PLAYING THE DEVIL’S ADVOCATE:
HISTORIC PLACES OF WORSHIP AND PRESERVATION POLICIES IN ENGLAND, SCOTLAND, AND THE UNITED STATES

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3. Introduction

In the twenty-first century, it may be surprising to learn that many religious institutions – and their historic places of worship – still maintain a position of privilege within the law. Over the course of the last century, churches, mosques, and synagogues catered to the building code requirements, such as fire escapes and disabled access, yet remained customarily untouched by preservation policy. This contested issue has caused several investigative commissions, at least one never-ending voluntary pilot scheme, and countless court cases.

To understand the variety of approaches to preserving religious structures, this dissertation will look at the history and development of policies in England, Scotland, and the United States. Although this dissertation will broadly examine the place of houses of worship in preservation, each country has a particular case worthy of examining in greater detail. In England, the 1984 Faculty Jurisdiction Commission report and Paul Newman’s 1997 report considered the state of “ecclesiastical exemption.” While these reports chose to maintain the exemption, if the key themes were reexamined today, the result would likely reach the opposite conclusion. In Scotland, the Scheme to Apply Listed Building Controls to the Exteriors of Churches in Ecclesiastical Use, which began in 2002, partially enacted listed building controls on places of worship. However, this limited policy merely feigned victory for conservationists. Finally, in the United States, the strict separation of Church and State

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1 Most countries – England, Scotland, and the United States included – have a set of policies regarding historic buildings and town planning. In the U.K. this falls under listed building controls and in the U.S. this is through local landmark ordinances. These provisions often include a review of proposed internal and external alterations. ‘Ecclesiastical exemption’ is the term typically used to describe when religious institutions do not have to comply in part or in full with the standard public policy.
makes the already controversial and assumed anti-capitalist field of preservation more complicated. The differing municipal ordinances across the U.S. and a series of court cases could be seen as barriers to preserving historic churches, temples, synagogues, and other places of worship; conversely, these can be used to prove the next logical progression of preservation policy where religious institutions are concerned.

3.1 Methodology and Limitations

In order to understand the modern approaches to the conservation of historic places of worship and to make an informed proposal to improve the current provisions, this report critically examines the development of each nation's preservation policies. The insights, opinions, and experiences of church officials, conservationists, and architects complements the historic review presented in this dissertation.

Due to the number of historic places of worship, this report will only discuss churches – although many temples, synagogues, and mosques merit examining. Moreover, to further narrow the topic of study, this dissertation will not discuss the topic of redundant churches because the exemption applies to churches in ecclesiastical use.

3.2 Themes

Based on the information provided in the following three chapters, this report will analyze the privileged position of places of worship in planning law. Several aspects of society have changed between the policy’s origin and its modern implementation. There are two key themes to consider. First, the general public desires transparency in procedures affecting their community. This applies to more than just preservation, but is an ideal for general governance. Second, modernity has greatly affected the size and
activeness of congregations. Where congregations are growing, the churches face new needs and often desire different uses for their space. However, it is these cases that set congregations in conflict with conservationists. The challenge is to find a solution that satisfies both parties.

3.3 Objective

It is because religious buildings play such a prominent role in a nations', cities', and communities' landscape that their architecture merits the highest respect. Yet the complexity of the situations can often leave all parties – congregations, communities, and conservationists – dissatisfied.

By examining three countries with varying approaches to the preservation of religious buildings, I conclude that there may be a way to resolve the divide between congregations and conservationists: by removing the exemption, utilizing the listed building regulations of that nation, allowing for more public involvement, and creating a transparent process for religious groups wishing to appeal.
The introduction of ecclesiastical exemption in England occurred at a time when preservation was not a priority, and members of the government did not dare confront the Anglican clergy. This delicate relationship is no longer the norm. Tracing the development of ecclesiastical exemption reveals the evolution of society’s growing appreciation of and the state’s efforts to protect the historic fabric. In the late-twentieth century two reports evaluated the condition of the ecclesiastical exemption – the Faculty Jurisdiction Commission’s *The Continuing Care of Churches and Cathedrals* and John Newman’s *Review of Ecclesiastical Exemption*. These reports highlight the successes of the current system, but they also note short-fallings in the areas of enforcement, accountability, and transparency. Marcus Binney and John Newman spotlighted these faults, but very little has been done to correct them.²

**4.1 History of Religion and Preservation**

The largest ecclesiastical landowner in England is the Church of England; for this reason, its history, governance, and property management are the focus for this chapter. After all, the introduction of ecclesiastical exemption in the early-twentieth century can be traced to the Archbishop of Canterbury’s plea to Parliament. The exemption developed along side – but separate from – planning policy and the implementation of listed building controls. In many ways the Anglican system resembles the secular process, but the few variances make all the difference between an effective and

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ineffective method. In order for the exemption to dramatically change or be entirely removed, the Church of England would need to lead the way.  

