come from Christian backgrounds²⁵, and 154 million consider themselves practicing Christians.²⁶ However,

19. *Id.*

20. *Id.*

21. *History and Theory Papers of Mediation I*, supra note 1.

22. *Id.*

23. *Id.*

24. Global Road Warrior, *United States at a Glance*, available at <http://media.maps.com/globalroadwarrior/countries/grwunitedstates/01ataglancebody.html> (last visited Oct. 12, 2001).

25. *Id.*

26. Religious Tolerance.Org, *Religious Makeup of the United States*, at http://www.religioustolerance.org/us_rel/htm (last visited Oct. 12, 2001).

“Christians” are by no means a homogenous group. Roughly 60 million American Christians are Roman Catholic (the largest single group)²⁷, and 94 million comprise the 220 different protestant denominations, ranging from Mormons to Mennonites and from Presbyterians to Pentecostals.²⁸

Within the spectrum of faith-based ADR, Christian forms of dispute resolution are the least formal, and generally range somewhere between negotiation and mediation. The informality of Christian dispute resolution technique is no accident. As discussed below, it is deeply rooted in basic Christian doctrine.

Naturally, Christians draw their traditions of faith-based dispute resolution from the Bible, particularly the teachings of Jesus Christ. Basically, Jesus taught that all people had to work out their differences in order to receive salvation, saying, “Love your enemies, do good to those who hate you, bless those who curse you, pray for those who ill treat you. If someone strikes you on one cheek, turn to him also the other.”²⁹ Likewise, “Whatever you bind on earth shall be bound in heaven; and whatever you loose on earth shall be loosed in heaven.”³⁰ This is a common theme not only in the teachings of Jesus himself, but also throughout the New Testament. For example, in his letter to the Romans, the Apostle Paul wrote, “Do not repay anyone evil for evil . . . If it is possible, as far as it depends on you, live at peace with everyone.”³¹

Arguably, there is no stronger command for Christians to resolve their disputes peacefully than in the Sermon on the Mount, when Jesus told his followers, “Blessed are the peacemakers, for they shall be called the children of God.”³² Just as Jesus compelled his followers to forgive one another and reconcile their differences, he also taught them how to go about accomplishing those goals. In the Book of Matthew, Jesus taught, “If your brother sins against you, show him his sin in private; if he listens, you have won your brother.”³³ “If a dispute cannot be resolved privately between the parties, Jesus taught that one of the grieving parties should take one or two others along with [him or her] so that every fact may be established on the testimony of those witnesses.”³⁴ Finally, if the parties were still unable to reach a solution after talking with the neutral third parties, Jesus taught that they should then “take [their dispute] to the church.”³⁵

27. *Id.*

28. *Id.*

29. *Luke 6:27-28; Matthew 5:38-39.*

30. *Matthew 18:18.*

31. *Romans 12:17-18.*

32. *Matthew 5:9.*

33. *Id.* at 18:15.

34. *Id.* at 18:16.

35. *Id.* at 18:17.

Many Christians interpret Jesus' teachings, as well as various other passages from the New Testament, as strongly discouraging, if not outright prohibiting, Christ's followers from taking their disputes to the secular courts.³⁶ This aversion to the mainstream legal system felt by some Christians has its roots in many passages from the New Testament. For example, in the book of Matthew, Jesus said, "Woe to you, teachers of the law . . . you have neglected the more important matters of the law— justice, mercy, and faithfulness."³⁷ Likewise, Jesus also taught his followers that it is best to avoid litigation altogether by going beyond the letter of the law, saying, "[I]f someone wants to sue you and take your tunic, let him have your cloak as well."³⁸ Moreover, Jesus taught that even when legal disputes cannot be avoided, every Christian should "[s]ettle matters quickly with [the] adversary who is taking [him or her] to court," even if that means reaching a settlement on the way to the courthouse.³⁹ Similarly, in his First Letter to the Corinthians, the Apostle Paul wrote that those who resort to taking their neighbors to court never win in the eyes of God, regardless of the verdict, because "[t]he very fact that [Christians] have lawsuits among [one another] means [both parties] have been completely defeated already."⁴⁰ Thus, because the teachings of Jesus and the various authors of the New Testament passionately urge Christians to forgive one another, stay out of court, and personally resolve their disputes in the least formal way possible, the Christian approach to dispute resolution has traditionally focused on negotiation or mediation, rather than arbitration or adjudication.⁴¹ Such is the case in the modern practice of Christian dispute resolution in the United States.

