

## **When Faith Falls Short: Bankruptcy Decisions of Churches**

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*What does a church do when it is about to go bust? Religious organizations, like any business, can experience financial distress. Leaders could try to solve their churches' financial problems on their own. Perhaps leaders do not view the problems as addressable with law. Or perhaps they do not think, as a moral or spiritual matter, that they should resort to the legal system, such as bankruptcy, to deal with their churches' inability to pay its debts. Yet about ninety religious organizations seek to reorganize under the Bankruptcy Code every year. This Article relies on interviews with forty-five of these organizations' leaders and attorneys to examine how the leaders conceptualized their churches' financial distress as legal problems and decided to address those legal problems with bankruptcy.*

*Through these inquiries, the Article sheds light on longstanding questions about how people and organizations decide to use the legal system versus doing nothing or solving problems through self-help. The Article thus provides one of the first assessments of how small organizations view their problems as legal problems, and the first assessment of how leaders of small organizations decide to file for bankruptcy.*

*Church leaders' journeys began with struggling to solve their congregations' financial problems themselves and proclaiming that "bankruptcy from a spiritual standpoint is a no-no." Most often, creditors' foreclosure threats brought law to leaders' attention. Leaders then turned to social networks for help understanding their legal options. Drawing from these results, the Article also scrutinizes how leaders' reliance on social networks and feelings of stigma and shame because of their decisions to file influence debates about restricting access to bankruptcy.*

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## I. INTRODUCTION

Pastor Taylor's church is on the brink of financial meltdown. It has foregone paying the mortgage on its building for the past three months in order to keep up with other bills. Congregants have inklings that the church does not have enough money, but they are hard-pressed to contribute more given their own tight budgets. If only Pastor Taylor had a bit more time for finances to improve and a bit less due to creditors every month. But right now the church is about to go bust and he has to decide what to do.<sup>1</sup>

Does Pastor Taylor try to negotiate with the bank holding the mortgage? Does he confess to his congregation the full extent of the church's financial problems in an effort to raise money? Does the church simply close? Or will

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<sup>1</sup> This anecdote is an amalgamation of stories from churches' chapter 11 filings and my interviews with pastors and attorneys who represented churches in their chapter 11 cases. See generally Pamela Foohey, *Bankrupting the Faith*, 78 MO. L. REV. 719 (2013) [hereinafter Foohey, *Bankrupting the Faith*]; Pamela Foohey, *When Churches Reorganize*, 88 AM. BANKR. L.J. 277 (2014) [hereinafter Foohey, *When Churches Reorganize*].

Pastor Taylor authorize the church to file for bankruptcy despite having preached that bankruptcy is absolutely not a choice for Christians?

This Article relies on my original research regarding religious organizations<sup>2</sup> that have filed chapter 11 bankruptcy cases to investigate how leaders of these organizations come to see their institutions' financial problems as legal problems and as addressable by the particular legal solution of reorganization.<sup>3</sup> How these leaders decide between attempting to deal with their organizations' financial distress<sup>4</sup> themselves versus turning to the legal system sheds light on longstanding questions about how legal problems come to the legal system. Indeed, Americans tend toward self-help as a matter of pride or to avoid taking unpalatable legal action.

Consequently, in the United States, most civil justice problems are not addressed with law.<sup>5</sup> People, including small business owners, instead respond by doing nothing or handling their problems themselves.<sup>6</sup> For example, cattle ranchers may not seek compensation from nearby ranchers when animals trespass onto their land.<sup>7</sup> Roller-derby skaters may rely on a privately administered list of derby pseudonyms instead of turning to formal law to

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<sup>2</sup> As in my previous work, I use terms such as “faith-based organization,” “religious institution,” and “religious organization” interchangeably and to mean any organization whose operations are motivated in a meaningful way by faith-based beliefs and principles. See Foohey, *When Churches Reorganize*, *supra* note 1, at 277 n.1.

<sup>3</sup> Most scholarship regarding the use of bankruptcy focuses on the financial problems that underlie the need to file. See Ronald J. Mann & Katherine Porter, *Saving Up for Bankruptcy*, 98 GEO. L.J. 289, 291 (2010) (noting that “scant research” exists about the decision to file for bankruptcy and exploring what leads households to seek bankruptcy protection at the precise moment they file). My inquiry focuses on how leaders think about organizations' financial situations, posing new questions about how people and organizations think about financial distress as a legal problem addressable with bankruptcy.

<sup>4</sup> Financial distress occurs when a person or organization has difficulty timely paying its financial obligations. See Charles W. Mooney, Jr., *A Normative Theory of Bankruptcy Law: Bankruptcy As (Is) Civil Procedure*, 61 WASH. & LEE L. REV. 931, 951 n.91 (2004).

<sup>5</sup> A “civil justice problem” is “one that has civil legal aspects and raises civil legal issues, though the person who has the problem may never think of as it a legal problem and may never take legal action to try to resolve it.” Rebecca L. Sandefur, *The Fulcrum Point of Equal Access to Justice: Legal and Nonlegal Institutions of Remedy*, 42 LOY. L.A. L. REV. 949, 951 n.5 (2009) [hereinafter Sandefur, *Fulcrum Point*]; see, e.g., *id.* at 953 (noting that studies “reveal that the majority of [civil justice] problems never make it to law, lawyers, or the civil justice system”); William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631, 649 (1980–81) (same).

<sup>6</sup> See Rebecca L. Sandefur, *Money Isn't Everything: Understanding Moderate Income Households' Use of Lawyers' Services*, in MIDDLE INCOME ACCESS TO JUSTICE 222, 237–38 & fig.7.3 (Michael Trebilcock et al. eds., 2012) [hereinafter Sandefur, *Money Isn't Everything*].

<sup>7</sup> See ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES 3 (1991) (observing farmers and cattle ranchers in Shasta County, California).

regulate their intellectual property.<sup>8</sup> A family that falls behind on its credit card payments because of unexpected medical bills may not consider bankruptcy as a potential avenue for relief.<sup>9</sup>

Research shows that people react to their civil justice problems based on their body of knowledge and the options they believe are acceptable responses. They may not know the law or think that the law is relevant.<sup>10</sup> Even if they know that law is relevant, resorting to law may not be on their list of options.<sup>11</sup> That is, they may not think of their problems as “legal.”<sup>12</sup>

For some people, at some point, a legal option appears on the list of possible actions. The groundbreaking “naming, blaming, claiming” framework describes how people first must notice and name their injurious experiences, then attribute those experiences to another party, and finally decide to make a claim against that other party, possibly in a court of law.<sup>13</sup>

Thus, the “demand side” of law—“how people come to think about and act on their potentially justiciable experiences”<sup>14</sup>—encompasses two distinct questions. First, when and how do people view the problems they encounter in their lives that raise legal issues as legal problems? Second, once people think of their problems in legal terms, how do they decide to pursue particular legal solutions?

This Article takes up these two questions in context of religious organizations. Religious organizations are part of insular communities, and thus their leaders may presume that members and others will help during times of distress, causing leaders not to see their institutions’ financial problems as legal problems.<sup>15</sup> Nonetheless, approximately ninety religious organizations file under chapter 11 every year.<sup>16</sup>

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<sup>8</sup> See David Fagundes, *Talk Derby to Me: Intellectual Property Norms Governing Roller Derby Pseudonyms*, 90 TEX. L. REV. 1093, 1093 (2012) (examining how roller-derby skaters have created a “Master Roster” of the names under which they compete).

<sup>9</sup> See Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, in TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 112, 123 (Pascoe Pleasence et al. eds., 2007) [hereinafter Sandefur, *Importance of Doing Nothing*] (discussing why people often take no action to address money problems).

<sup>10</sup> See Sandefur, *Fulcrum Point*, *supra* note 5, at 953–54.

<sup>11</sup> See *id.* at 954.

<sup>12</sup> See generally HAZEL GENN, *PATHS TO JUSTICE: WHAT PEOPLE DO AND THINK ABOUT GOING TO LAW* (1999).

<sup>13</sup> See Felstiner et al., *supra* note 5, at 635–36.

<sup>14</sup> Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101, 117.

<sup>15</sup> Leaders thus may turn to distinct and observable social networks in thinking about their organizations’ problems. Also, at least as to the organizations that file under chapter 11, one leader typically holds the primary decision-making authority. See *infra* Part III.B. This makes studying how religious organizations’ leaders think about their institutions’ financials a potentially fruitful setting to consider the “demand side” of law.

<sup>16</sup> In my previous work, I reviewed documents submitted in connection with all the chapter 11 cases filed by religious organizations between 2006 and 2011—approximately 500 cases. See generally Foohey, *Bankrupting the Faith*, *supra* note 1.

The vast majority of debtors are small Christian congregations<sup>17</sup> that faced problems paying mortgages on church buildings.<sup>18</sup> In many respects, their cases were similar to those of small businesses, particularly in that the organizations generally rose and fell with the effectiveness of a key leader.<sup>19</sup> Ultimately, chapter 11 seemed to have the potential to provide a productive means to preserve value and revive congregations.<sup>20</sup>

In addition, the religious organizations' cases clustered in certain geographic areas, with more than fifty percent of the cases filed in ten of a possible ninety federal judicial districts.<sup>21</sup> This filing distribution does not reflect where chapter 11 cases are filed generally or where congregations are located across the United States.<sup>22</sup> Given this clustering, I hypothesized that leaders may think about their organizations' financial problems and the decision to file bankruptcy similarly to how studies have found that people and organizations respond to civil justice problems.

Part II of the Article analyzes research about how people come to the legal system, including filing for bankruptcy. Notably, scholars have highlighted that an individual's decision to pursue legal remedies versus doing nothing or taking matters into their own hands is "socially construed."<sup>23</sup> Information gathered from friends, neighbors, and family members inform people's notions about whether their problems are legally addressable.<sup>24</sup> These social networks also lead people to attorneys and other legal service providers, who assist them in deciding among their options.<sup>25</sup>

To test my hypothesis about how leaders decided to place their organization in bankruptcy, as detailed in Part III, I conducted extensive interviews with leaders of religious organizations that filed chapter 11 cases in the ten "hot" districts and the attorneys who represented them. Part IV analyzes these interviews to reveal leaders' journeys from their churches' impending financial meltdowns to reorganization. Consistent with research

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<sup>17</sup> I use the term "congregation" to mean a group of individuals—collectively, the members or congregants—who meet together regularly for religious worship. *See id.* at 724 n.28.

<sup>18</sup> *Id.* at 725–26.

<sup>19</sup> *Id.* at 771–72.

<sup>20</sup> *See id.* at 767–71; Foohey, *When Churches Reorganize*, *supra* note 1, at 303–04 (reaching the same conclusion by relying on interviews with bankruptcy attorneys to track the post-bankruptcy experiences of religious institutions).

<sup>21</sup> *See* Foohey, *Bankrupting the Faith*, *supra* note 1, at 734–35.

<sup>22</sup> *See id.*

<sup>23</sup> Sandefur, *Money Isn't Everything*, *supra* note 6, at 232; *see also* Felstiner et al., *supra* note 5, at 644–47. *See generally* PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* (1998).

<sup>24</sup> *See* Felstiner et al., *supra* note 5, at 644–47; Sandefur, *Fulcrum Point*, *supra* note 5, at 953–54.

<sup>25</sup> *See* Sandefur, *Money Isn't Everything*, *supra* note 6, at 222; Paul DiMaggio & Hugh Louch, *Socially Embedded Consumer Transactions: For What Kinds of Purchases Do People Most Often Use Networks?*, 63 AM. SOC. REV. 619, 623 (1998).

regarding how individuals experience their justiciable problems, leaders initially chose to do nothing about their organization's financial problem or to turn to self-help techniques, such as approaching creditors themselves.

Only when creditors pushed for payment or when members or trusted contacts brought law to their attention did their thoughts and actions begin to change. Leaders then turned to other pastors, congregants, and friends to confirm that the situations were legal problems and to discuss concerns about what filing would say about themselves and their congregations. Leaders' social networks also led them to attorneys, who discussed the benefits of reorganization. With this information, leaders rationalized their decisions to file, which allowed them to cope with their continued views of filing for bankruptcy as stigmatized and shameful.

This analysis provides one of the first assessments of how organizations come to the legal system and the first study of how small organizations' leaders decide to file for bankruptcy. Part V of the Article connects this analysis of the "demand side" of bankruptcy law to important larger questions about the use of the American legal system, particularly when and how smaller organizations turn to law. Further drawing on the results, Part V also scrutinizes how the leaders' reliance on social networks and feelings of stigma and shame associated with filing for bankruptcy inform ongoing debates about restricting access to bankruptcy.

## II. LEGAL PROBLEMS AND LEGAL SOLUTIONS

Whether people will decide to address their justiciable problems through particular legal remedies encompasses two distinct questions. First, do they experience the problems as legal problems? This question considers the recognition and social construction of problems: how people understand the relevance of law to problems in their life. If people do not see problems as legal, they are not likely to take legal actions. Second, once they come to see their problems as having legal dimension, how do they evaluate the particular legal avenues that may be available to address the problems?<sup>26</sup> This question considers the choice between the newly recognized legal solutions and other options, such as doing nothing. This Part analyzes research addressing these two questions in general and in the specific context of the decision to file for bankruptcy.

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<sup>26</sup> Even if people choose to deal with their problems privately, law may affect their negotiations and decisions. They may "bargain in the shadow of the law." Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 968 (1979). Because this Article focuses on how a certain group of people recognizes its financial problems as legal and decides to address them through bankruptcy, it does not address how these people also may be "bargaining in the shadow of the law."

### A. How People Come to the Legal System

Research shows that most legal conflicts are resolved outside of the legal system.<sup>27</sup> Business owners may eschew drafting or renegotiating contracts to preserve business relationships.<sup>28</sup> Residents in suburban areas may “deny, minimize, contain, and avoid conflict” with their neighbors.<sup>29</sup> Importantly, part of deciding whether to use law involves recognizing that another’s action or a situation is a violation of a legally addressable right.

Focusing specifically on individuals, socio-legal scholars have found that people often fail to perceive that a particular problem violates the law—that is, they fail to name, blame, and claim the problem as legally actionable.<sup>30</sup> Consequently, people may not mobilize their legal rights<sup>31</sup> or invoke legal norms to settle their disputes.<sup>32</sup>

Studies of how lower and moderate income individuals respond to their justiciable problems demonstrate how people may or may not come to the legal system.<sup>33</sup> One of people’s most common responses to grievances is to do nothing.<sup>34</sup> People fail to take action because of shame, “a sense of insufficient power,” and “frustrated resignation.”<sup>35</sup> These feelings of shame and lack of power also decrease individuals’ likelihood of taking the initial action of seeking information about their options, including legal options.<sup>36</sup> Alternatively, they may try to resolve the problems by appealing directly to the other parties involved.<sup>37</sup> Thus, though people may be aware of applicable

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<sup>27</sup> See *supra* note 5.

<sup>28</sup> See generally Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOC. REV. 55 (1963) (interviewing forty-three companies and six law firms in Wisconsin to explore the legal documentation of business transactions).

<sup>29</sup> See M. P. BAUMGARTNER, *THE MORAL ORDER OF A SUBURB* 127–28 (1988) (studying a suburban community and finding that people usually tend to avoid conflict).

<sup>30</sup> See generally Felstiner et al., *supra* note 5; Richard E. Miller & Austin Sarat, *Grievances, Claims, and Disputes: Assessing the Adversary Culture*, 15 LAW & SOC’Y REV. 525 (1980–81) (conceptualizing the process of dispute generation as a pyramid).

<sup>31</sup> Mobilization of the law generally refers to the “process by which legal norms are invoked to regulate behavior.” Richard O. Lempert, *Mobilizing Private Law: An Introductory Essay*, 11 LAW & SOC’Y REV. 173, 173 (1976).

<sup>32</sup> See generally EWICK & SILBEY, *supra* note 23 (identifying different categories of legal consciousness that predict how a person will utilize the law in the face of a conflict).

<sup>33</sup> Members of economically disadvantaged groups often are less able or likely to mobilize their legally cognizable problems. See Calvin Morrill et al., *Mobilization of Law*, in 13 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES 590, 591 (James D. Wright ed., 2d ed. 2015). How they view their problems thus provides a good lens to overview how people come to think of potentially justiciable problems as legal problems.

<sup>34</sup> Sandefur, *Importance of Doing Nothing*, *supra* note 9, at 112.

<sup>35</sup> *Id.* at 123.

<sup>36</sup> *Id.* at 123–24.