4.1.1 Brief History of the Church of England

The Church of England has a long history deeply embedded in the nation's Constitution, culture, and landscape. Since the Synod of Whitby in 664, there has been an established Church with the Archbishops of York and Canterbury as the main liaisons to the Pope. These ties to the European church included exchanges of theology, liturgy, and architecture. When Henry VIII rejected the Catholic Papacy in the sixteenth century, the Crown replaced the Pope. However, this change in authority did not affect the building regulation policies from the pre-reformation church. The Church of England still held traditions from earlier centuries. One policy, issued by William the Conqueror and dating from 1072, proclaimed that spiritual matters would no longer be heard by religious officials in a secular court, but in a separate court without the influence of Crown-appointed judges. This gave bishops judicial authority over all religious matters and effectively made the Church a state within a state. Another enduring policy originated at the national synod of 1237 that provided early regulation of church buildings. This order strictly forbade, “…rectors of churches to pull down ancient consecrated churches without the consent and license of the bishop of the diocese under the pretence of raising a more ample or fair fabric.” The Archbishop of

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Canterbury, Randall Davidson, inherited these two traditions and utilized them to support his 1913 plea for ecclesiastical exemption.\footnote{David Andrew, “The Ecclesiastical Exemption,” Institute of Historic Building Conservation, http://ihbc.org.uk/context_archive/36/ecclesiastical.html.}

\subsection*{4.1.2 Places of Worship and Preservation, 1880s to 1970s}

The founders of the conservation movement, William Morris and John Ruskin, began the campaign to protect England’s national treasures in the late-nineteenth century. This included the first – and rather limited – set of legal protection given by the British Ancient Monuments Act of 1882.\footnote{Aylın Orbaşlı, Architectural Conservation (Oxford: Blackwell Publishing, 2008), 19.} While alterations to this initial protection scheme occurred over the subsequent decades, it was the Ancient Monuments Consolidation and Amendment Act 1913 that re-structured the prototype policy into its earliest modern form.\footnote{Alexandra Fairclough, “Ecclesiastical Law and the Church of England,” Historic Churches (2002).} During the debate of this Act, the Archbishop of Canterbury, Randall Davidson, defended the Consistory Courts before the House of Lords. The Archbishop said, “The authority, which at present controls these matters is the authority which can best control them in the years to come.”\footnote{“The authority” to which Davidson is referring is the Church of England; Delafons, “Politics and Preservation,” 121.} To demonstrate his seriousness in the matter, Archbishop Davidson created a commission to examine the Church’s current supervisory system. Davidson appointed the Dean of Arches, Sir Lewis Dibdin, to investigate the effectiveness of the Church’s courts and to make recommendations for any provisions necessary to better protect the built fabric.

In 1914, Dibdin released his report. The primary outcome was the creation of the Diocesan Advisory Committee, a board that would provide expertise in matters of
repair, redecoration, and all other alterations.\textsuperscript{11} In 1928, the Church Assembly operated and financed the forerunner to today’s Church Buildings Council, the Central Council of Diocesan Advisory Committees.\textsuperscript{12} The Council is accountable to the General Synod and offers guidance to parishes and diocese wishing to conserve or alter the built fabric.\textsuperscript{13} The year 1938 marked a crucial moment for conservation in the Church of England. The Faculty Jurisdiction Measure made Sir Dibdin’s recommendations statutory rather than voluntary. Moreover, this Measure introduced the “Archdeacon’s Certificate,” which was an effort to make the review process for routine like-for-like repairs simpler. The 1938 Measure was the first nationally applicable law implemented for the care of churches.\textsuperscript{14}

After its creation at the beginning of the twentieth century, the Town and Country Planning Act underwent several modifications, but since its inception the Church remained exempt from secular planning regulations. When the Town and Country Planning Act of 1944 introduced the grading of listed buildings, the Act did not exclude churches from listing, only from listed building control.\textsuperscript{15} In the aftermath of the Second World War the Church Assembly reassessed its policies concerning the repair of churches. This marked a shift from the inactive review process that only applied to proposed alteration, restoration, and demolition to an active conservation consciousness. In 1955, the Inspection of Churches Measure instituted the quinquennial inspection system. These inspections must be performed by an architect or building