While hundreds of Christian denominations and organizations offer some sort of conflict resolution service, several have stood out as leaders in the process of Christian dispute resolution. Some of these are discussed below.

1. Peacemaker Ministries

In 1982, a group of nonprofit Christian ministries offering dispute resolution services throughout the United States joined together to form the Christian Legal Society.⁴² Five years later, many of these ministries formed the

36. Alice Curtis, *Should We File Lawsuits?*, CHRISTIANITY TODAY, August 6, 2001, available at <http://www.christianitytoday.com/ct/2001/010/27.66.html> (last visited Oct. 12, 2002).

37. *Matthew* 23:23.

38. *Id.* at 5:40.

39. *Id.* at 5:25.

40. *1 Corinthians* 6:7.

41. Peacemaker Ministries, *Our Distinctives and Statement of Faith*, available at http://www.hispeace.org/html/abt_us-distinct.htm (last visited Oct. 12, 2002).

42. Peacemaker Ministries, *Our Ministry*, available at <http://www.hispeace.org/html/org.htm> (last visited Oct. 12, 2002).

Association of Christian Conciliation Services, and by 1993, these services had merged into Peacemaker Ministries (“Peacemakers”).⁴³ Today, over three hundred churches, ministries, and organizations are a part of Peacemakers, making it is the largest, multi-denominational Christian dispute resolution service in the country.⁴⁴

One of the core beliefs of the Peacemakers is that Christians should not see conflict as necessarily bad or destructive.⁴⁵ Rather, the Peacemakers believes that “[b]y God’s grace, [Christians] can use conflict to glorify God, serve other people, and grow to be like Christ.”⁴⁶ When conflicts do arise, the Peacemakers follows Jesus’ teaching that the parties should try to work out their differences between themselves through negotiation.⁴⁷ In doing so, the Peacemakers’ approach is for each party to first look inward and ask whether he or she has had a “critical, negative, or overly sensitive attitude that has led to unnecessary conflict.”⁴⁸ This call to introspection stems from Jesus’ teaching that one must “first take the plank out of [his or her] own eye, and then [he or she] will see clearly to remove the speck from [his or her] brother’s eye.”⁴⁹ Next, Peacemakers’ approach requires the parties to “negotiate in a Biblical manner,” following the Apostle Paul’s teaching that each individual should “[d]o nothing out of selfish ambition or vain conceit, but in humility, consider others better than [one’s self],” and not merely look out for [one’s] own personal interests, but also for the interests of others.⁵⁰ If negotiations fail to resolve the conflict, the Peacemakers suggest that the parties turn to a “spiritually mature” person within the church to “coach” them and get them back on track to resolving their differences in private.⁵¹ Moreover, in keeping with Jesus’ teachings, if the “spiritually mature” person fails to help the parties reach a resolution, they should then seek the advice of one or two mutually respected individuals to help settle their differences through mediation and, if necessary, arbitration.⁵²

If, after making every attempt to resolve a conflict either privately or within a small, community- or church-based group, the parties are still unable to reach a solution, they can request that a trained peacemaker from the Institute

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Our Ministry*, *supra* note 42.

48. *Id.*

49. *Matthew* 7:5.

50. *Philippians* 2:3-4.

51. Peacemaker Ministries, *Basic Principles*, available at <http://www.hispeace.org/html/bas.htm>

(last visited Oct. 12, 2002).

52. *Id.*

for Christian Conciliation take an active role in the process.⁵³ These peacemakers do not act as advocates or provide counseling, but rather help to facilitate the process of resolving the dispute by serving the interests of all parties impartially.⁵⁴ Moreover, these professional peacemakers charge a “professional fee” (about \$125-150 per hour, plus expenses), providing an additional incentive for the parties to reach a private solution in a Christ-like manner.⁵⁵

2. Christian Dispute Resolution Professionals, Inc.

Like the Peacemakers, Christian Dispute Resolution Professionals, Inc. (“CDRP”) offers “alternative dispute resolution with a biblical twist.”⁵⁶ However, CDRP is not a nonprofit organization. Rather, it is a money-making business based in California, comprised of “retired judges, experienced business attorneys, and other qualified professionals trained as mediators and arbitrators” who hear cases and attempt to settle them by applying “biblical principles of justice and reconciliation to effect a mutually beneficial solution.”⁵⁷ While CDRP’s mediators and arbitrators are compensated for their time, the corporation notes that the average cost of one of its full mediations or arbitrations averages only about \$5,000, split between the parties, and, naturally, all proceedings are private and confidential.⁵⁸