<sup>37</sup> *Id.* at 114.

laws, they may not characterize their situations as addressable by law.<sup>38</sup> As a result, some problems effectively remain “alegal.”<sup>39</sup>

Individuals’ decisions to pursue legal remedies versus doing nothing also are “socially construed.”<sup>40</sup> The advice and actions of individuals in a person’s social networks—“friends, neighbors, family members, and service providers to whom they bring their troubles”<sup>41</sup>—strongly influence characterizations of situations or disputes as legal or nonlegal. People may rely on leaders and members of their community organizations, such as churches, for guidance and information.<sup>42</sup> These social networks play a complex and crucial role in the transformation of problems with potential legal solutions into actual legal problems.<sup>43</sup> Gathering information through “social searching” may help people think of their problems as legally addressable and lead them to attorneys and other legal service providers.<sup>44</sup>

Conversely, the information may reinforce the construction of a particular problem as not legal even if it may present a legal claim.<sup>45</sup> Indeed, people do not cite lack of knowledge itself as a reason for doing nothing,<sup>46</sup> and likewise do not implicate the cost of attorneys as the primary reason for failing to turn to law to deal with justiciable problems.<sup>47</sup> Rather, they learn to do nothing or address problems outside the legal system from their previous experiences and social context and networks.<sup>48</sup>

### B. A Corollary: Diffusion of Legal Innovation Across Organizations

Similar ideas of social networks factor into theories of how legal and other innovations spread through organizations. As detailed in the next Part, the timing of religious organizations’ chapter 11 cases aligns better with the

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<sup>38</sup> For instance, people have reported not appealing decisions regarding payments from federal insurance programs because they believed they could not prevail. *Id.* at 123.

<sup>39</sup> Sandefur, *Fulcrum Point*, *supra* note 5, at 953 (“The characterization of a specific situation as a legal problem reflects . . . the thoughts and actions of the people who experience the troubles . . .”).

<sup>40</sup> *Id.*; see also Felstiner et al., *supra* note 5, at 644–47.

<sup>41</sup> Sandefur, *Fulcrum Point*, *supra* note 5, at 953.

<sup>42</sup> Sandefur, *Importance of Doing Nothing*, *supra* note 9, at 114.

<sup>43</sup> Sandefur, *Fulcrum Point*, *supra* note 5, at 953.

<sup>44</sup> See Sandefur, *Money Isn’t Everything*, *supra* note 6, at 222, 237–38 (noting that studies of moderate income Americans find that households take about thirty percent of their justiciable problems to lawyers and overviews studies of how people find attorneys).

<sup>45</sup> Social constructions also impact the mobilization of law. See generally EWICK & SILBEY, *supra* note 23.

<sup>46</sup> Sandefur, *Importance of Doing Nothing*, *supra* note 9, at 126.

<sup>47</sup> Sandefur, *Fulcrum Point*, *supra* note 5, at 954–55 (“[A lack of money to hire help] is only one reason, and often not the primary one in people’s own accounts of why they handle their problems as they do.”).

<sup>48</sup> *Id.* at 954.



timing of consumer than of business bankruptcy filings.<sup>49</sup> The religious organizations that use bankruptcy also usually grant control to one key leader.<sup>50</sup> These characteristics make studies of how people come to the legal system a useful starting point in considering how religious organizations' leaders think about law. However, as artificial entities with boards of trustees<sup>51</sup> and pastors effectively serving as managers or chief executive officers,<sup>52</sup> religious institutions are different than individuals. Studies of organizational adoption of innovations offer another explanation for how religious institutions' leaders may decide to address their financial problems with the legal solution of chapter 11.<sup>53</sup>

Researchers have characterized the diffusion of practices across organizations as “a process of social construction.”<sup>54</sup> Managers and directors, in part, respond to changes in the legal, political, and social environment through a combination of direct contact with their networks and indirect observation of what other organizations have done.<sup>55</sup> Empirical studies have connected direct and indirect reliance on networks to the spread of the adoption of poison pills and golden parachutes among corporations,<sup>56</sup> the adoption of formal employment discrimination complaint procedures for nonunion employees in American companies without a direct government

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<sup>49</sup> See *infra* notes 116–17 and accompanying text.

<sup>50</sup> See *infra* notes 136–39 and accompanying text.

<sup>51</sup> As nonprofit entities, religious organizations should be governed by boards. See Foohey, *When Churches Reorganize*, *supra* note 1, at 291 n.84; *infra* note 135 and accompanying text.

<sup>52</sup> See generally MARK L. GRIFFIN, PASTOR, CEO: MANAGING KINGDOM BUSINESS (2010) (explaining that pastors need to have organizational and financial management skills in today's church environment); Gary William Kuhne & Joe F. Donaldson, *Balancing Ministry and Management: An Exploratory Study of Pastoral Work Activities*, 37 REV. RELIGIOUS RES. 147 (1995) (studying five evangelical Protestant churches and detailing the pastors' multi-faceted work activities).

<sup>53</sup> These theories and studies also address how organizations come to the legal system because they consider how organizations adapt practices in response to changes in law or legal innovation. See *supra* note 52.

<sup>54</sup> Gerald F. Davis & Henrich R. Greve, *Corporate Elite Networks and Governance Changes in the 1980s*, 103 AM. J. SOC. 1, 1–3 (1997).

<sup>55</sup> See *id.* The idea that decision-makers in organizations rely on others' actions originates from broader work about “institutional isomorphism,” which seeks to explain similarity among organizations. See generally Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147 (1983).

<sup>56</sup> Gerald F. Davis, *Agents Without Principles? The Spread of the Poison Pill Through the Intercorporate Network*, 36 ADMIN. SCI. Q. 583, 608 (1991) (finding that “the more a firm was tied to others that had adopted a poison pill, the more likely it was to adopt a pill itself (up to a point)”); Davis & Greve, *supra* note 54, at 33–34 (finding that golden parachutes spread slowly through regional networks of corporate professionals, while poison pills spread rapidly through shared directors, evidencing that both social ties among firms and norms of professionals influence diffusion).

mandate,<sup>57</sup> and the abandonment of particular business strategies in the radio station industry.<sup>58</sup>

These theories also are relevant to diffusion of practices across religious institutions. A comparative study of local congregations referenced theories of social contagion and mimicry among businesses to explain how churches rely on the practices of other congregations and denominations to fashion their programs and missions.<sup>59</sup> Likewise, a study of the evolution of churches allowing the ordination of women connected the diffusion of this practice among groups of congregations and denominations with similar theological orientations partly to the prior adoption of the practice by other congregations.<sup>60</sup> Similar to how churches and denominations accepted the ordination of women, religious organizations' leaders may communicate with leaders of local churches or look to the practices of other congregations with similar theologies in considering how to address their churches' financial problems.

### *C. How People Come to the Bankruptcy System*

Particular to bankruptcy, these patterns of not thinking of problems as legal and of relying on the social construction of problems are apparent in studies of how social spillovers and context may influence consumer bankruptcy filing rates. These studies respond to questions about the role of bankruptcy's stigma and shame in historically increasing rates of consumer bankruptcy filings.<sup>61</sup> Though the 2005 amendments to the Bankruptcy Code

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<sup>57</sup>Lauren B. Edelman, *Legal Environments and Organizational Governance: The Expansion of Due Process in the American Workplace*, 95 AM. J. SOC. 1401, 1435 (1990) (concluding that “[o]ver time, processes of institutional isomorphism—mediated by the personnel profession and by changing societal, legal, and managerial ideologies of workplace governance—engendered a gradual diffusion of due process protections” in American companies).

<sup>58</sup>Henrich R. Greve, *Jumping Ship: The Diffusion of Strategy Abandonment*, 40 ADMIN. SCI. Q. 444, 468 (1995) (concluding that contagion among organizations was a factor in the abandonment of a product-market strategy).

<sup>59</sup>PENNY EDGELL BECKER, CONGREGATIONS IN CONFLICT: CULTURAL MODELS OF LOCAL RELIGIOUS LIFE 180–203 (1999).

<sup>60</sup>Mark Chaves, *Ordaining Women: The Diffusion of an Organizational Innovation*, 101 AM. J. SOC. 840, 865–66 (1996) (concluding that “[i]nterorganizational ties to prior adopters powerfully affect diffusion” of the practice of ordaining women).

<sup>61</sup>See, e.g., Michael D. Sousa, *Bankruptcy Stigma: A Socio-Legal Study*, 87 AM. BANKR. L.J. 435, 437 (2013) (discussing consumer bankruptcy filing rates over the last forty years); Teresa A. Sullivan et al., *Less Stigma or More Financial Distress: An Empirical Analysis of the Extraordinary Increase in Bankruptcy Filings*, 59 STAN. L. REV. 213, 214–15 (2006) (noting that there were 315,832 consumer bankruptcy filings in 1981 and 1,563,145 consumer bankruptcy filings in 2004); see also Rafael Efrat, *Bankruptcy Stigma: Plausible Causes for Shifting Norms*, 22 EMORY BANKR. DEV. J. 481, 488–517 (2006) (discussing why there may be a perceived shift in the social norm of bankruptcy stigma since the 1960s).

made it more difficult for individuals and families to file for bankruptcy,<sup>62</sup> these amendments have not changed who files for bankruptcy,<sup>63</sup> leading to continued questions about bankruptcy's enduring stigma and shame.<sup>64</sup>

“Social spillover” refers to how the actions of others in people's neighborhoods can influence their decisions.<sup>65</sup> When individuals in a neighborhood file for bankruptcy, others are likely to hear about the filings either first or second hand.<sup>66</sup> The ensuing information cascades may increase people's knowledge about the bankruptcy process, thereby prompting others to view their financial problems as legal problems and lessening informational barriers to filing.<sup>67</sup> At the same time, others in the neighborhood may observe that filing is a socially acceptable response to financial problems, thus reducing the level of stigma attached to bankruptcy in that particular geographic location and validating filing for bankruptcy as a productive

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<sup>62</sup> See Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005) [hereinafter BAPCPA] (codified as amended in scattered sections of 11 & 28 U.S.C.); Susan Block-Lieb & Edward J. Janger, *The Myth of the Rational Borrower: Rationality, Behavioralism, and the Misguided “Reform” of Bankruptcy Law*, 84 TEX. L. REV. 1481, 1486–87 (2006) (describing BAPCPA's “means test,” which provides which consumers may file for bankruptcy); Sullivan et al., *supra* note 61, at 214 (noting that with the 2005 amendments, “the U.S. Congress has embraced changes intended to make bankruptcy difficult or impossible for many financially troubled Americans”).

<sup>63</sup> See Robert M. Lawless et al., *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, 352–53 (2008) (finding that BAPCPA blocked families from filing “indiscriminately, regardless of their individual income circumstances”).

<sup>64</sup> See Sousa, *supra* note 61, at 437 (“The need to study bankruptcy stigma remains relevant today.”). See also Rafael Efrat, *The Evolution of Bankruptcy Stigma*, 7 THEORETICAL INQUIRIES L. 365 (2006), for a discussion of the historical treatment of debtors, and *infra* Part V.B for a discussion of disentangling the related but distinct concepts of stigma and shame in future debates about bankruptcy's stigma.

<sup>65</sup> See Astrid Dick et al., *Social Spillovers in Personal Bankruptcies 1* (June 2008), [http://nyfedeconomists.org/topa/DLT\\_062808.pdf](http://nyfedeconomists.org/topa/DLT_062808.pdf) [<http://perma.cc/UXN8-RQ3S>].

<sup>66</sup> See *id.* (describing the theorized effects of social spillovers); see also Ethan Cohen-Cole & Burcu Duygan-Bump, *Household Bankruptcy Decision: The Role of Social Stigma vs. Information Sharing 1–3* (Fed. Reserve Bank of Bos., Working Paper No. QAU08-6, 2008) [hereinafter Cohen-Cole & Duygan-Bump, *Role of Stigma*], <https://www.bostonfed.org/bankinfo/qau/wp/2008/qau0806.pdf> [<http://perma.cc/38YZ-BMX6>] (noting the social “phenomenon” of decreased costs of filing for bankruptcy include information costs and social stigma); Scott Fay et al., *The Household Bankruptcy Decision*, 92 AM. ECON. REV. 706, 710 (2002) (same).

<sup>67</sup> Dick et al., *supra* note 65, at 1 (discussing “informational channels”).

solution.<sup>68</sup> Higher filing rates should result from the diffusion of information and shifting attitudes.<sup>69</sup>

Consistent with the theory, the results of several empirical studies of consumer bankruptcy filings suggest that filing rates increase in a given year if filing rates in the same geographic location rose in the prior year.<sup>70</sup> However, these studies do not differentiate the effect of information cascades from a reduction in perceived stigma.<sup>71</sup> Two more recent studies have sought to make this distinction.<sup>72</sup> They find that both increased knowledge and decreased stigma impact the bankruptcy filing decision, but that information dissemination may better explain filing trends.<sup>73</sup>

Social spillover theories closely relate to hypotheses about how social capital may influence bankruptcy filings. Social capital refers to the “social networks, norms, and cooperation and trust created by human interactions in a community.”<sup>74</sup> Communities that experience less migration, and thus have a more stable population, may have stronger networks of citizens committed to

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<sup>68</sup> *Id.* (describing a “second channel” of social spillover related to stigma); Fay et al., *supra* note 66, at 710 (differentiating between “information cascades” and “local differences in the level of bankruptcy stigma”).

<sup>69</sup> Cohen-Cole & Duygan-Bump, *Role of Stigma*, *supra* note 66, at 2; Dick et al., *supra* note 65, at 1; Fay et al., *supra* note 66, at 710.

<sup>70</sup> Dick et al., *supra* note 65, at 1 (finding some evidence of local spillover following changes in state law making it easier to file); Fay et al., *supra* note 66, at 716 (predicting that if a district experiences an increase in filings in one year, it will experience a greater increase in filings the next year); David B. Gross & Nicholas S. Souleles, *An Empirical Analysis of Personal Bankruptcy and Delinquency*, 15 REV. FIN. STUD. 319, 339–40 (2002) (finding that the “probability that someone files for bankruptcy increases with the number of people in her state who filed in the recent past”).

<sup>71</sup> See Ronald J. Mann, *Optimizing Consumer Credit Markets and Bankruptcy Policy*, 7 THEORETICAL INQUIRIES L. 395, 409 (2006) (noting that these studies do not “separate the effect of stigma from a ‘learning-curve’ effect associated with increased awareness of the bankruptcy process”). The studies also are criticized for defining neighborhoods broadly and using proxies for stigma that may have economic effects that directly increase individuals’ likelihood of filing for bankruptcy. See Richard M. Hynes, *Bankruptcy and State Collections: The Case of the Missing Garnishments*, 91 CORNELL L. REV. 603, 614 (2006); Barry Scholnick, *Bankruptcy Spillovers Between Close Neighbors 1* (Apr. 2013), [http://professor.business.ualberta.ca/barryscholnick/~media/business/FacultyAndStaff/MBEL/BarryScholnick/Documents/JournalArticles/BK\\_Neighbor\\_14Apr2013.pdf](http://professor.business.ualberta.ca/barryscholnick/~media/business/FacultyAndStaff/MBEL/BarryScholnick/Documents/JournalArticles/BK_Neighbor_14Apr2013.pdf) [<http://perma.cc/NM7P-VX67>].

<sup>72</sup> Cohen-Cole & Duygan-Bump, *Role of Stigma*, *supra* note 66, at 1–2; Ethan Cohen-Cole & Burcu Duygan-Bump, *Social Influence and Bankruptcy: Why Do So Many Leave So Much on the Table? 1* (Dec. 10, 2009) [hereinafter Cohen-Cole & Duygan-Bump, *Social Influence and Bankruptcy*], [http://papers.ssrn.com/abstract\\_id=1423964](http://papers.ssrn.com/abstract_id=1423964) [<http://perma.cc/XZ5Z-T8GC>].

<sup>73</sup> See generally Cohen-Cole & Duygan-Bump, *Role of Stigma*, *supra* note 66; Cohen-Cole & Duygan-Bump, *Social Influence and Bankruptcy*, *supra* note 72.

<sup>74</sup> Sumit Agarwal et al., *Consumer Bankruptcy and Default: The Role of Individual Social Capital*, 32 J. ECON. PSYCHOL. 632, 632 (2011).

the communities' prosperity.<sup>75</sup> Residents' drive to support the community in turn may decrease the acceptability and incidence of bankruptcy filings.<sup>76</sup> Social capital thus may both lead people not to conceptualize financial problems as legal problems and counsel against using bankruptcy even if they view their financial problems as legal.