\textsuperscript{11} Delafons, “Politics and Preservation,” 121.
\textsuperscript{12} Faculty Jurisdiction Commission, \textit{The Continuing Care of Churches and Cathedrals}, 9.
\textsuperscript{14} Faculty Jurisdiction Commission, \textit{The Continuing Care of Churches and Cathedrals}, 9.
\textsuperscript{15} Delafons, “Politics and Preservation,” 119.
surveyor to determine the condition of the church.\textsuperscript{16} This modification to the canonical system subsequently created a new body of architects with knowledge of historic churches.\textsuperscript{17} Under the Town and Country Planning Act of 1968, churches remained exempt from listed building controls, yet required planning permission for any alteration or extensions affecting the exterior of the building.\textsuperscript{18}

As early as 1953, the State made funds available for the conservation of listed buildings, but exclusion from listed building control meant historic places of worship were ineligible for these government grants.\textsuperscript{19} However, in the 1970s, the rising costs of repairs caused church officials to approach the Department of the Environment to request access to state funds.\textsuperscript{20} They reached an agreement in 1976, though under the condition that the Church of England would conduct a thorough review of their internal review process.\textsuperscript{21}

\textbf{4.1.3 Re-evaluating the Care of Churches}

The Archbishops of Canterbury and York and the Standing Committee of the General Synod appointed the Faculty Jurisdiction Committee:

\begin{quote}
\textsuperscript{17} Faculty Jurisdiction Commission, \textit{The Continuing Care of Churches and Cathedrals}, 9.
\textsuperscript{18} Delafons, “Politics and Preservation,” 119.
\textsuperscript{20} Faculty Jurisdiction Commission, \textit{The Continuing Care of Churches and Cathedrals}, 11.
\textsuperscript{21} Newman, \textit{Review of the ecclesiastical exemption for listed building controls}, 8.
\end{quote}
To review the operation of the Faculty Jurisdiction Measure 1964 and, more generally, to consider how and in what way the Church of England should monitor and, where appropriate, control in the interests both of the Church and of the wider community, the process of maintaining, altering and adapting churches in use for worship, taking account *inter alia* of the operation of the Inspection of Churches Measure 1955, the Pastoral Measure 1968 (and the proposed Amendment Measure), the ecclesiastical exemption and the making available of State Aid towards the cost of repair and maintenance of churches of historical and architectural interest.  

Released in 1984, the report produced by the Faculty Jurisdiction Commission provides a thorough history of ecclesiastical exemption; explains the current policies imposed by the Diocesan Advisory Committee; considers the results of removing the exemption; and takes into account the opinions of conservation bodies and the public regarding accountability.

The Commission argues that the review system used within the Church of England is in many ways more rigorous than that of local planning authorities. While churches are exempt from listed building control, they must obtain planning permission for works affecting the exterior of an ecclesiastical building or for a change of ownership. The Commission notes that this obligation is not particularly burdensome on the congregation. In order for a church to begin any alterations, the proposal must first undergo a dual-purposed review process administered by the Diocesan Advisory Committee. The Committee is responsible for respecting not only the aesthetic architectural qualities of a sanctuary but also the needs of an evolving parish. According to the Faculty Jurisdiction Commission, listed building control alone could never produce the same results. The Commission argues that the repeal of ecclesiastical

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22 Faculty Jurisdiction Commission, *The Continuing Care of Churches and Cathedrals*, 1.
23 Ibid., 22.
24 Ibid., 20.
exemption would leave both the congregation and the outside community disappointed with the final product.\footnote{Faculty Jurisdiction Commission, \textit{The Continuing Care of Churches and Cathedrals}, 22.}

The heart of the problem lies much more in the distinction which we recognise between a purely preservationist form of control imposed from outside and a means of guiding architectural or decorative work in the service of the Church so that expression of its own identity through its buildings comes naturally from within. The former method can only be concerned with the protection of what exists whereas the latter, which is available through the faculty jurisdiction, can unite care of that kind with a creative architectural approach which we see as 'celebratory.'\footnote{Ibid., 23.}

The Commission did acknowledge some challenges facing church conservation, namely funding. Financially, many churches could no longer afford upkeep or alterations to their buildings; this directed the flow of some public funds toward church conservation. However, in order for government money to aid churches, there must be some notion of accountability; after all, why should government funds support projects that the public has little to no say in? This concern over the lack of oversight encouraged the Commission to outline the current procedure and when members of the public and conservation bodies may express their opinions. Moreover, the Commission noted this weakness in the current ecclesiastical exemption policy and recommended more access during the review process to ensure accountability. Additionally, the Commission clarified that churches should receive public funds on the condition that any future plans would be submitted to the Department of the Environment for review and approval.\footnote{Ibid., 25.}
The Faculty Jurisdiction Commission concluded with an over two hundred point recommendation scheme. The Commission declared that ecclesiastical exemption is sound in principle and, with a few modifications, it can continue to prove beneficial for both congregations and outside communities.28