CDRP offers faith-based services in virtually every practice area one might find in a secular “big firm,” including real estate, contract, marital disputes, child custody, employer/employee disputes, insurance disputes, workplace harassment, employment discrimination, and personal injury— all with a focus on biblical principles.⁵⁹ Primarily, CDRP handles marriage and family mediations.⁶⁰ As Christians, CDRP mediators and arbitrators “do not encourage divorce, but seek to help families find agreement where possible.”⁶¹ “If a

53. Peacemaker Ministries, *Introduction to Christian Conciliation, Frequently Asked Questions about Christian Conciliation*, available at <http://www.hispeace.org/html/geticfaq.htm> (last visited Oct. 12, 2002).

54. *Id.*

55. *Id.*

56. Christian Dispute Resolution Professionals, Inc., *Welcome*, available at <http://cdrpinc.com> (last visited Oct. 12, 2002).

57. *Id.*

58. Christian Dispute Resolution Professionals, Inc., *Getting Started*, available at <http://cdrpinc.com/getting%20started.htm> (last visited Oct. 12, 2002).

59. Christian Dispute Resolution Professionals, Inc., *When to Call CDRP*, available at <http://cdrpinc.com/when%20to%20call.htm> (last visited Oct. 12, 2002).

60. Christian Dispute Resolution Professionals, Inc., *Affordable Mediation Plans to Meet Your Family's Needs*, available at http://cdrpinc.com/marriage_meditation_program.htm (last visited Oct. 12, 2002).

61. Christian Dispute Resolution Professionals, Inc., *Marriage and Family Mediation, Frequently Asked Questions*, available at http://cdrpinc.com/family_meditation_faq.htm (last visited Oct. 12, 2002).

couple, after consulting with their support professionals and church leaders, decide to divorce, the CDRP mediators try to reduce the damages to the relationship that may occur.”⁶² Where couples can find agreement, the CDRP encourages full family reconciliation.⁶³

B. Islam

Islam is now the fastest growing religion in the United States.⁶⁴ Currently, between 3.5 and 3.8 million Muslims call America home.⁶⁵ While many American Muslims are immigrants, the majority are now born here,⁶⁶ due mainly to the fact that the American Muslim birthrate is about 4.5 children per couple, versus a nationwide average of 1.9.⁶⁷ As the American Islamic community has grown, it has faced the challenge of maintaining its cultural distinctiveness and adhering to its core beliefs while many Muslims are becoming increasingly secular and “Americanized.”⁶⁸ One approach American Muslims have used to preserve their traditions is Islam-based dispute resolution.

Within the spectrum of ADR, Islamic dispute resolution techniques and traditions are more formal than those characteristic of Christianity. Generally, Islamic faith-based dispute resolution falls somewhere between mediation and arbitration. Like the Christian tradition, Islamic ARD has its foundation in the tenants of religious doctrine.

Historically, Islamic culture has had a strong tradition of encouraging the peaceful resolution of disputes between Muslims. In Islam’s holiest book, the Quran, Muslims are taught that “Allah guides all who seek his good pleasure to ways of peace.”⁶⁹ The Quran also teaches that Muslims should always take the initiative for peace, reconciliation, and dialog,⁷⁰ describing true Muslims as people “who hastens in every good work, and those who are foremost in them.”⁷¹ Likewise the Quran gives Muslims numerous, explicit instructions as to how they should resolve their disputes. For example, one verse commands, “All who believe, stand out firmly for Allah as witnesses to fair dealing, and let

62. *Id.*

63. *Id.*

64. *Religious Makeup of the United States*, *supra* note 26.

65. *Id.*

66. Barry Seitz, *Fastest-Growing Religion Often Misunderstood*, at <http://www.themodernreligion.com/assault/rising.html> (last visited Oct. 12, 2002).

67. *Id.*

68. M.A. Muqtedar Khan, *American Muslims and the Moral Dilemmas of Citizenship* (May 2000), available at <http://www.washington-report.org/backissues/052000/0005061.html> (last visited Oct. 12, 2002).