Studies investigating how social capital affects consumer bankruptcy filings overall find that factors pertaining to community stability, such as mobility and rural residency, have statistically significant effects on filing rates.<sup>77</sup> Areas with greater population shifting, such as larger cities, should experience higher filing rates.<sup>78</sup> These results complement findings about social spillover, further indicating that geographic location and social networks may bear upon filing rates. Social capital theories also add nuance to conclusions regarding social spillover, suggesting stigma and information sharing may operate differently depending on location. For example, information about bankruptcy may clarify individuals' perception of their financial problems as legal problems and make them more comfortable with the bankruptcy process, yet social capital may counsel them against filing.

#### D. How People Decide Bankruptcy Is the Solution

Once leaders understand their religious organizations' financial problems as legally addressable, before they file for bankruptcy on behalf of their organizations, they also must decide that bankruptcy law in particular is the most viable tool to resolve the situations. Because there is no research into how small businesses like religious organizations come to the bankruptcy system, the most relevant literature is studies of consumer debtors. Prior literature exploring how people choose bankruptcy from among their options focuses on how people sort out what filing says about them.<sup>79</sup> This process

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<sup>75</sup> *Id.* at 633–34; see F. H. Buckley & Margaret F. Brinig, *The Bankruptcy Puzzle*, 27 J. LEGAL STUD. 187, 193–94 (1998).

<sup>76</sup> Agarwal et al., *supra* note 74, at 633–34 (detailing how high social capital may reduce consumer bankruptcy filings); Buckley & Brinig, *supra* note 75, at 193–94 (discussing how social capital may influence an individual's propensity to file bankruptcy based on her neighbors' beliefs about bankruptcy).

<sup>77</sup> See Agarwal et al., *supra* note 74, at 646 (concluding that “individual social capital variables collectively can affect the strength of a community's social networks and norms, and, in turn, shape the community's attitudes toward certain socioeconomic behaviors or outcomes,” including filing for bankruptcy); Buckley & Brinig, *supra* note 75, at 200 (finding that “social variables,” defined as the strength of social networks, conservative and hierarchical attitudes, and the social stigma of promise breaking, predict filing rates).

<sup>78</sup> Buckley & Brinig, *supra* note 75, at 205 (concluding that this result is “consistent with the hypothesis that filing rates are higher in regions where social networks are weaker”).

<sup>79</sup> Relatedly, some studies have investigated what prompts filings at a particular date and time. See Mann & Porter, *supra* note 3, at 292, 296–97 (finding that households file when they save enough money to pay their attorneys and filing fees).

encompasses two dimensions: people must realize the extent of their financial declines and rationalize their decisions to file.

First, studies based on interviews with debtors, attorneys, and other legal actors involved in the consumer bankruptcy system have considered the ways in which individuals avoid dealing with their financial failure even if they know that their situations are addressable through bankruptcy.<sup>80</sup> People refuse to answer debt collectors' calls and otherwise evade the consequences of their situations.<sup>81</sup> As perceived by bankruptcy attorneys, eventually the psychological toll of the reality of their predicaments allows for an "internal reckoning with their own capacities to manage their financial circumstances."<sup>82</sup> At that point, people admit to their often worsening financial situations and accept bankruptcy as part of a solution.<sup>83</sup>

Interviews with consumer debtors link people's perceptions of bankruptcy's stigma and shame with this realization process. Particularly illuminating are direct interviews by Deborah Thorne and Leon Anderson of couples who filed bankruptcy in 1999.<sup>84</sup> The couples reported postponing filing for months or even years to avoid the stigma of bankruptcy.<sup>85</sup> They also described hiding their bankruptcies post-filing from relatives and friends because of fear of stigmatization.<sup>86</sup> Most recently, Michael Sousa's interviews with consumer debtors who filed under chapter 7 between 2006 and 2010 also revealed that some individuals avoided filing for bankruptcy because of its stigma and the shame they felt more generally about incurring debts that were unable to repay.<sup>87</sup>

Second, individuals may need to rationalize filing for bankruptcy, a process distinct from recognizing the gravity of their predicaments.

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<sup>80</sup> See, e.g., Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L.J. 501, 540–43 (1993) (detailing consumer debtor attorneys' perspectives on their client's feelings and attitudes toward bankruptcy); Terrell A. Hayes, *Stigmatizing Indebtedness: Implications for Labeling Theory*, 23 SYMBOLIC INTERACTION 29, 29 (2000) (interviewing forty-six individuals who attended Debtors Anonymous); Mann & Porter, *supra* note 3, at 313–18 (discussing results of interviews with consumer bankruptcy attorneys); Sousa, *supra* note 61, at 462 (interviewing fifty-eight consumer debtors); Deborah Thorne & Leon Anderson, *Managing the Stigma of Personal Bankruptcy*, 39 SOC. FOCUS 77, 77 (2006) (interviewing thirty-seven newly bankrupt families).

<sup>81</sup> See Braucher, *supra* note 80, at 541 (noting attorney statements that "[m]any debtors struggle with huge debts for a long time before visiting a bankruptcy lawyer"); Mann & Porter, *supra* note 3, at 313–14 (describing the "ostrich defense"); Thorne & Anderson, *supra* note 80, at 86 (detailing how debtors avoided bill collectors).

<sup>82</sup> Mann & Porter, *supra* note 3, at 316; see also Thorne & Anderson, *supra* note 80, at 83 (detailing how several debtors reported that as their financial problems worsened they "sank into serious self-described depression").

<sup>83</sup> Mann & Porter, *supra* note 3, at 317.

<sup>84</sup> See generally Thorne & Anderson, *supra* note 80.

<sup>85</sup> *Id.* at 86 (detailing how debtors described trying to avoid bankruptcy).

<sup>86</sup> *Id.* at 86–87.

<sup>87</sup> Sousa, *supra* note 61, at 463–69.

Rationalization is a psychological mechanism whereby individuals justify their decisions to solve the cognitive dissonance they experience when their actions do not align with their beliefs.<sup>88</sup> People may justify their actions both at the time events are occurring and after they have acted.<sup>89</sup> In the latter instance, a tendency to distort memories to reduce cognitive dissonance may play a key role in how individuals ex post perceive their decisions in relation to how they believe they and others should behave.<sup>90</sup> Also, in justifying the rightness of their actions, people may distance themselves from the moral implications of their behavior, a process termed “moral disengagement.”<sup>91</sup> This process may include comparing one’s actions to other’s more reprehensible behavior and placing the responsibility for one’s actions on another person or groups of people.<sup>92</sup>

There is limited empirical evidence linking cognitive dissonance and rationalization to consumer debtors’ use of bankruptcy. Most prominently, Thorne’s and Anderson’s, as well as Sousa’s interviews with consumer debtors revealed that the debtors engaged in multiple methods of “deviance

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<sup>88</sup> See, e.g., LEON FESTINGER, A THEORY OF COGNITIVE DISSONANCE 73–74 (1957) (noting that “rationalization” refers to the “process of justification for the choice after its completion to satisfy oneself rather than of affording logical presentation of reasons to influence the process beforehand”); CAROL TAVRIS & ELLIOT ARONSON, MISTAKES WERE MADE (BUT NOT BY ME) 4, 13 (2007) (“Self-justification . . . allows us to create a distinction between our moral lapses and someone else’s, and to blur the discrepancy between our actions and our moral convictions.”); Ruth Thibodeau & Elliot Aronson, *Taking a Closer Look: Reasserting the Role of the Self-Concept in Dissonance Theory*, 18 PERSONALITY & SOC. PSYCHOL. BULL. 591, 591 (1992) (noting that cognitive dissonance is most bothersome when it disrupts people’s conceptions of themselves).

<sup>89</sup> See TAVRIS & ARONSON, *supra* note 88, at 20–21 (“Dissonance theory came to explain far more than the reasonable notion that people are unreasonable at processing information. . . . Once we make a decision, we have all kinds of tools at our disposal to bolster it.”).

<sup>90</sup> See *id.* at 6, 70–71 (“Memories are often pruned and shaped by an ego-enhancing bias that blurs the edges of past events, softens culpability, and distorts what really happened.”); Michael Ross, *Relation of Implicit Theories to the Construction of Personal Histories*, 96 PSYCHOL. REV. 341, 355 (1989) (discussing how people use implicit theories of themselves to construct personal histories that produces biases in their recollection of past events).

<sup>91</sup> See, e.g., Albert Bandura et al., *Mechanisms of Moral Disengagement in the Exercise of Moral Agency*, 71 J. PERSONALITY & SOC. PSYCHOL. 364, 364 (1996) (discussing how people may selectively deactivate their moral standards when engaging in conduct they view as reprehensible); Lisa L. Shu et al., *Dishonest Deed, Clear Conscience: When Cheating Leads to Moral Disengagement and Motivated Forgetting*, 37 PERSONALITY & SOC. PSYCHOL. BULL. 330, 331 (2011) (noting theories of how people “modify their beliefs about [their] questionable actions through moral disengagement” and linking those theories with cognitive dissonance).

<sup>92</sup> See Bandura et al., *supra* note 91, at 365–66 (discussing how people morally justify their actions).

avowal” to justify their filings.<sup>93</sup> Debtors distanced themselves from other debtors by citing their “legitimate” reasons for declaring bankruptcy<sup>94</sup> and made excuses for their situations.<sup>95</sup> They also tried to “transcend” their filings by stating that they planned to repay creditors or teach others about managing their finances.<sup>96</sup>

The interviews with religious organizations’ leaders and attorneys analyzed in Part IV connect these theories and evidence regarding how people and organizations come to law generally and bankruptcy specifically to religious institutions’ use of chapter 11. Part III sets the stage for this analysis by detailing the underlying data.

### III. RELIGIOUS ORGANIZATIONS’ APPROACH TO BANKRUPTCY

My previous investigation of religious organizations’ chapter 11 cases through their filings led to the research questions investigated in this Article. This Part begins by describing the quantitative data collection and the development of the research question. It then discusses the interviews.

#### A. *Quantitative Filing Data*

To explore how religious organizations use chapter 11 to deal with financial distress and what their cases reveal about business reorganization and the bankruptcy process, I created a database of the universe of religious organizations that filed under chapter 11 nationwide from the January 1, 2006, to December 31, 2011, based on data available via the Public Access to Court Electronic Records (PACER) service. As described in my prior work, I identified 497 chapter 11 cases filed by 454 unique religious organizations spanning the study’s six year timeframe.<sup>97</sup>

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<sup>93</sup> Sousa, *supra* note 61, at 469–81 (detailing how debtors psychologically distanced themselves from their financial situations and bankruptcy filings); Thorne & Anderson, *supra* note 80, at 87–93 (noting that “while debtors acknowledged the general wrongfulness of bankruptcy, they endeavored to separate the stigmatized act from the deviant role with which it was generally associated”).

<sup>94</sup> Thorne & Anderson, *supra* note 80, at 87–90; *see also* Sousa, *supra* note 61, at 470–73, 477–79.

<sup>95</sup> Sousa, *supra* note 61, at 470–72, 475–77.

<sup>96</sup> Thorne & Anderson, *supra* note 80, at 92–93. Interviews with consumer debtor attorneys augment these findings. *See* Braucher, *supra* note 80, at 541–42.

<sup>97</sup> For a detailed description of the methodology used to assemble the dataset, see Foohey, *Bankrupting the Faith*, *supra* note 1, at 730–32. Of note, I combined jointly administered cases and eliminated cases filed by Catholic dioceses and those of organizations that duplicate services provided in the private market. The Catholic dioceses’ and related entities’ cases stem from sex abuse allegations and most likely ultimately represent an effort to handle widespread litigation. *See* Jonathan C. Lipson, *When Churches Fail: The Diocesan Debtor Dilemmas*, 79 S. CAL. L. REV. 363, 363–65 (2005) (analogizing the diocese cases to mass tort bankruptcy cases). Those debtors that duplicated services



An analysis of their cases revealed that religious organization leaders' "social construction" of bankruptcy may have influenced their approach to using reorganization. First, fifty-one percent of the cases in the dataset originated in ten of a possible ninety federal districts.<sup>98</sup> These districts do not coincide with either the districts in which most chapter 11 cases generally were filed during the study's timeframe,<sup>99</sup> the distribution of chapter 7 or chapter 13 cases across the country during the study's timeframe,<sup>100</sup> or the concentration of religious organizations across the United States.<sup>101</sup> This suggests that the concentration of religious organization bankruptcies was not a mere artifact of the geographic locations of chapter 11 cases filings or religious organizations. Table 1 lists the ten districts with the greatest percentages of religious organization cases filed nationwide during the study timeframe and compares them to the percentages of total chapter 11 cases filed during the same timeframe and percentages of total congregations nationwide located in those districts.

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provided in the private market included senior living communities, YMCAs, and hospitals. Foohey, *Bankrupting the Faith*, *supra* note 1, at 731–32.

<sup>98</sup> In creating the dataset, I searched filings from bankruptcy courts located in the fifty United States and the District of Columbia. Foohey, *Bankrupting the Faith*, *supra* note 1, at 730. Of the ninety possible federal districts, the cases in the dataset came from sixty-nine. *Id.* at 734.

<sup>99</sup> Forty-eight percent of all chapter 11 cases filed during the study's timeframe came from ten districts. Four of these districts are among the districts from which the majority of religious organizations' cases originated. *Id.* at 734 n.90.

<sup>100</sup> Foohey, *When Churches Reorganize*, *supra* note 1, at 280 n.19.

<sup>101</sup> Because many have few members and lack permanent locations, determining the precise number of religious organizations nationwide is difficult. The Association of Statisticians of American Religious Bodies' censuses provide the most comprehensive data. See Ass'n of Statisticians of Am. Religious Bodies, *2010 U.S. Religion Census: Links and Rankings (All Years)*, RELIGIOUS CONGREGATIONS & MEMBERSHIP STUDY (RCMS) (2012), <http://www.rcms2010.org/compare.php> [<http://perma.cc/E4HB-86PT>] [hereinafter *2010 U.S. Religion Census*]. The 2010 study estimated that there are approximately 345,000 congregations in the country. ASSOCIATION OF STATISTICIANS OF AMERICAN RELIGIOUS BODIES, U.S. RELIGIOUS CENSUS 2010: SUMMARY FINDINGS 6 (May 2012), [http://www.rcms2010.org/press\\_release/ACP%2020120501.pdf](http://www.rcms2010.org/press_release/ACP%2020120501.pdf) [<http://perma.cc/PY3H-WTCR>]. Five of the ten districts with highest concentrations of congregations are among those with the most religious organization filings during the study timeframe: Central District of California, Middle District of Florida, Northern District of Illinois, and Southern and Western Districts of Texas. Congregations tend to be spread more evenly across the United States, with no more than three percent of total nationwide congregations located in any one federal district. See *id.*

Table 1: *Ten Districts with Greatest Percentages of Religious Organization Filings During Study Timeframe*<sup>102</sup>

District	Religious Organization Cases		All Chapter 11 Cases		Congregations	
	N	%	N	%	N	%
N.D. Georgia	53	10.7	1,791	2.9	5,830	1.7
M.D. Florida	38	7.7	2,879	4.7	9,093	2.6
W.D. Tennessee	27	5.4	323	0.5	2,861	0.8
C.D. California	24	4.8	4,791	7.8	10,750	3.1
N.D. Texas	22	4.4	1,868	3.1	8,796	2.6
S.D. Texas	21	4.2	1,684	2.8	7,438	2.2
D. Maryland	18	3.6	1,210	2.0	5,336	1.6
N.D. Illinois	18	3.6	1,504	2.5	6,215	1.8
E.D. N. Carolina	17	3.4	1,689	2.8	6,065	1.8
S.D. Florida	16	3.2	697	1.1	3,977	1.2
Total	254	51.1	18,436	30.1	66,361	19.3

Second, within the ten districts with the greatest percentages of filings, many of the organizations that sought to reorganize were located relatively near to each other. For instance, despite including the metropolitan area of Athens, all but one of the forty-five unique religious organizations that filed in the Northern District of Georgia were located around the city of Atlanta.<sup>103</sup> In contrast, the Athens area is home to about five percent of the total congregations in the metropolitan areas of Athens and Atlanta.<sup>104</sup>

Likewise, in the Central District of California, nine (38%) of the twenty-four debtors were located near South Los Angeles. The Central District of California includes Los Angeles County, which encompasses many other heavily populated areas besides South Los Angeles. All of Los Angeles

<sup>102</sup> Where applicable, I report “N” for the number of cases, debtors, or congregations. In Table 1, N for Religious Organization Cases Filed is 497, and N for All Chapter 11 Cases Filed is 61,260, and N for Congregations is 344,894. Data regarding religious organization chapter 11 cases are from my original dataset. *See supra* note 97 and accompanying text. Data regarding all chapter 11 cases are from the Administrative Office of the United States Courts (AO). *Caseload Statistics Data Tables*, U.S. COURTS, <http://www.uscourts.gov/Statistics/BankruptcyStatistics.aspx> [<http://perma.cc/Q3B8-VB9P>]. Data regarding congregations are from the *2010 U.S. Religion Census*, *supra* note 101.