One member of the Faculty Jurisdiction Commission, Marcus Binney, disagreed with the Commission’s final assessment. Binney declares that “parishes would be better off, and the character of historic churches better safeguarded,” if ecclesiastical exemption were abolished, and religious buildings were subject to the same listed building controls as secular structures.29 Binney finds that the limited financial resources and the large number of parishes requires the Church of England to triage its buildings and utilize the secular grading system. Binney puts forward a series of reasons for ecclesiastical exemption to be removed. The full text of Binney’s evidence for removal is in Appendix 11.1.

He finds that the mix of a privileged position outside of listed building control, the church’s opaque process, and the lack of accountability grounds to eliminate ecclesiastical exemption. Binney’s leading argument is that all historic buildings in England, and the United Kingdom, should be subject to the same system of control. At the time of his report, the Crown also had immunity from listed building controls, though this is no longer the case. Moreover, he added that the ecclesiastical court system is overly complex and deters the public from getting involved in the review process. The secular system allows for public opinion to be easily recognized, even if

they are not always incorporated in the final decision.\textsuperscript{30} In addition, Binney writes, “Faculty Jurisdiction has no teeth.”\textsuperscript{31} In other words, if a parish chooses to alter plans without approval there is no punishment. The secular system not only has a regulation method in place, but also takes into account the scale of a proposal – from like-for-like repair to large interventions – in a fashion that the ecclesiastical committees cannot do because of the few cases they process.

Binney stresses that if ecclesiastical exemption were to be removed, the Church of England – which was responsible for the exemption’s creation – would have to pioneer the effort to remove it. With these arguments in mind, Binney concluded:

> In my view, listed building control would not only be a better and more effective system of control, but a much simpler one to operate, reducing the burden on parishes. By this I mean full listed building control as it applies to secular buildings and a complete end to any exemption for ecclesiastical buildings in ecclesiastical use…The secular system has the virtue of being independent of the building owner, and independence to my mind is of importance in securing objectivity and creating confidence among the public at large that decisions are reached objectively.\textsuperscript{32}

Marcus Binney’s dissenting opinion created a precedent for future skeptics of ecclesiastical exemption.

4.2 Current Policies

The publication of the 1984 Faculty Jurisdiction Commission Report and the rising public interest in heritage resulted in stricter scrutiny of church conservation and its internal review process. Today, ecclesiastical exemption in England is limited to six

\textsuperscript{31} Ibid., 184.
\textsuperscript{32} Ibid., 188-89.
denominations that demonstrate the “approved system of control” as defined by the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994. The six exempt denominations are the Church of England, the Church of Wales, the Methodist Church, the Roman Catholic Church, the United Reformed Church, and the Baptist Church. All other listed places of worship or those located within a conservation area must apply for listed building consent within the guidelines set forth in the secular system.33 No matter the faith of the religious institution, planning permission is always necessary for exterior alterations.34

4.2.1 Legal Measures and Orders

Two particular pieces of legislation dictate the modern implementation of ecclesiastical exemption: the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 and the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994. The Care of Churches Measure defines ecclesiastical faculty, the Diocese Advisory Committee, and other elements of the exemption process. Although this is a government document, it clarifies that the Diocese Advisory Committee is the chief internal influence responsible for reviewing proposals and granting faculties. To maintain the harmony between religious institutions and government regulations, the Measure also notes that when conserving a historic church, due regard is to be given to the worship and mission of the faith.35

The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 only allowed six denominations to retain exemption on the basis that the government

considered the religious institution’s internal review process comparable or stricter than that of the local planning authorities’ listed building controls. These denominations must also abide by the Care of Churches Measure. The 1994 Order excludes in-use ecclesiastical buildings from eight provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 including the urgent works to unoccupied listed buildings measure and secular enforcement system against unapproved works.\(^{36}\) For full text of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 and the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 refer to Appendix, 11.2 and 11.3, respectively.