69. Quran 5:16.

70. Alaa Bayoumi, *Peace: The Muslim’s Initiative* (October 1999), available at <http://conflictres.org/vol172/peace.html> (last visited Oct. 12, 2001)

71. Quran 23:61.

not the hatred of others to you make you swerve to wrong and depart from justice. Be just, for that is next to piety”⁷² More specifically, in the context of marital disputes, the Quran teaches that “[i]f [Muslims] fear a breach between two people, [they should] appoint an arbitrator from his people and an arbitrator from her people. If they both want to set things right, Allah will bring about reconciliation between them.”⁷³ In light of this emphasis on peaceful dispute resolution, the Islamic tradition has developed specialized intermediaries known as *quadis* who interpret and apply Islamic law (*shari'a*), often in an attempt to preserve social harmony by reaching a negotiated solution to a dispute.⁷⁴

An interesting facet of the Islamic approach to dispute resolution is that, arguably unlike Christianity, Islam gives its followers specific guidance as to handle disputes between themselves and people of other faiths.⁷⁵ In the Quran, Allah teaches Muslims to “invite [non-Muslims] to the way of the Lord with wisdom and beautiful preaching; and argue with [non-Muslims] in ways that are best.”⁷⁶ Likewise, Muslims are also taught to “walk on the earth in humility, and when [those ignorant of Islam] address [Muslims], they say peace.”⁷⁷

Islam’s emphasis on peaceful resolution of disputes between all persons, including non-Muslims, has its roots in the Islamic view of the unique role of Muslims as *shahadat*, an Arabic word meaning “witness over other nations.”⁷⁸ Islam teaches that, for Muslims to deserve the position of *shahadat*, they must first understand peace and initiate it among themselves.⁷⁹ Next, Muslims must extend the call for peace to include their non-Muslim neighbors.⁸⁰ Finally, Muslims must be as committed to spreading peace within other communities as they are within their own.⁸¹ “Only then will Muslims deserve to witness over other nations.”⁸²

1. Muslim Mediation

Both mediation and conciliation are the preferred dispute resolution approaches of the Prophet Mohammed.⁸³ In disputes between American

72. *Id.* at 5:8.

73. *Id.* at 4:34.

74. *History and Theory Papers of Mediation I, supra note 1.*

75. Bayoumi, *supra note 70.*

76. Quran 16:125.

77. *Id.* at 25:63.

78. Bayoumi, *supra note 70.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *History and Theory Papers of Mediation I, supra note 1.*

Muslims, mediation is most often used to address marital disputes.⁸⁴ In keeping with the procedures discussed in the Quran, when a Muslim husband and a wife are in conflict, each spouse will either name a different person he or she is comfortable with, and the two will help resolve the conflict, or they both will agree on one person to be the sole mediator.⁸⁵ In most cases, if two people are chosen, they are older family members, and if one person is chosen, he will be the couple's local *Imam* (religious leader and teacher).⁸⁶ As in secular mediation, the Muslim mediator is more of a facilitator than a judge.⁸⁷ According to Shahina Siddiqui, executive director of the Islamic Social Services Association of the United States and Canada (ISSA), "The job of the [Muslim] mediator is to listen to both sides, to help [the parties] identify what the problem is, where the conflict is, and then allow each client to listen to each other."⁸⁸

Dr. Muzammil Siddiqi, a long time mediator to the Muslim community in California, observes that the most common conflict between Muslim couples is "culture clash;" the prime example being "a Muslim woman brought up in America married to a Muslim man from India."⁸⁹ Although culture clash is the most common Muslim marital dispute, it is also among the conflicts most amenable to mediation.⁹⁰ "Sometimes," Dr. Siddiqi notes, "couples have said, 'I wish we had come before. I wish we had gone to someone earlier; we might have saved out marriage.'"⁹¹

Besides being more successful at resolving conflicts between Muslim couples, mediation also tends to result more often in agreements that secular courts will enforce. Zafar Hasan, a Chicago-based attorney, has noted that courts view a signed, notarized contract made after couples have gone through voluntary mediation as being more legally binding "because both the husband and the wife have agreed to the conditions mutually."⁹² In contrast, Hasan notes, courts are more likely to ignore or not enforce arbitration agreements because of incompatibility with local laws.⁹³

84. SoundVision.com, *Mediation: solving marital disputes mutually*, at <http://www.soundvision.com/marriage/conflict/mediation.shtml> (last visited Oct. 12, 2002).