<sup>103</sup> The outlier is a ministry located in Texas that filed in the Northern District of Georgia. Eight organizations filed more than once during the study timeframe. *See supra* note 102.

<sup>104</sup> The 2010 U.S. Religion Census: Religious Congregations & Membership Study also reports the number of congregations in metropolitan areas. The Athens metropolitan area is home to 224 congregations, while the Atlanta metropolitan area is home to 4,529 congregations. *2010 U.S. Religion Census*, *supra* note 101.

County is home to about half of the congregations in the Central District of California, suggesting that religious organizations located within the South Los Angeles area file disproportionately.<sup>105</sup>

Similarly, all but two (90%) of the nineteen debtors that filed in the Northern District of Illinois were in the metropolitan area of Chicago.<sup>106</sup> This area generally includes counties where only 75% of the congregations in the Northern District of Illinois are located.<sup>107</sup> These statistics provide some indication that religious organizations not only filed in particular districts, but also that their locations within those districts clustered around certain metropolitan areas, suggesting that social spillovers and norms partially may have driven the distribution.

Third, particular attorneys handled a sizable proportion of the cases filed in some of these ten districts. Most revealing of this phenomenon is who represented the religious organizations that filed in the Western District of Tennessee. Of the twenty-seven cases, three attorneys each represented five or six debtors. Certain attorneys handled a sizable minority of cases in other districts as well. One attorney handled five (36%) of the fourteen cases filed with counsel in the Eastern District of North Carolina, and one attorney represented the debtor in eight (18%) of forty-four cases filed with counsel in the Northern District of Georgia.<sup>108</sup> Though the number of attorneys that accept business chapter 11 debtor clients in their districts may impact the distribution of cases among attorneys, social networks and referral systems whereby the religious organizations talked with each other about bankruptcy before filing also may have influenced the distribution.

Fourth, the affiliations of the religious organization debtors spanned a variety of religious beliefs and reflected the general makeup of religious congregations in America, with more than 90% of debtors affiliated with Christianity.<sup>109</sup> However, the composition of Christian affiliated debtors did not mirror the breakdown of Christian congregations by denomination in America.<sup>110</sup> Many of the Christian affiliated debtors were nondenominational or congregationalist.<sup>111</sup> These organizations often independently and autonomously run their own affairs.<sup>112</sup> This may have left these churches with fewer options when they encountered financial problems, which may have

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<sup>105</sup> Of the 10,750 congregations in the Central District of California, 5,773 are located in Los Angeles County. *2010 U.S. Religion Census*, *supra* note 101.

<sup>106</sup> One debtor was located near the Missouri border. The other was located 90 miles west of Chicago. *See supra* note 102.

<sup>107</sup> Of the 6,215 congregations in the Northern District of Illinois, 4,650 are located in Cook, DuPage, Lake, and Will Counties. *2010 U.S. Religion Census*, *supra* note 101.

<sup>108</sup> In nine cases filed in the Northern District of Georgia, the debtors did not retain counsel before filing. Likewise, in three cases filed in the Eastern District of Carolina, the debtors did not retain counsel before filing. *See supra* note 102.

<sup>109</sup> Foohey, *Bankrupting the Faith*, *supra* note 1, at 737 tbl.2.

<sup>110</sup> *Id.* at 737.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

lead them to file for bankruptcy in greater numbers than those congregations affiliated with other Christian denominations.<sup>113</sup> Simultaneously, leaders of organizations with similar denominations and operating structures may have talked with each other about their organizations' financial problems, resulting in certain denominations filing more frequently. Likewise, when leaders read or heard about similar congregations filing under chapter 11, they may have been more likely to consider law and bankruptcy as a solution to their congregations' financial problems, analogous to how churches decided to allow the ordination of women.<sup>114</sup>

Finally, oftentimes one pastor held the ultimate decision authority.<sup>115</sup> These pastors' ability to direct their congregations may have made their decisions to place their churches into chapter 11 more akin to consumer debtors' decisions to file for bankruptcy. Bolstering this theory, increases and decreases in religious organizations' filings over the study timeframe did not track with increases and decreases in business bankruptcy filings over the same timeframe.<sup>116</sup> Rather, as depicted in Figure 1, their filings generally increased as consumer bankruptcy filings increased, and decreased between 2012 and 2013 along with consumer filings.<sup>117</sup> Indeed, their filings appear to

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<sup>113</sup> *Id.*; Foohey, *When Churches Reorganize*, *supra* note 1, at 284–86 (discussing how a specific religious organization's denomination or lack of affiliation may impact its leader's tendency to consider filing for bankruptcy).

<sup>114</sup> *See supra* note 60 and accompanying text.

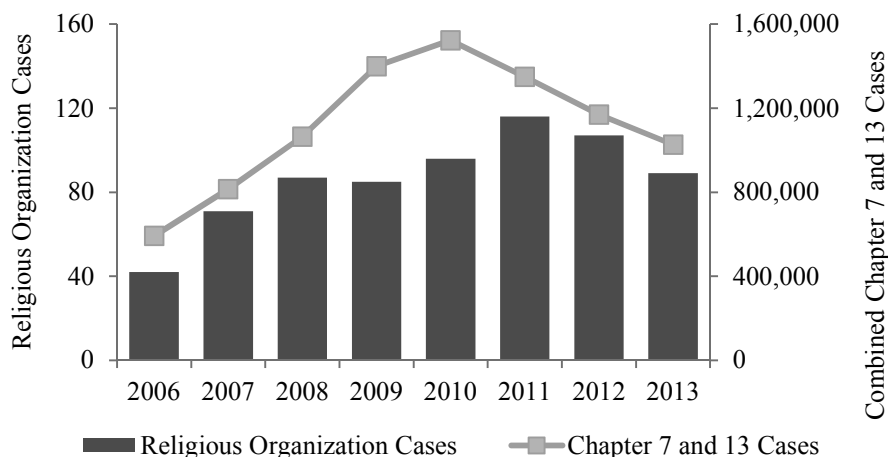
<sup>115</sup> *See infra* notes 136–41 and accompanying text; *see also* Foohey, *When Churches Reorganize*, *supra* note 1, at 287–90 (discussing whether churches of various sizes and with differing member demographics vest decisional authority with lead pastors).

<sup>116</sup> *See* Foohey, *Bankrupting the Faith*, *supra* note 1, at 733 fig.1.

<sup>117</sup> I used the same criteria and procedure to identify religious organizations' chapter 11 filings for 2012 and 2013 as I did to create the study dataset. *See supra* note 97 and accompanying text. Consumer bankruptcy filing data is based on data reported by the Administrative Office of the United States Courts (AO). *Caseload Statistics Data Tables*, *supra* note 102. To calculate consumer bankruptcy filings per year, I combined total chapter 7 filings in which the predominate nature of reported debt was nonbusiness with total chapter 13 filings in which the predominate nature of reported debt was nonbusiness. As with religious organizations' chapter 11 cases, I included filings in the fifty United States and the District of Columbia. Because of bankruptcy attorneys' practices, these figures may overestimate consumer bankruptcy filings slightly. *See* Robert M. Lawless & Elizabeth Warren, *The Myth of the Disappearing Business Bankruptcy*, 93 CALIF. L. REV. 743, 763 (2005) (finding that attorneys routinely indicate on petitions that individual debtors' cases stem from predominately consumer debts when they arise from predominately business debts). Assuming that attorneys' practices remained constant from 2006 to 2013, the comparison between consumer and religious organization cases should not be affected.

lag behind consumer filings by one year, perhaps because consumers' finances heavily influenced religious organizations' financial problems.<sup>118</sup>

Figure 1: *Combined Chapter 7 and 13 Cases with Predominately Consumer Debts versus Religious Organization Chapter 11 Cases Filed by Year*



Of course, other explanations of the clumping of religious organizations' chapter 11 filings besides social networks, spillovers, and contagion remain. The congregations that sought bankruptcy protection may have had relatively fewer members, impacting their ability to weather financial problems.<sup>119</sup> Or the religious organizations that filed may have been located in economically depressed areas or areas in which populations shifted, making these churches

Figure 1 presents the following data regarding cases filed per year:

	Year							
	2006	2007	2008	2009	2010	2011	2012	2013
Religious Organization Cases	42	71	87	85	96	116	107	89
Combined chapter 7 and 13 Cases	592,070	814,317	1,064,444	1,400,163	1,522,634	1,349,995	1,169,271	1,026,236

<sup>118</sup> One of the main reasons cited by religious organizations for their financial declines was a decrease in tithes and offerings because of the Great Recession's impact on their members' finances. Foohey, *Bankrupting the Faith*, *supra* note 1, at 757–59.

<sup>119</sup> See Foohey, *When Churches Reorganize*, *supra* note 1, at 288 (noting that scholars and attorneys have suggested that a church's size may limit its sustainability and growth).

more susceptible to economic fluctuations or decreasing membership.<sup>120</sup> Certain congregations may not have emphasized contributing as much as others, rendering these churches more likely to file for bankruptcy because their members were less prepared to use their own funds to help the congregation. Likewise, inexperienced or less business savvy pastors may have led many of the organizations that filed. That these churches were located in the same geographic areas may have been mere coincidence. Competition among churches in a given area itself may have created the clumping, with a number of churches vying for members from the same pools of households. Competition may have caused some of these churches' financial problems and eventual bankruptcy filings.

Nonetheless, considered together, the distribution of religious organizations' cases suggests that social spillovers and norms in part may have driven the filings. Given this, I hypothesized that the organizations' leaders may approach the decision to seek bankruptcy protection similar to the ways in which people generally come to the legal system, including by way of social networks.

### B. *Qualitative Interview Data*

To test this hypothesis, I interviewed leaders and attorneys involved in a sample of the religious organizations' chapter 11 cases originating from the ten judicial districts with the greatest percentages of filings.<sup>121</sup> I focused on these ten "hot" districts because if social networks or norms partially are driving filings, the phenomena logically will be evident where filings cluster. Also, gathering in-depth data from a limited number of districts minimizes the chances that the findings stem from individual characteristics of the cases rather than fixed effects of the districts, and also presented the best way to gather data in light of limits of time and money.

Preferably, I also would have interviewed leaders from organizations in similar financial distress whose congregations did not file for bankruptcy. However, it is incredibly expensive at best and infeasible at worst to identify the population of similarly situated religious institutions that did not seek to reorganize.<sup>122</sup> Even locating congregations post-bankruptcy and obtaining

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<sup>120</sup>This may be particularly true as regards the physical proximity of religious organization debtors within districts.

<sup>121</sup>Qualitative research seeks to "describe and explain persons' experiences, behaviors, interactions and social contexts" by focusing on a small group of people and without relying on statistical models. Ellie Fossey et al., *Understanding and Evaluating Qualitative Research*, 36 AUSTL. & N.Z. J. PSYCHIATRY 717, 717 (2002). As such, qualitative research is not generalizable to a larger population probabilistically, but rather is concerned with "the applicability of [its] findings, based on how the nature and processes involved in experiences generalize." *Id.* at 730.

<sup>122</sup>See Mann & Porter, *supra* note 3, at 302 ("There is simply no access point to the population of those in financial distress paralleling the public availability of data about bankruptcy debtors.").

interviews with their leaders proved difficult. The interviews with attorneys thus supplement the interviews with the organizations' leaders, together providing a more comprehensive picture of how the leaders thought about addressing their financial problems with bankruptcy.

To solicit interviews, I mailed potential respondents a letter that detailed the study and asked for their help by agreeing to speak with me about their organization's case or their experiences in handling chapter 11 cases filed by religious institutions.<sup>123</sup> Approximately one week after they received the letter, I called each debtor or attorney and requested their participation.<sup>124</sup> I conducted all of the interviews over the telephone based on scripted open-ended questions.<sup>125</sup> Participants did not receive compensation.<sup>126</sup>

### 1. *Religious Organizations' Leaders*

In the ten districts with the greatest percentages of cases during the study timeframe, 229 unique institutions filed for bankruptcy. Three of these debtors were led by the same individual as another debtor, leaving 226 unique leaders to potentially interview.<sup>127</sup> Of those leaders, I successfully contacted ninety-

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<sup>123</sup> Mailing addresses came from the debtors' bankruptcy filings. I verified and updated the addresses via Internet searches of the debtors' operating names and the names of the debtors' leaders and attorneys as disclosed on their chapter 11 petitions.

<sup>124</sup> Phone numbers came from the debtors' bankruptcy filing records. I verified and updated the phone numbers via Internet searches of the debtors' operating names and the names of the debtors' leaders and attorneys as disclosed on their chapter 11 petitions.

<sup>125</sup> As with other studies based on semi-structured interviews, I generally followed the script, but occasionally asked questions out of order or asked follow-up questions. *See, e.g.*, Braucher, *supra* note 80, at 512–13 (interviewing bankruptcy attorneys and trustees “using non-directive, open-ended questions, not always phrased the same way or asked in the same order”); Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 N.Y.U. L. REV. 515, 528–29 (2013) (describing methodology for a study assessing the earned income tax credit program based on interviews with program recipients); Angela Littwin, *Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers*, 86 TEX. L. REV. 451, 503–05 (2007) (describing methodology for interviews with low-income women to investigate the effect of usury restrictions).

One interview with a leader was conducted in March 2014. All other interviews took place between April and July of 2013. Each of the respondents allowed me to audio record the interview. I transcribed and coded all of the interviews myself. To preserve the interviewees' anonymity, I omit identifying details. Instead, I identify each interview subject with a descriptive title such as “Central California Attorney One” or “Central California Leader One.”

<sup>126</sup> Prior to soliciting interviews, I obtained approval of the interview and data retention procedures from the University of Illinois's Institutional Review Board.

<sup>127</sup> All three of these leaders opened another church with a different incorporation and operating name after the chapter 11 cases of their previous religious organization ended. Though the three leaders are the same people, the organizations are unique debtor entities.

three (41%).<sup>128</sup> Ten of those leaders agreed to speak with me, for a response rate of 11%. The interviews ranged from twenty to eighty minutes, with a median of forty minutes.

Several factors may contribute to this low response rate. Given that many of the religious organizations were small, some of them may have employed their leaders and staff on a part-time basis.<sup>129</sup> Reaching these organizations offered additional challenges.<sup>130</sup> In addition, most religions, including Christianity, have some religious writings that condemn bankruptcy.<sup>131</sup> Though the organizations ultimately filed for bankruptcy, their leaders may have been more reticent than other bankruptcy filers to discuss their cases publicly. Similarly, as an outsider to the congregations, the leaders may not have been inclined to speak with me.

The ten interviewed leaders' religious organizations were located in five of the ten federal districts. Three leaders' organizations were from the Central District of California, three debtors came from the Middle District of Florida, and another two organizations were located in the Western District of Tennessee. The remaining two debtors came from the Northern District of Georgia and Northern District of Illinois. Nine of the leaders were senior pastors and effective CEOs of their churches; the other leader headed the church's trustee board.<sup>132</sup> Consistent with the breakdown of the religious organization debtors' affiliations, all the leaders' organizations were Christian churches, most of which were nondenominational or congregationalist.<sup>133</sup> Nine of the ten churches were predominately black.<sup>134</sup>

All of the churches' governing structures included boards that the leaders were part of or with whom the leaders were required to discuss issues

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<sup>128</sup> The other 133 leaders' organizations' phones were disconnected and, to the extent that the letters were not returned as undeliverable, the leaders did not respond to the mailed letters on their own initiative.

<sup>129</sup> Attorneys mentioned difficulties in communicating with the debtors' leadership and staff because of the part-time nature of employment. *See, e.g.*, Telephone Interview with Middle Fla. Att'y Three 4 (May 8, 2013) ("These people have other jobs, and yet they're representing [the] church."); Telephone Interview with S. Tex. Att'y Two 3 (June 17, 2013) (noting that one of the religious organization debtors was led by "one of these ministers who was preaching on Sunday and running a construction company during the week").

<sup>130</sup> Though I called each debtor at least three times, including on weekends, I often left voicemail messages.

<sup>131</sup> *See* Rafael Efrat, *The Moral Appeal of Personal Bankruptcy*, 20 WHITTIER L. REV. 141, 167 (1998) ("Christianity, Islam, Judaism, and Hinduism clearly foster in their believers a moral code that emphasizes the importance of debt-repayment, and hence, the avoidance of bankruptcy at all costs.").

