**The Definition of Religion in American Courts: Religious Minorities and Conformist Pressures**

What role do legal determinations of what counts as religion play in shaping so-called "new religious movements" and other religious minorities in the United States? Scholars of religion invest a great deal of time in developing, contesting, and negotiating definitions of religion, but this paper contends that courts of law wield the real power in determining what counts as a religion in American society. Accordingly, this paper contributes to a study of religion that analyzes first Amendment cases as important sites for the production of the category of religion. Specifically, this paper will examine how three prominent legal approaches to the problem of defining religion shape what counts as religion in American public life by exerting conformist pressures on new religious movements and religious minorities. Finally, this paper will question whether freedom of religion for religious minorities is possible if courts define religion by looking to dominant social models of religion.

The paper will begin by reviewing substantive approach to defining religion used in early first amendment cases in America, including *Reynolds v. US*. A substantive approach requires all religions to meet certain criteria, often theism. This approach can encourage new religious movements to adopt criteria set by courts for religion, especially theism and worship. Next, the paper will consider the analogical approach used most notably by Judge Arlin Adams in *Malnak v. Yogi* and *Africa v. Commonwealth*. An analogical approach bases determinations of religious status on comparisons with existing paradigmatic examples of religion. An analogical approach can encourage religious minorities and new religious movements to emulate existing, dominant religions in order to ensure a positive comparison. This paper will then consider the functionalist approach used in *Seeger v. U.S.* and *Welsh v. U.S.* Functionalist approaches evaluate the status of a claim to religious status by focusing on the question of whether the claimed belief plays the role of religion in the life of the individual or group appealing for first amendment protections. The paper will then briefly review efforts by new religious movements to conform to the models of existing religious groups in order to improve their arguments for legal protection.

Finally, this paper will ask whether courts need a set mechanism for determining what counts as religion. Judges arguably must determine what counts as religion in a variety of types of cases involving the religion clauses of the first amendment. Some scholars suggest that all sincere claims to religious status be accepted in court, but others argue that such an approach, combined with a strong reading of the free exercise clause, could lead to anarchy. This paper will examine whether religious freedom is compatible with approaches to determining what counts as religion that rely on existing, dominant social models of religion. Moreover, the paper will contend that concerns about anarchy are overstated given the state of free exercise doctrine after *Employment Division v. Smith*.