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Mediation: solving marital disputes mutually*, *supra* note 84

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

2. Muslim Arbitration

Arbitration has received mixed reviews within the Muslim community. According to Shahina Siddiqui, "In the North American [Islamic] community, arbitration is rarely used."⁹⁴ "It is more likely to be a last resort . . . for couples on the verge of divorce."⁹⁵ "Arbitration," she notes, might "come into how the property is divided, who will take the children, that kind of stuff, [but] you cannot really arbitrate a relationship."⁹⁶ Zafar Hasan, the Chicago attorney, has observed that "[p]art of the problem is that the contract that results from the arbitration is not respected." "Couples can . . . draft a contract stipulating terms and conditions that each partner will respect. They can even get it notarized. However, it is usually either appealed or broken."⁹⁷ Another Muslim attorney, Faisal Kutty, notes that, "[a]t the end of the day, unless there is some kind of social pressure forcing the parties to abide by [the arbitrated agreement], what ends up happening is one of the parties will take it to court."⁹⁸

However, Abdalla Idris Ali, a former Toronto Imam, supports the use of arbitration as "a way for warring couples to avoid divorce."⁹⁹ "If they arbitrate [their] issues and accept the arbitration . . . , they might back down from the decision to divorce."¹⁰⁰ Ali is not the only Muslim who believes in the value of arbitration. Dr. M. Qadeer Baig has long campaigned for Muslims to resolve their disputes through arbitration rather than mediation.¹⁰¹ According to Dr. Baig, through arbitration, Muslims will be able to decide [their] family law matters according to Islamic law.¹⁰² Moreover, he says, "many [a]rbitration decisions are final in that they do not need formal court approval in the same way as required in mediation cases."¹⁰³ To accomplish this, Dr. Baig recommends the creation of Islamic arbitration boards to deal with family problems, marital separations, inheritance, child support, and spousal maintenance in accordance with the *shari'a*.¹⁰⁴

94. SoundVision.com, *How arbitration can help Muslim couples solve conflicts*, at <http://www.soundvision.com/marriage/conflict/arbitration.shtml> (last visited Oct. 12, 2002).

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *How arbitration can help Muslim couples solve conflicts*, *supra* at note 94

100. *Id.*

101. Syed Mumtaz Ali, *A Word from the President*, at <http://muslim-canada.org/word.htm> (last visited Oct. 12, 2002).

102. *Id.*

103. *Id.*

104. *Id.*

C. Judaism

Today, approximately 3.8 million Americans practice Judaism, and another 2 million consider themselves “culturally” or “ethnically” Jewish.¹⁰⁵ Perhaps because people of the Jewish faith represent a relatively small percentage of the American population (approximately 2%),¹⁰⁶ many Jewish communities throughout the United States have generally worked to preserve Jewish culture and religious law through Judaism-based dispute resolution. Primarily, Jewish communities have worked to settle their disputes in accordance with their faith through highly specialized religious courts. As will be illustrated below, the Jewish approach to the resolution of conflicts is significantly more formal and adjudicative than either the Christian or Islamic traditions.

Compared to the ADR traditions of Christianity and Islam, the Jewish approach to faith-based dispute resolution is the most formal and can often be conducted very much like a secular trial, firmly rooted in process and law. Along the ADR spectrum, Jewish dispute resolution falls somewhere between arbitration and full adjudication.

The long, rich history of the Jewish people, as reflected in the Bible, Talmud, and in the writings of Jewish scholars, as well as in the practice of *halacha* (Jewish law), provide the basis for the Jewish approach to conflict resolution.¹⁰⁷ Central to the Jewish approach is the concept of *shalom* (peace).¹⁰⁸ The Bible commands religious and community leaders to seek and pursue peace and accept that which is undesirable in order to avoid conflict within the community.¹⁰⁹ Shouldering the special burden of preserving peace and avoiding conflict within the Jewish community are the rabbis. As community leaders and religious authorities, rabbis are responsible for interpreting and enforcing the *halacha*.¹¹⁰ At the same time, rabbis also have the obligation to prevent divisions and conflict from arising in the first place.¹¹¹

In Jewish tradition, compromise, based on mediation and arbitration, is seen as an important method of settling civil disputes (*bayn adam l'ichavero*) and preventing community conflict.¹¹² One of Judaism's holiest books, the Talmud (a compilation of the Jewish oral law with rabbinical commentaries), highlights the advantages of mediation and compromise over a legal decision

105. Religious Tolerance.Org, *supra* note 64.

106. *The World Factbook - United States*, at <http://www.cia.gov/cia/publications/factbook/geos/us.html> (last visited Oct. 12, 2002).

107. Gerald M. Steinberg, *Conflict Prevention and Mediation in the Jewish Tradition*, available at <http://faculty.biu.ac.il/~steing/conglict/jewishconfl.htm> (last visited Oct. 12, 2002).

108. *Id.*

109. *Psalms* 34:15.