<sup>132</sup> *See infra* note 136.

<sup>133</sup> *See supra* note 111 and accompanying text.

<sup>134</sup> *See* Foohey, *When Churches Reorganize*, *supra* note 1, at 286–87 (discussing the racial demographic skew and noting that it bears further study).



regarding the churches' finances.<sup>135</sup> However, eight of the ten pastors had the authority to make the final decision regarding the bankruptcy filing, even if they technically consulted with the board.<sup>136</sup> The attorneys I interviewed confirmed that many of the religious organizations that contacted them regarding bankruptcy were Black Churches<sup>137</sup> of nondenominational or congregationalist Christian affiliations,<sup>138</sup> and that typically, the senior pastor effectively held the ultimate decision-making authority regarding filing for bankruptcy.<sup>139</sup> Additionally, many of the religious organization debtors listed the "authorized individual" as a senior pastor, suggesting that in these cases, the pastor occupied a position that included decision-making authority.<sup>140</sup> Indeed, in a majority of these cases, the pastor's listed title also included

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<sup>135</sup> See, e.g., Telephone Interview with Middle Fla. Leader One 1 (Apr. 18, 2013) ("We have a group of trustees, individuals of the church, . . . and we are the ones that make the decisions when it comes to any kind of financial decisions that need to be made for the church."); Telephone Interview with N. Ill. Leader One 2 (May 6, 2013) (noting that certain financial decisions go through the board of finance and the interviewed leader); Telephone Interview with W. Tenn. Leader Two 2 (Mar. 17, 2014) (noting that along with pastoring, the leader serves as chairperson of the board and leads all board meetings); see also *supra* note 51 and accompanying text.

<sup>136</sup> Five pastors indicated that they had the final say about major decisions. Three pastors said that there was discussion among board members regarding the decision to file, but they also indicated that their thoughts were crucial to major decisions. One pastor was from a large denominational church with a clear decision-making structure that included, but was not guided by, the pastor. The final leader was the chair of the board that made the decision to file; under this church's structure, the pastor was selected by the board and the pastor's sole function was to pastor.

<sup>137</sup> "Black Church" refers to predominately black congregations and includes historically African American congregations and predominately black churches in white denominations. See C. ERIC LINCOLN & LAWRENCE H. MAMIYA, *THE BLACK CHURCH IN THE AFRICAN AMERICAN EXPERIENCE* 1 (1990).

<sup>138</sup> See, e.g., Telephone Interview with Cent. Cal. Att'y Three 5 (Apr. 22, 2013) ("I deal with black churches."); Telephone Interview with N. Ga. Att'y Three 1 (June 20, 2013) (noting that all four churches represented were black churches); Telephone Interview with E. N.C. Att'y Three 2-3 (May 15, 2013) (noting that "[a]ll of these [debtors] that I've mentioned have black congregations" and that they all were nondenominational); Telephone Interview with S. Tex. Att'y Two, *supra* note 129, at 2 ("Without exception, they are all black churches. All of them. And they're all congregationalist churches.").

<sup>139</sup> See, e.g., Telephone Interview with N. Ga. Att'y Three, *supra* note 138, at 2 (noting that all the represented churches had boards, but that "the day to day decision making in pretty much all of the cases had been made by the pastor"); Telephone Interview with N. Ill. Att'y Five 2 (May 16, 2013) (noting that a represented church had a board, but recalling that it was not "any issue" and that the pastor ran the church); Telephone Interview with W. Tenn. Att'y Three 2 (May 15, 2013) (noting that the represented churches "were really pastor driven"). *But see* Telephone Interview with N. Ill. Att'y Six 2 (May 28, 2013) (noting that in representing a Lutheran church, the attorney dealt with the congregation's president, not the pastor).

<sup>140</sup> In a case filed by an artificial entity, the debtor's "authorized individual" must sign the petition for bankruptcy. *Voluntary Petition*, U.S. COURTS, [http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK\\_Forms\\_Current/B\\_001.pdf](http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK_Forms_Current/B_001.pdf) [<http://perma.cc/ZNY3-8ZTZ>].

President or CEO, further suggesting that the pastor's opinion was pivotal to decision-making.<sup>141</sup>

Though the response rate is low, based on attorneys' experiences and the breakdown of the religious organizations that filed during the study timeframe, the composition of the interviewed leaders and their churches seems consistent with the general makeup of religious institutions seeking to reorganize under chapter 11. In addition, the attorney interviews supplement and confirm the leaders' responses, suggesting that I reached a representative, though small sample of the religious organizations' leaders. Even so, an obvious limitation of the data collected in these interviews is that the experiences of the leaders interviewed may not be generalizable to other religious organization debtors and leaders.

## 2. Attorneys

A total of 168 attorneys represented the 229 unique institutions in connection with their 254 chapter 11 cases filed in the ten districts with the greatest percentages of filings during the study timeframe. I randomly selected ninety (54%) of these attorneys to send letters.<sup>142</sup> Seven of these attorneys had moved firms and were not locatable.<sup>143</sup> Of the remaining, I interviewed thirty-five attorneys, for a response rate of 42%.<sup>144</sup> The interviews ranged from twenty to sixty minutes, with a median of thirty-five minutes, largely depending on the number of cases handled by the attorney.

The interviewed attorneys were spread relatively evenly across the ten districts, represented a range of the religious organizations that filed during the study timeframe, and operated diverse legal practices. By district, six of the attorneys practiced in the Central District of California, six practiced in the Middle District of Florida, two practiced in the Southern District of Texas, and three practiced in each of the other districts. The interviewed attorneys handled the cases of a total of fifty-eight religious organizations that filed during the study timeframe and an additional twelve cases filed by religious institutions outside the study timeframe. They generally represented congregations with affiliations that corresponded to the breakdown of the types of religious entities that filed under chapter 11 during the study timeframe.<sup>145</sup>

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<sup>141</sup> See also *supra* note 52 and accompanying text.

<sup>142</sup> I randomly selected attorneys from each district. I did not sample equally from the districts because of the disparity in the number of attorneys who represented debtors in those districts. My goal was to speak to roughly equal numbers of attorneys from each district. The random selection yielded a regionally diverse pool of interviewees.

<sup>143</sup> These attorneys seemingly either had left law practice or moved to government or in-house positions. Regardless, the letters I sent were returned as undeliverable and I could not find active telephone numbers for them, rendering them unreachable.

<sup>144</sup> I called each attorney three times.

<sup>145</sup> The attorneys also generally matched the population of attorneys who represented religious organizations in cases filed in the ten districts with the greatest percentages of filings based on the limited data regarding attorneys that can be gleaned from case

The attorneys concentrated their practices on bankruptcy and related services. Their practices were debtor oriented, though some predominately represented individuals with consumer debts, while others primarily represented small businesses and individuals with business debts. The diversity of the attorneys and of their religious organization clients suggests that I interviewed a representative sample of attorney. Nonetheless, in considering the results of the interviews, it is important to remain cognizant of the possibility that I reached a nonrepresentative sample of attorneys.

#### IV. FROM FINANCIAL DISTRESS TO BANKRUPTCY

Religious organizations facing financial distress arrived at the decision to file for bankruptcy through a complex and often lengthy process. Their leaders rarely considered law in general or bankruptcy in particular as a solution to the problems until the leaders recognized the severity of their churches' situations, talked with people in their social networks to confirm that the situations were addressable with law and bankruptcy, learned more about the bankruptcy process, and came to terms with what filing said about themselves and their congregations. Congregations' leaders applied the same information and similar thinking to update their beliefs about the legal nature of their organizations' financial problems, their understandings of the chapter 11 process, and their perceptions of how peers would view their decisions to file bankruptcy. The remainder of this Part divides leaders' process of deciding to place their churches in bankruptcy into four interconnected pieces. In doing so, it highlights how the process is consistent with the theories and limited studies detailed in Part II addressing how individuals and organizations come to the legal system. It then synthesizes the process to provide an overview of how religious organizations' leaders decided to address their churches' financial difficulties through secular law.

##### A. *Recognizing the Legality of Financial Problems*

The term "ostrich defense" is most commonly associated with how individuals tend to approach their increasingly precarious finances.<sup>146</sup> Though people may understand the severity of their economic circumstances, they refuse to deal with their situations because they believe better financial times lay ahead or because they simply do not want to admit failure.<sup>147</sup> "Ostrich effect" was how one attorney labeled religious organization leaders' approach to financial problems.<sup>148</sup>

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documents. For instance, the interviewed attorneys handled similar average numbers of cases during the study timeframe as other attorneys.

<sup>146</sup> See Mann & Porter, *supra* note 3, at 313.

<sup>147</sup> See generally *supra* Part II.D.

<sup>148</sup> Telephone Interview with S. Tex. Att'y Two, *supra* note 129, at 6.

Attorneys universally commented that the institutions they represented typically waited long past when it would have been more effective to seek assistance, usually not coming to them until the “drop dead date” before a foreclosure sale.<sup>149</sup> Most prevalently, attorneys attributed the delay to leaders’ desire to believe that their churches’ situations would miraculously improve despite declining contributions and other serious issues. Pastors seemed unrealistic about what they could do, sometimes “going by faith”<sup>150</sup> and “thinking [that] a miracle is going to fall out of the sky.”<sup>151</sup> They were ill prepared for “the inevitability of a filing,” again perhaps because they had “faith that things will work out.”<sup>152</sup>

A primary source of the churches’ downfalls was financing of the purchase or construction of buildings with the idea that the congregations were going to improve and grow, a “build it and they will come” “field of dreams” mentality.<sup>153</sup> Members became emotionally attached to particular properties because “they [were] looking for a home,”<sup>154</sup> and leaders opted to “wait for divine intervention.”<sup>155</sup> Another attorney summed up the problem as “an inability to really, really grasp the gravity of the situation.”<sup>156</sup>

Discussions with leaders confirmed attorneys’ impressions that leaders tended to postpone thinking about their churches’ problems as requiring any action, particularly legal action. For instance, one leader admitted that at first he primarily spent time “pray[ing] about [the situation], and I said Lord, what am I going to do?”<sup>157</sup> Even if leaders knew of or understood the benefits and

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<sup>149</sup> Telephone Interview with Cent. Cal. Att’y Six 3 (May 10, 2013); *see also* Telephone Interview with Cent. Cal. Att’y Two 4 (Apr. 18, 2013) (noting that the represented religious organization was “ahead of the curve” in seeking assistance three months before filing); Telephone Interview with N. Ga. Att’y Two 2 (May 21, 2013) (“I don’t ever get a lot of time [to prepare the bankruptcy filing.]”); Telephone Interview with W. Tenn. Att’y Three, *supra* note 139, at 3 (noting that filing on an emergency basis is typical of church cases).

<sup>150</sup> Telephone Interview with Middle Fla. Att’y One 2 (May 2, 2013).

<sup>151</sup> Telephone Interview with Md. Att’y Three 4 (May 24, 2013).

<sup>152</sup> Telephone Interview with Cent. Cal. Att’y One 4 (Apr. 24, 2013).

<sup>153</sup> Telephone Interview with S. Tex. Att’y Two, *supra* note 129, at 5; *see also* Telephone Interview with Middle Fla. Att’y One, *supra* note 150, at 4 (“[The churches] just didn’t have the money to handle [mortgage payments], but they thought things were going to get better.”); Telephone Interview with S. Fla. Att’y Two 2 (Apr. 23, 2013) (“They were building [the] Taj Mahal, and then the economy went where it went in 2005.”).

<sup>154</sup> Telephone Interview with Cent. Cal. Att’y Three, *supra* note 138, at 6; *see also* Telephone Interview with N. Tex. Att’y Three 2 (May 13, 2013) (noting leaders tended to “fall[] in love with one church facility”).

<sup>155</sup> Telephone Interview with N. Ill. Att’y Four 6 (May 14, 2013); *see also* Foohey, *When Churches Reorganize*, *supra* note 1, at 293 (discussing why congregations may become emotionally attached to their buildings).

<sup>156</sup> Telephone Interview with W. Tenn. Att’y One 3 (May 2, 2013).

<sup>157</sup> *See* Telephone Interview with Middle Fla. Leader Three 2 (May 14, 2013); *see also* Telephone Interview with Cent. Cal. Leader Three 2–3 (July 17, 2013) (describing how the

costs of bankruptcy, they initially rejected considering filing as an option—that is, they did not view the churches’ financial problems as legal problems.<sup>158</sup> Rather, when discussing the prebankruptcy situations, they described trying to deal with creditors themselves,<sup>159</sup> seeking grants,<sup>160</sup> or holding fundraisers.<sup>161</sup>

One pastor linked leaders’ unwillingness to address their churches’ financial situations with bankruptcy with overconfidence and “egos.”<sup>162</sup> Another noted that “the psychological impact [of financial distress] on the pastor and the [pastor’s] family and the church is really tough.”<sup>163</sup> Leaders’ descriptions of the situations revealed disbelief that their churches had landed in such desperate financial conditions.<sup>164</sup> They felt that they were “caught off guard”<sup>165</sup> and unprepared to handle their churches’ finances apart from the usual avenues of approaching their creditors and other involved parties themselves.<sup>166</sup>

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congregation waited months in hopes of getting a grant even though it increasingly was evident that the party promising the grant could not deliver and the church would be broke).

<sup>158</sup> See Telephone Interview with Middle Fla. Leader Two 2 (May 3, 2013) (detailing how an attorney on the board initially suggested bankruptcy, but the idea was rejected without discussion because “there was too much of a stigma with that”); Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 5 (“I wasn’t even familiar with a chapter 11.”).

<sup>159</sup> See Telephone Interview with Cent. Cal. Leader Two 2 (May 10, 2013) (“[W]e went to the bank several times and tried to get a modification or work some terms out.”); Telephone Interview with Middle Fla. Leader Two, *supra* note 158, at 1–2 (detailing how the leadership was unsuccessful in renegotiating the mortgage loan); Telephone Interview with N. Ill. Leader One, *supra* note 135, at 2–3 (noting that the leadership thought their mortgage creditor would modify their loan); Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 4 (stating that the church tried to negotiate with the mortgage lender, among other nonlegal actions).

<sup>160</sup> See Telephone Interview with S. Fla. Att’y Three 4 (Apr. 26, 2013) (noting that the religious organization debtor had received a grant prior to filing under chapter 11); Telephone Interview with E. N.C. Att’y One 2 (May 3, 2012) (describing how one client tried to obtain grant money to build an assisted living facility to supplement the organization’s income).

<sup>161</sup> See Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 4 (“We had some fundraising drives to try to [avoid having to approach the mortgage lender].”).

<sup>162</sup> Telephone Interview with Cent. Cal. Leader One 4 (Apr. 17, 2013).

<sup>163</sup> Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 4.

<sup>164</sup> See Telephone Interview with Middle Fla. Leader Three, *supra* note 157, at 2 (“[It] seem[ed] like things beg[an] to spin out of control.”); Telephone Interview with N. Ill. Leader One, *supra* note 135, at 2–3 (mentioning repeatedly the church’s good credit rating).

<sup>165</sup> Telephone Interview with Middle Fla. Leader One, *supra* note 135, at 6.

<sup>166</sup> See also Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 4 (lamenting that the church “had opportunities where we could have avoided [bankruptcy]”).

Leaders also experienced their churches' downfalls as personal failings. They spoke of how they felt responsible and inadequate,<sup>167</sup> how they believed that "[the pastor] go[es] down with the ship,"<sup>168</sup> and how they put off, but then ultimately decided to file for bankruptcy because of not wanting "to psychologically feel like I was a loser."<sup>169</sup> Thereby, leaders' perceptions of how they were expected to respond to their churches' problems and of how best to maintain their organizations' "public images" also seemed to steer them away from initially considering their churches' financial situations as addressable through legal means.

Some leaders' inability to recognize that their organizations' precarious financial situations were legal problems further stemmed from a lack of information. A couple pastors came from business backgrounds or sat on trustee boards with members who had business or legal expertise.<sup>170</sup> But most leaders were unaware of the basics of bankruptcy as it related to smaller businesses, describing bankruptcy as "a big black box."<sup>171</sup>

Ultimately, the churches' creditors pushed leaders to view the financial problems as legal problems by taking concrete action, usually in the form of initiating foreclosure proceedings.<sup>172</sup> Occasionally, a board member or congregant also brought the availability of a legal remedy to the attention of the senior pastor and other leadership.<sup>173</sup> In this way, creditors served as the primary "agents of transformation," shaping the leaders' construction of financial problems as legal rather than as private problems or simply

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<sup>167</sup> Telephone Interview with Cent. Cal. Leader Three, *supra* note 157, at 5–6.

<sup>168</sup> Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 4.

<sup>169</sup> Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 4.

<sup>170</sup> See Telephone Interview with Cent. Cal. Leader Three, *supra* note 157, at 4 ("[W]e've all known about, at least at that time, what the purpose of bankruptcy was for."); Telephone Interview with Middle Fla. Leader Two, *supra* note 158, at 2 (noting that a board member was a lawyer).

<sup>171</sup> Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 8; see also Telephone Interview with N. Ill. Leader One, *supra* note 135, at 3 (noting that when they sought legal advice, they learned about the consequences of partial payments and that the automatic stay could halt foreclosure); Telephone Interview with W. Tenn. Leader One 3–4 (May 1, 2013) (noting that the leadership mainly relied on information obtained from the government); Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 5 ("I wasn't even familiar with a chapter 11.").

<sup>172</sup> Six of the leaders specifically linked seeking out information about bankruptcy with lenders' actions. Three leaders preemptively sought advice about legal options when they realized that their churches would not be able to meet their obligations going forward.

<sup>173</sup> See Telephone Interview with Middle Fla. Leader Two, *supra* note 158, at 2 (noting that a board member who was a lawyer suggested chapter 11 when the church began having problems); Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 5 (explaining that a friend who was an attorney "encouraged" the leader to think about bankruptcy); see also Telephone Interview with N. Ga. Leader One 3–4 (Apr. 17, 2013) (discussing how the church was facing litigation related to personal injury and explaining that the general counsel suggested bankruptcy in regards to that claim and issues with making mortgage payments).

(hopefully temporary) bad luck.<sup>174</sup> Interestingly, three leaders told me that their mortgage lenders suggested exploring bankruptcy after negotiations halted.<sup>175</sup> Eventually, often facing creditors' impending actions, leaders admitted to themselves that their churches' situations would not improve without help from third parties, that they "needed someone else."<sup>176</sup>

### B. Cementing the Legal Problem and Learning About Bankruptcy

Leaders called upon a carefully chosen network of people in seeking information about their legal options. They tended to search for advice quietly, selectively approaching other pastors of similar congregations, church members, friends, and trusted professional contacts.<sup>177</sup> Leaders' selectivity related to not wanting others, sometimes including their own members, to know of their churches' financial plight.<sup>178</sup> For example, one pastor worried that members might "lose faith" and "draw back the funds" or that outsiders might be "scandalized and tell lies."<sup>179</sup> Another leader only spoke to a few other ministers, "but not too many" because "in this town, people talk, and [I] only asked a few choice people."<sup>180</sup> An attorney likewise noted that church debtors often seemed inclined "to try to keep [their financial situation and chapter 11 filing] as quiet as possible."<sup>181</sup>

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<sup>174</sup> See Albiston & Sandefur, *supra* note 14, at 118; Felstiner et al., *supra* note 5, at 639.

<sup>175</sup> Telephone Interview with Middle Fla. Leader One, *supra* note 135, at 2; Telephone Interview with Middle Fla. Leader Three, *supra* note 157, at 3; Telephone Interview with W. Tenn. Leader One, *supra* note 171, at 3. Attorneys hypothesized that mortgage lenders' hands were tied by federal programs that required banks to exhaust their remedies, or that they reached a point where they had to take action even if they ultimately did not want to foreclose on a church, leading them to suggest bankruptcy. See Foohey, *When Churches Reorganize*, *supra* note 1, at 294–95.

<sup>176</sup> Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 4.

<sup>177</sup> See, e.g., Telephone Interview with Middle Fla. Leader Two, *supra* note 158, at 2 (mentioning that a board member was an attorney who suggested that the leadership think about bankruptcy); Telephone Interview with Middle Fla. Leader Three, *supra* note 157, at 3 (explaining how the leader told his wife, mother, and "other pastor friends of mine" about the bank's suggestion of filing for bankruptcy); Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 5 (noting that "my friend who was once an attorney himself, he kinda encouraged me" to think about legal options); see also *infra* note 182 and accompanying text.

<sup>178</sup> See Telephone Interview with Middle Fla. Leader Two, *supra* note 158, at 2 (noting that the membership did not know about the filing and explaining that the leader discussed the church's situation with a couple pastors); Telephone Interview with Middle Fla. Leader Three, *supra* note 157, at 3 (explaining that the leader did not tell congregants about the filing).

<sup>179</sup> Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 4–5.

<sup>180</sup> Telephone Interview with W. Tenn. Leader One, *supra* note 171, at 3, 5.

<sup>181</sup> Telephone Interview with W. Tenn. Att'y Two 2 (May 1, 2013) (noting that middle class congregations in particular were apt to keep their financial plights quiet); see also Telephone Interview with Md. Att'y Three, *supra* note 151, at 3 (noting that in the future,

Most prevalently, leaders approached pastors of other similar congregations, including those congregations that previously had filed under chapter 11.<sup>182</sup> These other pastors discussed bankruptcy from their viewpoints and level of sophistication, which seemed to reinforce in the leaders' minds that financial problems were legal problems.<sup>183</sup> Other leaders knew personally or through word of mouth of other churches going through foreclosure or filing for bankruptcy, which they appeared to weigh in their calculation of whether to seek to reorganize.<sup>184</sup> One pastor similarly later "encouraged a couple other churches" to consider bankruptcy.<sup>185</sup>

Discussions with their trusted contacts encouraged leaders to look for attorneys to learn more about the intricacies of bankruptcy so that they could evaluate chapter 11 as an option. Leaders sequentially described consulting with others and then approaching bankruptcy counsel, perhaps evidencing that leaders first confirmed that their problems were legal before gathering information to assess bankruptcy in particular.<sup>186</sup> To find counsel, leaders seemed to rely on their social networks, including sometimes involving their members in the search for potential counsel.<sup>187</sup> They also consulted with attorneys that they had retained for prior matters.<sup>188</sup>

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the attorney will require a meeting with the church's members because "[i]t gets kind of foggy because the pastor might be directing you to go in one direction, and you're not sure if this is the direction that the congregation wants to go in").

<sup>182</sup> Five of the ten leaders described seeking out and talking with other pastors.

<sup>183</sup> See, e.g., Telephone Interview with Middle Fla. Leader Three, *supra* note 157, at 3–4 (talking with other pastors then seeking out bankruptcy counsel); Telephone Interview with N. Ill. Leader One, *supra* note 135, at 5 (same). Pastors also referred leaders to knowledgeable members of their own congregations. See Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 3.

<sup>184</sup> See Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 4 (noting that "I had two or three churches that I knew the pastor personally" that had filed for bankruptcy); Telephone Interview with Middle Fla. Leader One, *supra* note 135, at 2 ("[W]e actually had seen some churches go belly up and go into foreclosure."); Telephone Interview with N. Ga. Leader One, *supra* note 173, at 4 ("If you go down to the U.S. district court, you see quite a bit of churches.").

<sup>185</sup> Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 4.

<sup>186</sup> See *supra* note 183.

<sup>187</sup> See Telephone Interview with Cent. Cal. Leader Three, *supra* note 157, at 5 (involving membership in the search for bankruptcy counsel); Telephone Interview with Middle Fla. Leader One, *supra* note 135, at 2 (same); Telephone Interview with N. Ill. Leader One, *supra* note 135, at 5 (noting that the church sought advice from other ministers regarding law firms).

<sup>188</sup> See, e.g., Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 5 (explaining that a real estate attorney provided the referral); Telephone Interview with Middle Fla. Leader Two, *supra* note 158, at 3 (same); Telephone Interview with N. Ga. Leader One, *supra* note 173, at 3 (explaining that the general counsel referred the church to a bankruptcy attorney).



Attorneys likewise hypothesized that networks among religious organizations led them both to the decision to file and to attorneys.<sup>189</sup> Attorneys identified other professionals, usually attorneys, financial consultants, or real estate professionals, as the predominant source of their referrals.<sup>190</sup> Few of the attorneys advertised beyond websites and very limited social media.<sup>191</sup> A handful of attorneys noted personal connections to their communities or specifically advertising to religious organizations.<sup>192</sup>

The frequency of leaders' and attorneys' comments about these networks supports the hypothesis that the effects of social spillover and social capital may have partially caused the clustering of religious organizations' filings during the study timeframe. Studies show that households considering how to handle their financial problems, and organization's managers and directors deciding whether to implement new practices, rely on two modes of learning that a problem is legal: direct contact with social networks and indirect observations of their communities.<sup>193</sup> Likewise, the interviewed leaders directly talked with contacts and indirectly looked to the behavior of similar congregations in thinking about how to manage their churches' financial problems once they realized that their internal efforts were failing.

At the most basic level, the interviews reveal that these networks provided religious organizations' leaders with needed basic information about bankruptcy. Attorneys provided leaders with crucial information and guidance about chapter 11 in particular.<sup>194</sup> Even if the leaders had some knowledge of bankruptcy, like most nonattorneys, they were mistaken about certain of the important details.<sup>195</sup> Collectively, leaders' discussions with those in their

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<sup>189</sup> See, e.g., Telephone Interview with Cent. Cal. Att'y Six, *supra* note 149, at 2 (noting that the second church found the attorney through the first church); Telephone Interview with W. Tenn. Att'y Two, *supra* note 181, at 2 (“[S]everal of them came through other ministers who I’ve represented.”); Telephone Interview with N. Tex. Att’y Two 2 (May 2, 2013) (“[F]rom other discussions with them, I would assume, it’s a small community.”).

<sup>190</sup> Twenty-one attorneys specifically mentioned such referrals as the predominant way they came into contact with future clients.

<sup>191</sup> Seven attorneys said they advertised beyond their websites and social media. Two used search engine marketing. Three directed advertisements to consumers.

<sup>192</sup> See Telephone Interview with Middle Fla. Att’y One, *supra* note 150, at 1 (noting being involved in the church community); Telephone Interview with N. Ga. Att’y One 1 (May 10, 2013) (noting preparing seminars for community organizations); Telephone Interview with N. Ill. Att’y Four, *supra* note 155, at 1–2 (detailing giving seminars to churches, sending mailings to churches, and advertising on Christian radio stations).

<sup>193</sup> See *supra* Part II.B–C.

<sup>194</sup> See, e.g., Telephone Interview with N. Ill. Leader One, *supra* note 135, at 5 (noting that the attorney explained each step in the process and each document); Telephone Interview with W. Tenn. Leader One, *supra* note 171, at 3 (“[W]e were dependent on our attorney.”).

<sup>195</sup> See, e.g., Telephone Interview with Cent. Cal. Leader Three, *supra* note 157, at 6 (describing being surprised at the level of scrutiny of both the church and leadership even though also noting that the leadership knew about bankruptcy generally); Telephone

social networks and with attorneys cemented their views of their congregations' financial problems as legal and as best addressable with filing under chapter 11.

### C. Considering Bankruptcy's Stigma

Even if religious organizations' leaders understood that *financially* declaring bankruptcy represented the most viable remaining option, they still needed to decide that trying to reorganize was a *socially* and *morally* acceptable path for their congregation. Beyond discussing the usefulness of reorganization and referring leaders to attorneys, those in leaders' social networks most importantly shared their opinions about the propriety of filing under chapter 11—both as to what filing for bankruptcy meant for their churches' images and the leaders' own feelings of self-worth. Most of the interviewed leaders emphatically explained that prior to filing under chapter 11, they had believed that filing for bankruptcy implied a failing, both for their churches and themselves, and thus was not an option.

One leader specifically told me that I should put in my writings that “bankruptcy from a spiritual standpoint is a no-no.”<sup>196</sup> Another leader similarly stated, “I’ve said it openly that I don’t think bankruptcy is a choice for the Christian.”<sup>197</sup> That same leader also discussed thinking about the church’s financial plight as though it was a personal plight: “If you went into bankruptcy, you got out of paying your debt, and I don’t think that’s right. . . . [M]y belief system . . . is if a man don’t work, he don’t eat. And I went out and got all of this debt [on behalf of the church], [and] I should pay for it.”<sup>198</sup>

Others echoed this sentiment, stating that they believed bankruptcy was “the end of the world . . . the end of your worthiness.”<sup>199</sup> Leaders said that they feared filing would bring a “big negative stigma”<sup>200</sup> and would result in outsiders being “scandalized” and gossiping.<sup>201</sup> They likewise felt anxious that

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Interview with Middle Fla. Leader Three, *supra* note 157, at 5 (expressing surprise at how quickly the court approved the agreement between church and its lender); Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 5 (“I only knew about two bankruptcies—chapter 13 and the other one.”).

Attorneys likewise commented that their religious organization clients would have benefitted from being more aware of bankruptcy as an option. *See, e.g.*, Telephone Interview with N. Ill. Att’y Four, *supra* note 155, at 6 (“[Chapter 11]’s just something that [religious organizations] need to be aware of.”); Telephone Interview with Md. Att’y Three, *supra* note 151, at 6 (“[I]f people had more knowledge of the process or what their options would be before their emergency, I think that’s really helpful.”).

<sup>196</sup> Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 4.

<sup>197</sup> Telephone Interview with Middle Fla. Leader Three, *supra* note 157, at 3.

<sup>198</sup> *Id.* at 6.

<sup>199</sup> Telephone Interview with N. Ill. Leader One, *supra* note 135, at 5.

<sup>200</sup> Telephone Interview with Middle Fla. Leader Two, *supra* note 158, at 5.

<sup>201</sup> Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 5.

filing would affect their membership because “internally, and to the church psyche, [bankruptcy]’s not good.”<sup>202</sup> Similar to how individuals react to their financial problems, perceptions of bankruptcy’s stigma and shame seemed to influence how leaders thought about their churches’ debts and their decisions to use bankruptcy.<sup>203</sup>

Leaders’ statements further signal that worries about stigma and shame, while not mutually exclusive, operated distinctly in how leaders perceived bankruptcy. Stigma and shame are separate, though associated concepts. Stigma refers to societal disapproval of the actions, characteristics, or traits of an individual or group that deviate from others’ norms or expectations.<sup>204</sup> In contrast to the “public” nature of stigma,<sup>205</sup> shame focuses on internal “private” beliefs about personal failings.<sup>206</sup> Inability to live up to one’s own standards or the perceived standards of others may prompt feelings of shame, thereby linking shame and stigma.<sup>207</sup> In the context of consumer bankruptcy, the effects of stigma and shame are often combined.<sup>208</sup>

Three leaders’ discussions of their decisions to file evidenced both stigma and shame. Bankruptcy was socially and spiritually wrong, and also a personal failing.<sup>209</sup> Four other leaders focused predominately on bankruptcy’s stigma, talking almost exclusively about how others would perceive the churches’ filings. Conversely, one leader repeatedly mentioned feeling “personally responsible” for not being able to see the church through its financial issues, thereby expressing shame, but not necessarily stigmatization associated with the bankruptcy filing.<sup>210</sup>

Indeed, that leader couched the ultimate decision to file in terms of a business decision. Inability to repay the church’s debts despite best efforts meant “feeling bad . . . almost feel[ing] like you’re a failure,” but the act of

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<sup>202</sup> Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 9.

<sup>203</sup> See *supra* Part II.D.

<sup>204</sup> The modern sociological study of stigma originates from ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY (1963). See also GERHARD FALK, STIGMA: HOW WE TREAT OUTSIDERS 17 (2001); Sousa, *supra* note 61, at 436.

<sup>205</sup> Michael Lewis, *Shame and Stigma*, in SHAME: INTERPERSONAL BEHAVIOR, PSYCHOPATHOLOGY, AND CULTURE 126, 127 (Paul Gilbert & Bernice Andrews eds., 1998) (“Stigma, for the most part, constitutes a public violation or action. For a person to fear stigma from . . . a violation, it must be transparent . . .”).

<sup>206</sup> *Id.* at 126–27 (“Shame is best understood as an intense negative emotion having to do with the self in relation to standards, responsibility, and such attribut[es] as global self-failure. . . . Shame can take place privately as long as the attributions that give rise to it occur.”).

<sup>207</sup> Hayes, *supra* note 80, at 33 (“How people label a person constitutes a key component in eliciting his or her shame.”); Lewis, *supra* note 205, at 127 (“The literature on stigma and its relation [to] shame support[] the idea of stigma as a cause of shame.”).

<sup>208</sup> See Sousa, *supra* note 61, at 442–45 (discussing how the general concept of stigma applies to individuals and households filing for bankruptcy).

<sup>209</sup> In particular, see *supra* notes 196–98 and accompanying text.