110. Steinberg, *supra* note 107.

111. *Id.*

112. *Id.*

finding for one party or the other.¹¹³ Likewise, Jewish sages have noted that when the demands of pure justice are met, there is no peace.¹¹⁴ In fact, the *Shulchan Aruch*, the authoritative code of Jewish Law, states that judges of the *halacha* are required to open all civil proceedings by proposing a compromise for the litigants to consider.¹¹⁵ The *Shulchan Aruch* also states that a judge or an independent mediator may also offer to mediate a solution, even after the evidence has been heard, in order to encourage a peaceful resolution to the conflict.¹¹⁶ Moreover, the Jewish scholar and philosopher Maimonides urged judges to promote voluntary mediation, praising any judge who does not have to make a legal ruling in his lifetime, and is able to mediate a compromise between rival litigants.¹¹⁷

Jewish law states that civil disputes do not necessarily have to be settled by professional judges, but rather, any three individuals accepted by the litigants and familiar with the law can sit in judgment.¹¹⁸ Nevertheless, most disputes under Jewish law are heard by rabbis, since they are most familiar with Jewish law. However, despite its emphasis on mediation and compromise, the Jewish tradition does not provide much direction regarding the process of mediation.¹¹⁹ Essentially, judges are simply told to seek a compromise.¹²⁰ In furtherance of this command to seek compromise, judges, rabbis and other persons presiding over disputes between Jewish parties often employ the familiar techniques of mediation and arbitration.

1. Jewish Mediation and Arbitration

Everyone knows the Old Testament story of King Solomon and the baby with two mothers, but most people probably have not thought about it in terms of alternate dispute resolution technique. In this context, it is worth repeating.

The Bible teaches that, by the grace of God, King Solomon was the wisest man who ever lived.¹²¹ Soon after God bestowed this great wisdom upon him, Solomon went to the Temple in Jerusalem and threw a big party to give thanks

113. The Talmud, The Steinsaltz Edition (English translation), Volume XV, Tractate Sanhedrin, Part 1, (Random House, NY) 1996.

114. Yaakov Bazak, *Conflict Resolution Through Compromise in Jewish Law*, in Sinai (in Hebrew) Vol. 71, Nisan 5732 (Spring 1972).

115. *Id.* at fn 13.

116. *Id.*

117. *Id.* at fn 41.

118. MENACHEM ELON, *THE PRINCIPLES OF JEWISH LAW* 570 (Keter Publishing House Jerusalem Ltd. 1997) (1975).

119. *Id.*

120. *Id.*

121. 1 Kings 3:12.

for the gift he had received.¹²² In the middle of this party, two women (the Bible calls them “harlots”) approached Solomon with a dispute about a baby.¹²³ Apparently, both women had recently given birth, but one woman had rolled over on her baby during the night, and now the child was dead.¹²⁴ Consequently, the two women were battling over whose baby was dead and whose was still alive. So, King Solomon, taking his newly acquired wisdom out for a spin, said, “Get me a sword.”¹²⁵ “Then the King said, ‘Divide the living child in two, and give half to the one and half to the other.’”¹²⁶ “Then the King said, ‘Cut the living child in two, and give half to the one and half to the other.’”¹²⁷ The first woman was horrified and said, “Oh, my lord, give her the living child, and by no means kill him.”¹²⁸ However, the second woman sneered, “He shall be neither mine nor yours; divide him!”¹²⁹ Of course, King Solomon did not get to be revered as the wisest man who ever lived by carving up a lot of babies. Instead, he coolly gave the baby to the first woman, the *real* mother, and all the people of Israel said, “Wow! That Solomon is one heck of an Alternate Dispute Resolution guy.” (paraphrased).¹³⁰

Today, probably very few disputes within the Jewish community are resolved by threatening to chop the parties’ children in half, but the theme set by King Solomon all those centuries ago still holds true: Jewish tradition encourages creative solutions to dispute resolution. Because of this history of creative, not necessarily “legalistic” solutions to conflict, Judaism has developed a strong tradition of mediation and arbitration.

In the Talmud, the Hebrew terms *p’sharah* and *bitzua* are used interchangeably to refer both to mediation and arbitration.¹³¹ Which term is appropriate depends on the number of people presiding over the dispute. A *p’sharah* may be conducted by a single individual.¹³² Thus, it is less formal, and lends itself more to the process of mediation. In contrast, a *bitzua* is more formal and requires three individuals, which is also the number required for a strict legal proceeding or *din* (discussed in greater detail in the next section).¹³³

122. *Id.* at 3:15.

123. *Id.* at 3:16.