<sup>210</sup> Telephone Interview with Cent. Cal. Leader Three, *supra* note 157, at 5.

filing itself was not worrisome: “people do this all the time, leaders do [this] all the time, anything to keep going, corporations do it all the time.”<sup>211</sup> Similarly, for the other two leaders, bankruptcy first and foremost was a business choice. When asked if they struggled with the decision to file, one replied that “there was no struggle . . . because we had [run] out of options as to which way to go forward,” and referenced “what’s in the best interests of the church.”<sup>212</sup> The other pastor simply said that the church needed to reorganize because its mortgage lender was not interested in renegotiating the loan that had a balloon payment due shortly.<sup>213</sup>

A minority of leaders did not express feeling stigmatized or shameful about their churches’ filings. Importantly, however, these leaders did not make the decision to file hastily or without trying to work with their creditors first.<sup>214</sup> But, they did not view their ultimate use of bankruptcy as socially or morally wrong. For example, one pastor tried to negotiate and held fundraisers, but once bankruptcy was the church’s only remaining option, the decision to file “all boiled down to my commitment. And I didn’t want to psychological[ly] feel like I was a loser. I wasn’t going to go down without giving them a fight.”<sup>215</sup> The variety and nuances of leaders’ discussions of the propriety of filing for bankruptcy suggests that the differences between and the roots of the stigma and shame associated with indebtedness and bankruptcy is worthy of more detailed study, as discussed in Part V.

For those leaders who viewed filing for bankruptcy as socially and morally unacceptable, discussions with others augmented, though did not seem to substantially change the leaders’ opinions. They still thought of bankruptcy as taboo. Bankruptcy was “almost like that red button that you push, you push it only if that’s all that you have to do to do what you need to do.”<sup>216</sup> But leaders added that they had come to understand that bankruptcy could be a tool to regain control of their businesses, and that they ultimately were confident that

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<sup>211</sup> *Id.*

<sup>212</sup> Telephone Interview with Middle Fla. Leader One, *supra* note 135, at 3.

<sup>213</sup> Telephone Interview with N. Ga. Leader One, *supra* note 173, at 2. These leaders’ statements mirror the results of some of Sousa’s recent interviews with consumer debtors. Those debtors in Sousa’s study who did not express feelings of stigma or shame stated that filing was defensive, commonplace, or a business decision. Sousa, *supra* note 61, at 469–73.

<sup>214</sup> *See* Telephone Interview with Middle Fla. Leader One, *supra* note 135, at 2 (stating that the church tried to work with the mortgage lender, and that the lender suggested bankruptcy); Telephone Interview with N. Ga. Leader One, *supra* note 173, at 2 (noting that the church’s mortgage lender would not agree to a modification).

<sup>215</sup> Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 4.

<sup>216</sup> Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 9; *see also* Telephone Interview with M. Fla. Leader Three, *supra* note 157, at 5 (“But I don’t [look at] bankruptcy as a tool to run to because it’s there—you mismanage what you had, and now I’ll run to bankruptcy.”).

their churches had to use bankruptcy.<sup>217</sup> Regardless, chapter 11 was the only option: “It was either file or lose what you had.”<sup>218</sup>

Interviews with attorneys provided secondary evidence of the effect of perceptions about the unseemliness of bankruptcy on churches’ filings. Attorneys discussed how they believed that “[m]ost people are very embarrassed about [filing] and it’s a decision that’s not taken lightly.”<sup>219</sup> A few recalled speaking with congregants about chapter 11 to allay fears because “bankruptcy is a scary word for a lot of people.”<sup>220</sup> One attorney mentioned discussing the “sin” of bankruptcy with religious organizations’ leaders because sometimes they “say it’s immoral to file bankruptcy.”<sup>221</sup>

In the end, though the religious institutions’ leaders benefitted from speaking with others about bankruptcy, the stigma and shame associated with bankruptcy remained. In line with hypotheses about social spillovers and capital, this result suggests that information sharing through social networks may operate to clarify the process more than to shift attitudes about bankruptcy.<sup>222</sup> Part V also explores this insight and its consequences for bankruptcy policy.

#### D. Rationalizing the Decision to File

Interviews with leaders were most enlightening in how they talked about their churches’ chapter 11 cases. Those leaders who continued to view bankruptcy as socially and morally wrong, despite understanding that chapter 11 was the best option to address their organizations’ financial situations, had to harmonize their decisions to file with these beliefs. Likewise, even those leaders who did not condemn bankruptcy as unchristian or who claimed that they did not feel stigmatized or experience shame for using chapter 11 had

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<sup>217</sup> See, e.g., Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 5 (explaining that pastors “have been educated to say that [bankruptcy] is not a bad thing”); Telephone Interview with Middle Fla. Leader Three, *supra* note 157, at 5 (noting a change in perception about the breadth of the immorality of bankruptcy).

<sup>218</sup> Telephone Interview with Cent. Cal. Leader One, *supra* note 162, at 4; see also Telephone Interview with Middle Fla. Leader Two, *supra* note 158, at 2 (explaining that when the church was over a year behind on mortgage payments, “then the consensus was that there wasn’t much of an option, so we had to”); Telephone Interview with W. Tenn. Leader One, *supra* note 171, at 3 (“[I]t was something that we needed to do because our financial situation was getting worse.”).

<sup>219</sup> Telephone Interview with Cent. Cal. Att’y Three, *supra* note 138, at 6.

<sup>220</sup> Telephone Interview with E. N.C. Att’y One, *supra* note 160, at 2; see also Telephone Interview with Md. Att’y Two 2 (May 7, 2013) (describing a special meeting where the attorney “presented the strategy to the church and answered a series of questions from members of the congregation so that the [members] were comfortable with . . . the strategy”); Telephone Interview with W. Tenn. Att’y One, *supra* note 156, at 2 (describing making reports to the membership to keep them abreast of the process and answering questions).

<sup>221</sup> Telephone Interview with N. Tex. Att’y One 4 (May 1, 2013).

<sup>222</sup> See *supra* Part II.C.

reasons for their churches' filings apart from simple economic analyses. Consistent with literature discussing how consumer debtors overcome cognitive dissonance to rationalize filing for bankruptcy, leaders cited justifications for their decisions to file, tried to shift blame to their creditors, and discussed how they were going to "transcend" the filings by changing their financial habits going forward.<sup>223</sup>

Leaders most often justified their churches' filings by discussing how they did not want to lose buildings that their members had built themselves or to which their congregants had emotional ties.<sup>224</sup> Consumer debtors similarly have described their bankruptcies as "of necessity"<sup>225</sup> and in "self-defense."<sup>226</sup> Consumer debtors also have justified their bankruptcy filings by clarifying that their debts arose from medical issues or layoffs.<sup>227</sup>

Likewise, in explaining the importance of buildings, some leaders specified that their mortgage lender was their only creditor, clarifying that their filings were "totally about the mortgage."<sup>228</sup> One leader went so far as to state: "If I had some other creditors, I don't think I would have [filed] because of my conscience."<sup>229</sup> Another leader talked of the church's creditworthiness and pleaded that "all we ever sought to do was pay our bills to the best of our ability."<sup>230</sup> Leaders also justified the filings by noting that their organizations were community-outreach driven and describing how the churches provided services to underserved populations.<sup>231</sup>

Though leaders often took responsibility for their churches' situations, many simultaneously tried to disengage themselves from their actions by characterizing their churches as "innocent"<sup>232</sup> and laying blame for the situations elsewhere.<sup>233</sup> Leaders primarily blamed creditors for dealing with their churches when they thought creditors should have recognized that they were not able to pay or, more malevolently, for taking advantage of them, for being predatory and "totally heartless."<sup>234</sup> One leader mentioned that before

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<sup>223</sup> See *supra* Part II.D.

<sup>224</sup> Seven of the ten leaders specifically mentioned not wanting to lose buildings that meant more to their congregations than simply an economic investment. One other leader talked about land the church had purchased in hopes of building a new campus.

<sup>225</sup> Thorne & Anderson, *supra* note 80, at 88.

<sup>226</sup> Sousa, *supra* note 61, at 470–71.

<sup>227</sup> *Id.* at 479–81; Thorne & Anderson, *supra* note 80, at 88–89.

<sup>228</sup> Telephone Interview with Middle Fla. Leader Two, *supra* note 158, at 3.

<sup>229</sup> Telephone Interview with Middle Fla. Leader Three, *supra* note 157, at 3.

<sup>230</sup> Telephone Interview with N. Ill. Leader One, *supra* note 135, at 3, 6.

<sup>231</sup> See *id.* at 8; Telephone Interview with N. Ga. Leader One, *supra* note 173, at 3.

<sup>232</sup> Telephone Interview with Cent. Cal. Leader Three, *supra* note 157, at 9–10.

<sup>233</sup> See *supra* notes 91–92 and accompanying text.

<sup>234</sup> Telephone Interview with N. Ill. Leader One, *supra* note 135, at 3; see also Telephone Interview with Cent. Cal. Leader One, *supra* note 162, at 5 ("I fault the [church's] administration as well as the creditors."); Telephone Interview with Cent. Cal. Leader Three, *supra* note 157, at 10 ("I'm not blaming [the mortgage lender] for everything . . . but . . . they were predatory.").

encountering a predatory lender, the church had resources sufficient to meet its obligations, and thus believed that using bankruptcy was not “a sin issue like we did anything.”<sup>235</sup> Consumer debtors similarly have implicated their lenders and unforeseen circumstances as the true culprits of their bankruptcy filings,<sup>236</sup> while defending their filings based on the stress their debts had put on themselves and their families.<sup>237</sup>

Leaders also implicated their members, though not nearly as forcefully. Rather, they lamented that giving to the church was one of the first items that members cut from their budgets,<sup>238</sup> and that their jobs had increasingly become about convincing their members to tithe.<sup>239</sup> They also thought that members lost faith in the church’s mission when it struggled with funding,<sup>240</sup> and that people expect church to be a place to go to escape financial troubles, not to have to deal with more of them.<sup>241</sup> Some cited the economic downturn, observing that they were but one of many churches affected.<sup>242</sup> Consumer debtors too have referenced the fact that bankruptcy is “commonplace” as a justification for their filings.<sup>243</sup>

Again similar to consumer debtor’s declarations that they would teach others about financial management,<sup>244</sup> leaders further spoke of implementing educational programs to teach their members about living debt free.<sup>245</sup> They also planned to counsel other pastors in considering taking on debt.<sup>246</sup> Leaders made these declarations and mentioned these programs ostensibly in attempt to absolve their churches and themselves from bankruptcy’s stigma and their shame.<sup>247</sup>

Relatedly, some leaders declared that they would never file again,<sup>248</sup> which also is consistent with consumer debtors’ avowals never to file again.<sup>249</sup> In connection with these declarations, leaders reiterated that they were opposed to debt and operating beyond their churches’ economic means.<sup>250</sup> When asked if they would file again if they could go back and be given a “do

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<sup>235</sup> Telephone Interview with Cent. Cal. Leader Three, *supra* note 157, at 6.

<sup>236</sup> Sousa, *supra* note 61, at 470–72, 475–77.

<sup>237</sup> Thorne & Anderson, *supra* note 80, at 90–92.

<sup>238</sup> Telephone Interview with N. Ga. Leader One, *supra* note 173, at 2.

<sup>239</sup> Telephone Interview with Cent. Cal. Leader One, *supra* note 162, at 5.

<sup>240</sup> Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 4.

<sup>241</sup> Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 1.

<sup>242</sup> See, e.g., Telephone Interview with N. Ga. Leader One, *supra* note 173, at 4; Telephone Interview with N. Ill. Leader One, *supra* note 135, at 6.

<sup>243</sup> Sousa, *supra* note 61, at 472–73, 477–79.

<sup>244</sup> Thorne & Anderson, *supra* note 80, at 92–93; see *supra* note 96.

<sup>245</sup> Telephone Interview with Cent. Cal. Leader Three, *supra* note 157, at 9.

<sup>246</sup> Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 5.

<sup>247</sup> In total, five leaders’ discussions evidenced trying to transcend the filings.

<sup>248</sup> Four leaders said their churches would not file again.

<sup>249</sup> Thorne & Anderson, *supra* note 80, at 89–90.

<sup>250</sup> See Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 9; Telephone Interview with Middle Fla. Leader One, *supra* note 135, at 6.

over,” four leaders said they would not.<sup>251</sup> This answer came even after these leaders told me that they considered their churches’ chapter 11 cases to have been successful. When pushed on this seeming contradiction, they reiterated bankruptcy’s stigma and talked of its toll on their members apart from the perceived stigma.

A method of “deviance avowal” that appears more unique to religious organization leaders is the use of specific words to describe chapter 11.<sup>252</sup> These words signaled attempts to distance their decisions from the negative connotation that they continued to associate with the word “bankruptcy.” When responding to questions about their “bankruptcy” cases,<sup>253</sup> they used different terminology, referring to the filings as allowing their organizations “to restructure, reorganize,”<sup>254</sup> “to restructure, to revamp,”<sup>255</sup> and to “get back on track, get [back to] business as usual, straighten our mortgage out, and go forward.”<sup>256</sup> They conceptualized their filings as “a temporary move,”<sup>257</sup> a “bridge gap,”<sup>258</sup> and a “transitional period”<sup>259</sup> necessary to “work out some kind of plan.”<sup>260</sup> Using this terminology also may have helped leaders reduce cognitive dissonance by updating their memories about how they decided that prebankruptcy filing under chapter 11 was warranted.<sup>261</sup>

Interviews with attorneys further support the conclusion that leaders used these rationalization techniques. Some of the ways in which the attorneys described interacting with religious organizations’ leaders evidence that the attorneys were cognizant of the leaders’ need to justify their filings. One attorney spoke of requesting that a church create a committee to oversee the chapter 11 case, and strategically naming the committee “the reorganization committee.”<sup>262</sup> Another attorney recommended to religious organization debtors that they put together press releases describing their bankruptcies as “reorganizations.”<sup>263</sup> Fifteen other attorneys used the terms “reorganization”

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<sup>251</sup> Two leaders said they would file if they were able to make the decision again. One leader answered yes and then no. Two leaders skirted the question. Another leader had taken over for the pastor in charge right before the filing and declared that the church would not have been in the situation under current leadership.

<sup>252</sup> Consumer debtors similarly might refer to their chapter 13 cases as “debt payment plans” rather than using the word “bankruptcy.”

<sup>253</sup> When crafting the interview scripts, I purposefully referred to cases filed under the Bankruptcy Code with the terms “chapter 11” or “bankruptcy.”

<sup>254</sup> Telephone Interview with Middle Fla. Leader One, *supra* note 135, at 4.

<sup>255</sup> Telephone Interview with N. Ill. Leader One, *supra* note 135, at 5.

<sup>256</sup> Telephone Interview with Middle Fla. Leader Three, *supra* note 157, at 4.

<sup>257</sup> Telephone Interview with Cent. Cal. Leader Three, *supra* note 157, at 5.

<sup>258</sup> Telephone Interview with N. Ill. Leader One, *supra* note 135, at 5.

<sup>259</sup> Telephone Interview with Middle Fla. Leader One, *supra* note 135, at 5.

<sup>260</sup> Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 9. In total, six of the leaders used such terminology.

<sup>261</sup> See *supra* note 90 and accompanying text.

<sup>262</sup> Telephone Interview with S. Tex. Att’y Two, *supra* note 129, at 8.

<sup>263</sup> Telephone Interview with W. Tenn. Att’y Two, *supra* note 181, at 2.



or “restructure” in discussing their small business and religious institution clients. This phraseology sometimes contrasted with the language they used to describe consumer bankruptcy,<sup>264</sup> perhaps indicating that attorneys conceptualized these cases as a distinct subset of bankruptcy, or that they had become accustomed to presenting chapter 11 in this light.<sup>265</sup>

Another attorney counseled religious organizations that they could repay their creditors back in full later.<sup>266</sup> Consumer debtor attorneys have stated that they use the same tactic in helping their clients overcome emotional reticence to filing.<sup>267</sup> Attorneys also encouraged their religious organization clients to think of the church as a business—that is, to bring a more secular view of the institutions to bear on their situations.<sup>268</sup>

### *E. From Religion to Business*

Attorneys’ observations that religious organization leaders would benefit from treating their churches more as businesses reflects the result of leaders’ journeys from their churches’ financial distress through law and to bankruptcy. An important part of the process was appreciating that their churches are businesses, and that like other business leaders, they should consider using potentially beneficial legal solutions. Religious organization leaders’ discussions of their chapter 11 cases reflect this insight.