124. *Id.* at 3:17-22.

125. 1 Kings 3:24.

126. *Id.* at 3:24.

127. 1 Kings 3:25.

128. *Id.* at 3:26.

129. *Id.*

130. *Id.* at 3:27-28.

131. Ira Yitzhak Kasdan, *A Proposal for P’sharah: A Jewish Mediation/Arbitration Service*, available at <http://www.jlaw.com/Articles/psharah3.html> (last visited Oct. 12, 2001) [Hereinafter *Proposal for P’sharah*].

132. *Id.* (citing Sulchan Aruch, Choshen Mishpat 12:7).

133. *Proposal for P’sharah*, *supra* note 131.

Three individuals are required when a potentially binding decision is sought because, under Jewish law, the enforceability of such judgments requires *kinyan* ("exchange").¹³⁴ Consequently, a *bitzua* is more likely to refer to arbitration.

As with secular mediation, Jewish mediators do not render decisions, and any suggestions the mediator makes for resolving the dispute are not binding on the parties.¹³⁵ A mediator may preside over a face-to-face meeting between the parties, caucus with each side separately, or, most likely, combine the two.¹³⁶ In practice, a Jewish mediator basically acts like any other mediator. He or she serves as an objective "sounding board" to offer an impartial evaluation of the merits of the case, and any information he or she receives is strictly confidential unless the parties agree otherwise.¹³⁷

Like mediation, Jewish arbitration essentially follows the same procedures as secular arbitration. The parties voluntarily take their disagreement to a panel of typically three impartial *dayanim* ("arbitrators") from the Jewish community who hear the evidence and arguments and render either a binding or non-binding decision, depending on what the parties want.¹³⁸ At times, the procedures used during the arbitration are designed and agreed upon by the parties, and, more often, Jewish arbitration panels follow the rules of an organization like the American Arbitration Association.¹³⁹ The latter is particularly true when the parties are seeking a binding decision. While arbitration awards can be appealed under various state and federal statutes, generally, courts will not vacate an arbitration panel's decision unless the proceedings were "tainted by fraud or bias" or the arbitrators "exceeded their powers in a manner [that] results in a manifest disregard of the law."¹⁴⁰

While these less formal approaches certainly have their place in the Jewish tradition, most Judaism-based dispute resolution is done by official, adjudicative bodies of trained professionals. These Jewish courts and the roles they perform are discussed in greater detail below.

2. Jewish Adjudication - The *Beth Din*

Din is the Hebrew word for a formal court proceeding.¹⁴¹ A *Beth Din* (or *Beit Din*) is an official Rabbinical Court, the authoritative forum of Jewish

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Proposal for P'sharah, supra* note 131.

139. *Id.*

140. *Id.*

141. *Id.*

law.¹⁴² Some of its many responsibilities include the preservation of procedures and decisions based on the Torah, Talmud, and the vast body of *halachic* law.¹⁴³ While there is no single “*Beth Din*” in the United States (virtually every state is served by at least one), Jewish courts are typically affiliated with the Rabbinical Council of America (“RCA”) or the Union of Orthodox Jewish Congregations of America.¹⁴⁴

Beth Dins serve the Jewish community by providing a forum for obtaining Jewish divorces, confirming personal status, and adjudicating commercial disputes stemming from divorce, business, and community issues.¹⁴⁵ When it comes to financial conflicts, Beth Dins usually hear cases involving disputes between business partners, employers and employees, congregations and rabbis, and family members. While Beth Dins rely primarily on Jewish law in reaching their decisions, most pride themselves on offering “erudite rabbinic judges . . . capable of addressing *halachic* issues in areas of financial and family law through the prism of contemporary commercial practice and secular law.”¹⁴⁶ When appropriate, many Beth Dins include lay professionals and experts; including secular lawyers, businesspeople, physicians, and psychologists; on its panel of judges.¹⁴⁷ Finally, most Beth Dins will hear cases regardless of the amount of money being disputed, because their jurisdiction hinges on the parties’ desire to be governed by Jewish law, not on the amount in controversy.¹⁴⁸

One of the most important functions of a Beth Din is the certification of one’s status within the Jewish community. When issues arise as to whether or not a person is Jewish or whether a couple is recognized as “married” in accordance with Jewish law, a Beth Din will hear the evidence, apply the *halacha*, and issue a ruling, either denying or confirming the disputed status.¹⁴⁹ Likewise, a Jewish divorce is properly accomplished by a Beth Din through a *get*, the official document required by Jewish law for either party to remarry.¹⁵⁰ The document makes no reference to responsibility or settlement details, nor

142. West Coast Rabbinical Court – Beth Din of Beverly Hills, *Beth Din*, available at <http://www.beth-din.org/more/default.htm> (last visited Oct. 12, 2002).

143. *Id.*

144. Beth Din of America, *Our Mission, Background & Affiliations, Principals*, available at <http://www.bethdin.org/mission.htm> (last visited Oct. 12, 2002).

145. Beth Din of America, *Our Services and What You Can Expect from the Beth Din o America*, available at <http://www.bethdin.org/services.htm> (last visited Oct. 12, 2002) [Hereinafter *Our Services*].

146. *Id.*

147. *Id.*

148. Beth Din, *Financial Arbitration*, available at <http://www.beth-din.org/Financial.asp> (last visited Oct. 12, 2002).

149. *Our Services*, *supra* note 145.

150. Beth Din, *Divorce*, available at <http://www.beth-din.org/more/divorce.html> (last visited Oct. 12, 2002).

does it offer any religious blessing or prayer.¹⁵¹ Thus, a *get* is strictly a legal document that breaks the existing bond of marriage and acknowledges that the parties are free to remarry under Jewish law.¹⁵²

In addition to confirming personal and marital status, Beth Dins also assist in conversion to Judaism by providing education and counseling, along with the actual procedure and appropriate documentation are provided to eligible, interested parties.¹⁵³ Great care is taken to ensure that a convert to Judaism's legitimacy in legal and family matters is guaranteed by strict adherence to Jewish law (*guir ke'halacha*). Once properly performed, conversion by a Beth Din is recognized by every Jewish legal authority, domestically and abroad.¹⁵⁴ Likewise, once settled, certificates of personal religious or marital status properly issued by a Beth Din are recognized by rabbinical courts in Israel and worldwide.¹⁵⁵

3. Jewish Law and the Secular Legal System

Because Beth Dins make an effort to conduct their proceedings in a manner consistent with secular arbitration law, their rulings are usually binding and enforceable in the secular court system.¹⁵⁶ For example, in *Cabinet v. Shapiro*, the Superior Court of New Jersey held that decisions of Jewish tribunals on religious matters must be accepted by legal tribunals as final and binding.¹⁵⁷ Similarly, in *Blitz v. Beth Isaac Adas Israel Congregation*, the Court of Appeals of Maryland recognized the validity of arbitration proceedings before a Beth Din, even when the proceedings are not in strict compliance with the Maryland Uniform Arbitration Act, so long as the parties knowingly and voluntarily agree to the arbitration procedures.¹⁵⁸ Moreover, when controversies include substantially religious issues, courts have declined to make their own judgments until a rabbinical court has had the opportunity to rule on the issues. For instance, in *Congregation B'nei Sholom v. Martin*, the defendant reneged on a \$25,000 pledge towards building a synagogue.¹⁵⁹ When the congregation sued in a Michigan court to collect on the pledge, the defendant claimed the court lacked jurisdiction, because the enforceability of the pledge was an issue of Jewish law, and, as such, it must be taken first to a Beth Din.¹⁶⁰ After hearing

151. *Id.*

152. *Id.*

153. *Beth Din*, *supra* note 142.

154. *Id.*

155. *Our Services*, *supra* note 145.

156. *Id.*

157. *Cabinet v. Shapiro*, 86 A.2d 314, 317 (N.J. Super. Ct. Law Div. 1952).

158. *Blitz v. Beth Isaac Adas Israel Congregation*, 720 A.2d 912, 913 (Md. 1998).

159. *Congregation B'nei Shalom v. Martin*, 173 N.W.2d 504, 504 (Mich. 1969).

160. *Id.* at 507.

expert testimony from rabbinical scholars of Jewish law, the Supreme Court of Michigan agreed, and remanded the case to the Beth Din.¹⁶¹

IV. CONCLUSION

While the dispute resolution traditions of Christianity, Islam, and Judaism may differ in the scope of issues they hear and the formality of the procedures they employ, all three certainly share one unifying theme: peacefulness is next to Godliness. In a time when faith seems to be a subject brought up more to spur conflict than to resolve it, it is both ironic and reassuring to read the holiest texts of these three great religions and reflect on their common commands: get along with one another; compromise; work things out. Suffice it to say that, when it comes to religion's true role in human conflict, blessed are the negotiators, the mediators, and the arbitrators, for they shall be called the children of God. And Allah. And Yahweh.

161. *Id.* at 510.