One leader clarified that though “churches operate with good intentions,” they do not have “enough business people on hand” to plan adequately.<sup>269</sup> Another contrasted religious organizations with for-profit businesses,

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<sup>264</sup> See, e.g., N. Ga. Att’y Two, *supra* note 149, at 1 (distinguishing between bankruptcy and reorganization in describing practice); S. Tex. Att’y One 1 (May 2, 2013) (describing the law practice as encompassing “small business reorganization[]” and “consumer bankrupte[y]”).

<sup>265</sup> Of course, chapter 11 is titled “reorganization,” which is another, perhaps simpler reason why attorneys sometimes referred to these cases as reorganizations or restructurings.

<sup>266</sup> Telephone Interview with N. Tex. Att’y One, *supra* note 221, at 5 (describing to clients that “life is a long-term proposition”).

<sup>267</sup> Attorneys have described counseling clients that they can repay creditors voluntarily post-discharge and citing their clients’ responsibility to their children and the immorality of creditors in an attempt to allay their clients’ concerns about filing for bankruptcy. Braucher, *supra* note 80, at 541–42.

<sup>268</sup> See, e.g., Telephone Interview with Cent. Cal. Att’y Three, *supra* note 138, at 5–6 (describing how leadership conducts business on a handshake and how it is “hard for them to accept that somebody would try to cheat them or beat them in this kind of situation, especially with the church”); Telephone Interview with N. Ga. Att’y Two, *supra* note 149, at 5 (noting that chapter 11 allowed churches to think of themselves as businesses); Telephone Interview with N. Ill. Att’y One 2 (Apr. 24, 2013) (“The churches don’t like to think of themselves as [a] business, but . . . you have a relatively simple [business] model.”); Telephone Interview with N. Ill. Att’y Four, *supra* note 155, at 6 (“[C]hurch officials often times don’t explore the more secular solutions to their problem.”).

<sup>269</sup> Telephone Interview with Middle Fla. Leader One, *supra* note 135, at 6.

explaining that churches tend to have “emotional ties,” while “people out in the world[,] they do business just like they do business.”<sup>270</sup> The leader believed that “looking at chapter 11” helped the church’s leadership understand “that sometimes people out in the secular field have . . . got it going on more wisely than people that deal with spiritual matters.”<sup>271</sup> Similarly, another leader commented that the most significant lesson of the filing was that record keeping is “extremely important” and that “it’s not as hard as I thought it was.”<sup>272</sup>

Consistent with these statements, leaders’ progressions in their thinking about their churches’ financial distress was marked by an increasing awareness that by engaging with financial institutions, even those that catered to religious organizations,<sup>273</sup> they had at least put a foot in the secular world. Their creditors most often provided the first push towards legalizing their financial problems. Discussions with other pastors convinced them that they could not extract their churches from souring relationships with creditors and worsening financial situations without the help of nonreligious professionals. And discussions with attorneys solidified their understandings of what chapter 11 entailed, how reorganization could help them achieve their churches’ goals, and ultimately how using bankruptcy law was the best course of action—that is, how those in the “secular field” were wise to use reorganization as a tool.

Naturally, leaders experienced this process through a religious gloss. At the same time as they understood that their lenders had to deal with them as business partners, they held their organizations apart from businesses. They raved about their churches’ good deeds in the community and their personal sacrifices, stating that “[n]obody wins whenever the churches have to suffer . . . but ultimately because the churches are in the businesses of doing ministry, [they] will always survive and be stronger.”<sup>274</sup> However, the leaders eventually saw their churches’ financial situations as legal problems and decided that chapter 11 was the best option to help them preserve the buildings and communities that their members held dear.

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<sup>270</sup> Telephone Interview with Cent. Cal. Leader Two, *supra* note 159, at 8.

<sup>271</sup> *Id.* at 5, 8 (connecting this insight to the Year of Jubilee).

<sup>272</sup> Telephone Interview with W. Tenn. Leader Two, *supra* note 135, at 7–8.

<sup>273</sup> For instance, one church received its loan from Evangelical Christian Credit Union, a financial institution that primarily does business with Christian churches. See Telephone Interview with N. Ill. Leader One, *supra* note 135, at 2; see also Telephone Interview with E. N.C. Att’y Two 3 (May 14, 2013) (describing how Foundation Capital worked with pastors); Telephone Interview with S. Tex. Att’y One, *supra* note 264, at 6 (noting that Foundation Capital deals with religious institutions).

<sup>274</sup> Telephone Interview with N. Ga. Leader One, *supra* note 173, at 4.

## V. THE “DEMAND SIDE” OF LAW AND BANKRUPTCY’S STIGMA

A. *Shedding Light on the Legal System*

In sketching how religious organizations interact with and invoke law to address financial problems, these interviews expand our knowledge about what tips people, including business leaders, toward choosing law over doing nothing or effectively engaging in self-help when faced with legal problems. People and businesses experience a multitude of problems every day, many of which are addressable by law. The legal system they could turn to is equally vast. Nonetheless, scholarly inquiries into the public experience with law primarily have concentrated on how lower and middle income individuals interact with the legal system to explore issues of access to justice and the mobilization of law.<sup>275</sup>

The results of this study show that leaders approached their religious organizations’ financial problems in ways that reflect the process by which people understand their options for dealing with their legal problems.<sup>276</sup> Leaders initially relied on their experiences, drawing upon how they perceived churches and their roles as church leaders in considering how to respond to their organizations’ financial declines.<sup>277</sup> Once creditors pushed them to reconsider their view of the churches’ situations, the leaders turned to their social networks and looked to the actions of other congregations in thinking through their problems.<sup>278</sup> And similar to how lower and moderate income individuals discuss their justiciable problems, the leaders rarely mentioned concerns about the cost of filing under chapter 11 as a dominant factor in their decision to file.<sup>279</sup>

But religious organization leaders, in effect, run businesses. They should have the knowledge, education, experience, and access to resources that come with leadership. Several mentioned generally being aware of the legal options to deal with financial problems, including bankruptcy, or that they or a few of their churches’ members had some business background.<sup>280</sup> Yet, the leaders still initially did not think of their churches’ problems as legal and still reached

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<sup>275</sup> This not to say that scholars have not explored how people and businesses react to their civil justice problems in other contexts, only that the predominant (and recent) focus has been on lower and middle income individuals. *See supra* Part II.A.

<sup>276</sup> *See supra* Parts II.A, C.

<sup>277</sup> *See supra* Part IV.A.

<sup>278</sup> *See supra* Part IV.B.

<sup>279</sup> *See supra* note 47 and accompanying text. For instance, one leader mentioned that the cost of chapter 11 for a business was much greater than the cost of a chapter 13 case, which caught the church off guard, though ultimately did not influence the decision to file or postpone the filing. Telephone Interview with Cent. Cal. Leader Three, *supra* note 157, at 5.

<sup>280</sup> *See supra* note 170 and accompanying text.

out to their social networks to confirm the availability of legal options to address their organizations' problems.

Moreover, the religious organization leaders' journeys from financial distress to bankruptcy indicate that the leaders integrated their conceptions of themselves and their actions into their churches' situations. Leaders spoke of what their churches' financial problems and filings under chapter 11 meant for their own feelings of self-worth.<sup>281</sup> Research has linked similar theories of relying on knowledge, social cues, and social network with how managers and directors of businesses consider whether to adopt legal and other innovations.<sup>282</sup> Leaders of other organizations, including nonprofits and smaller businesses, may have a similar tendency to tie the personal with the organization—a potential dynamic worthy of further exploration.

When considering future research, it also is crucial to assess the dynamics of how people's understandings about the legality of their problems unfold. For instance, given that religious organization leaders' journeys to chapter 11 often begin with not conceptualizing their organizations' financial distress as legal problems, perhaps attorneys should be encouraged to intervene earlier during the churches' financial declines. If engaged earlier, attorneys may be able to offer solutions better tailored to the situations, including legal options besides bankruptcy.

On average, however, the most productive solution may be the status quo—that is, leaders initially experiencing their churches' impending financial collapse as private or social problems. Affording creditors the power to turn their organizations' financial problems into legal problems may provide religious organizations goodwill with their creditors. This goodwill may foster a more productive negotiating environment, both outside and during bankruptcy. Bringing legal solutions into the initial mix of options may be detrimental. Future explorations of the “demand side” of law should consider whether the consequences of how people, particularly within organizations, experience and respond to their civil justice problems counsel against disrupting the natural social construction of problems.

### *B. Enduring Stigma and Recognizing Shame*

Focusing on bankruptcy, the study's results provide insights that bear upon debates about the effect of bankruptcy's stigma, or increasing supposed lack of stigma, on consumer bankruptcy filing rates.<sup>283</sup> As detailed in Part II, theories regarding social spillover and social capital seek to explain how individuals' interactions with members of their communities influence bankruptcy filing rates.<sup>284</sup> Empirical evidence links social spillovers and capital with regional

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<sup>281</sup> See *supra* Parts IV.A, C.

<sup>282</sup> See *supra* Part II.B.

<sup>283</sup> See *supra* notes 61–64 and accompanying text.

<sup>284</sup> See *supra* Part II.C.

fluctuations in filing rates and suggests that in some circumstances, social networks and context may decrease stigma.<sup>285</sup> But the studies often do not disentangle the effect of increased awareness about the bankruptcy process from the effect of decreasing stigma.<sup>286</sup> Those studies that attempt to separate the two effects preliminarily suggest that more knowledge may explain a greater portion of bankruptcy trends.<sup>287</sup>

The results of the interviews offer additional evidence regarding the effects of social networks on bankruptcy filings. Social networks impacted religious organizations' chapter 11 filings.<sup>288</sup> Leaders approached trusted contacts in their social circles and neighborhoods both to learn about bankruptcy in general and to discuss the stigma attached to filing.<sup>289</sup> Social networks may play a similar role in other bankruptcy filings, including those of smaller businesses, particularly given that research shows social networks influence how people understand their problems and how business leaders decide to adopt legal and other innovations.<sup>290</sup>

Bankruptcy also remains stigmatized, at least in the eyes of the religious organizations' leaders interviewed, and even in light of discussions with other pastors whose own organizations had filed under chapter 11.<sup>291</sup> This provides support for hypotheses that bankruptcy's stigma has remained steady, if not increased, over past decades and remains a barrier to filing.<sup>292</sup>

Further, the study's results are significant to disentangling social networks' information effects from changes in perceptions of bankruptcy's stigma. Interviewed leaders' perceptions of bankruptcy's stigma did not dissipate meaningfully after they talked with others about the propriety of using chapter 11 to deal with financial distress. Rather, discussions with others helped the leaders confirm the severity of their organizations' financial

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<sup>285</sup> See *supra* note 70 and accompanying text.

<sup>286</sup> See *supra* note 71 and accompanying text.

<sup>287</sup> See *supra* note 73 and accompanying text.

<sup>288</sup> Because the religious organization leaders interviewed are from churches that ultimately decided to seek to reorganize, the results do not indicate whether the overall impact of discussions with personal contacts and perceptions of social norms in geographic areas is to increase an individual's or an organization's propensity to file.

<sup>289</sup> See *supra* Part IV.B.

<sup>290</sup> See *supra* Parts II.A, C.

<sup>291</sup> See *supra* Part IV.C.

<sup>292</sup> Compare Sullivan et al., *supra* note 61, at 214–15 (concluding that the data presented “are far more consistent with the hypothesis that increased filings result from increased financial distress, and they hint that, despite loud claims to the contrary, the stigma of bankruptcy may actually be increasing”), with Buckley & Brinig, *supra* note 75, at 188 (discussing theories of the causes of increasing consumer bankruptcy filings and presenting evidence that rising filing rates partially are caused by “a shift in social norms”). The differences between these perspectives ultimately lead to disagreements about restricting consumers' access to bankruptcy. See Mann, *supra* note 71, at 404–10 (detailing this debate). The most significant culmination of this debate was BAPCPA's amendments to the Code. See *supra* notes 61–64 and accompanying text.

situations and solidify their decisions that they had to alter their responses to their creditors if their congregations were to survive.<sup>293</sup> Though leaders' perceptions of bankruptcy necessarily were altered with increased information, they ultimately filed despite the stigma. That perceptions of stigma did not diminish significantly even after filing is evident in leaders' statements explaining that chapter 11 was the only option,<sup>294</sup> and in their justifications for their churches' filings,<sup>295</sup> including recharacterizing the filings as "reorganization" or "restructuring" rather than as the more common (and more stigmatized) term "bankruptcy."<sup>296</sup>

As hypothesized previously,<sup>297</sup> social networks' effects on religious organizations' bankruptcy filings thereby operated on two levels—information dissemination and perceptions regarding stigma—that did not necessarily always occur at the same time or to the same degree. This result suggests that social networks even could increase bankruptcy's stigma while disseminating information.<sup>298</sup> Because only leaders who ultimately decided to place their churches into reorganization participated in this study, the data does not provide evidence regarding the overall effect of social networks on bankruptcy's stigma. Nonetheless, in future debates about the role of opportunistic behavior in driving bankruptcy filings, additional inquiries into the continued force of bankruptcy's stigma are necessary before basing legislative and policy decisions on perceptions of a decline in stigma's effects as increasing individuals' propensity to use bankruptcy.<sup>299</sup>

Moreover, how the interviewed leaders discussed the social and personal effects of their religious organizations' chapter 11 cases shows that more attention likewise should be paid to disentangling the outward stigmatization of bankruptcy from the internal shame of filing.<sup>300</sup> Feelings of stigmatization and of shame operated in tandem for some leaders, while other leaders focused primarily on bankruptcy's stigma or on bankruptcy's shame.<sup>301</sup> Even if the stigma of filing for bankruptcy has decreased in recent decades, it is not clear that the shame of filing has decreased as much or at all. If shame reduces the propensity to file in the same way as stigma, then shame alone, absent stigma, may inhibit some individuals from filing, rendering inquiries about bankruptcy's continued stigma incomplete to determine how perceptions of bankruptcy impact filings.

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<sup>293</sup> See *supra* Part IV.C.

<sup>294</sup> See *supra* note 218 and accompanying text.

<sup>295</sup> See *supra* Part IV.D.

<sup>296</sup> See *supra* notes 253–61 and accompanying text.

<sup>297</sup> See *supra* note 73 and accompanying text.

<sup>298</sup> See also Mann, *supra* note 71, at 409 ("The increased awareness is likely to affect a large number of people, of whom only a small number choose to file.").

<sup>299</sup> See *supra* note 292.

<sup>300</sup> See *supra* notes 205–08 and accompanying text.

<sup>301</sup> See *supra* Part IV.C.

Questioning how the stigma and shame of bankruptcy affect filings also may not be the most telling inquiry. The act of filing may bring closure to years of struggling to repay debts.<sup>302</sup> But not feeling stigmatized by or shameful about filing for bankruptcy does not mean that people do not feel stigmatized by or shameful about their long-term inability to repay their debts. Rather, leaders seemed to struggle to find a way to repay the money their churches owed before turning to bankruptcy as a final solution.<sup>303</sup>

Individuals and leaders of small businesses similarly may attach stigma and shame to their general inability to pay back money they borrowed. This stigma and shame may be vastly more important in postponing bankruptcy filings while people try for years to repay their debts. Though this interview data does not provide evidence of how individuals and business leaders generally view the propriety of not repaying debt, in the future, distinguishing between stigma and shame, both as it regards bankruptcy and as it regards the taking on and repaying of debts more generally, will enhance our understanding of how and when individuals turn to bankruptcy. Thus, again, clearer consideration of how people approach debt is needed before legislative and policy decisions are based on bankruptcy's supposed declining stigma.

## VI. CONCLUSION

Analyzing how religious organizations think about financial distress in general and bankruptcy in particular is not a straightforward or simple task. But how their leaders initially conceptualize their organizations' financial problems and how they come to the legal system provide key insights into longstanding questions about how people and organizations decide to use the legal system. Leaders may not view their organizations' issues as legal and they may integrate how they think of themselves into how they think about their organizations' problems. Both possibilities are worthy of future study.

The Article also offers additional, more nuanced evidence of how people think about filing for bankruptcy and repaying their debts. This evidence is significant to debates about consumer and small business bankruptcy policy. Leaders' articulations of how they felt about placing their religious organizations in bankruptcy and taking out debt indicate that continuing to disentangle the effects of stigma and shame on the decision to file, as well as on people's reactions to the inability to repay debt may reveal valuable insights into when and why consumers, small business owners, and smaller organizations turn to bankruptcy.

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<sup>302</sup> See *supra* notes 211–13 and accompanying text.

<sup>303</sup> This partially is evident in the fact that leaders first turned to nonlegal remedies to address their churches' financial issues. See *supra* Part IV.A.