### 4.2.2 Reviews and Reports


Three years after England established the modern guide to the exemption, John Newman conducted a review of ecclesiastical exemption on behalf of the Department of Culture, Media, and Sport. Newman’s *Review of the Ecclesiastical Exemption from Listed Building Control* ultimately argues for the policy to continue, but there are many points within Newman’s report that suggest he is skeptical of the exemption. Early on, Newman writes, “The Church of England should in the long term consider the radical

step of removing the control of listed buildings from the faculty jurisdiction and instituting a control system for them more in line with modern procedures."\textsuperscript{37} This is just one example within Newman’s report that appears to undercut the exemption system, although he does include some constructive criticism. These recommendations incorporate the need for more input from external conservation groups and to fully record the features of a church before major alterations or demolition. Newman also suggests the internal review process be made more open for not only public to follow but to actively engage in.\textsuperscript{38}

In the Ecclesiastical Law Journal, Mark Hill is cautiously optimistic of retaining the exemption. He writes, “The Church of England is entitled to be content, though not complacent, that its systems have been so highly thought of in the Newman Report.”\textsuperscript{39} Hill is well aware of the church’s privileged position and that only careful monitoring of the internal review system can guarantee the retention of the exemption.\textsuperscript{40}

The 2005 report demonstrates the legal balancing act required to appease church officials, planning authorities, and concerned conservationists. In the Department of Culture, Media, and Sport’s report, \textit{The Ecclesiastical Exemption: The Way Forward}, the Minister for Culture, David Lammy wrote, “We must ensure that we have a place in heritage protection systems that enable the role of the church to grow and develop rather than act as a brake on progress.”\textsuperscript{41} Despite the fact that the limitation of the exemption is intended to give churches autonomous power over their buildings, this

\textsuperscript{37} Newman, \textit{Review of the ecclesiastical exemption for listed building controls}, 1.
\textsuperscript{38} Ibid., 30-40.
\textsuperscript{40} Hill, “Losing One’s Faculties,” 171.
\textsuperscript{41} David Lammy, Foreword to \textit{Ecclesiastical Exemption: The Way Forward}, by the Department for Culture, Media and Sport: Architecture and Historic Environment Division (London: Crown Copyright, 2005), 3.
consultation introduced a voluntary management option: Heritage Partnership Agreements. These agreements are to be negotiated between English Heritage, local authorities, and the exempt denominations. Heritage Partnership Agreements are not meant to restrict or burden denominations, but to allow for the healthy exchange of ideas and provide a support structure between church communities and heritage bodies.\textsuperscript{42} Non-exempt denominations are also recommended to engage in a Heritage Partnership Agreement, even though the Government has no intention to expand the scope of the exemption.\textsuperscript{43} It is worth noting that the voluntary – but highly encouraged – Heritage Partnership Agreement is a significant shift in the practice of the exemption. \textit{Ecclesiastical Exemption: the Way Forward} argues that the traditional relationship of regulated-regulator is no longer the norm in the heritage sector, but rather the notion of a mutual partnership.\textsuperscript{44} “It is important, however, that the future of the Ecclesiastical Exemption is considered within the wider context of the ongoing review of the entire heritage protection system in England. The Heritage Protection Review will introduce important changes to the way in which historic sites, including ecclesiastical sites, are protected and managed...” \textsuperscript{45} The official intention of the Heritage Partnership Agreements is to complement the denomination systems, not to be an alternative to the current methods. While the Secretary of State may not alter the ecclesiastical exemption, as per the 1994 Order, this voluntary scheme would provide more strategic management of sites.\textsuperscript{46} Even though this scheme allows for more input from English Heritage and local authorities, is that enough to satisfy these organizations?


\textsuperscript{43} Ibid., 4.

\textsuperscript{44} Ibid., 8.

\textsuperscript{45} Ibid., 6.

\textsuperscript{46} Ibid., 9.
The Government’s suggestion of Heritage Partnership Agreements entitles English Heritage to a more prominent role in the decision making process for historic places of worship. English Heritage was already a consultation body for Diocesan Advisory Committees and Cathedral Fabric Advisory Committees. An interpretation of the Heritage Partnership Agreement acknowledges this secular body as a primary contributor to church proposals. In 2012, English Heritage published *New Work in Historic Places of Worship*. This guidance covers a range of common repairs and restoration questions, but also takes the time to note when English Heritage should be consulted. Cases where works affect the special historic, archaeological, architectural or artistic interest, including the removal of principal internal elements such as pews, screens, or organs, are covered.

### 4.2.3 Current Procedure

The result of these various measures and orders is the Church of England’s faculty process. Alexandra Fairclough provides a flow chart of this process in her article, “Ecclesiastical Law and the Church of England” (See fig. 1). The current procedure requires the applicant to consult their Diocesan Advisory Committee for major alterations or repairs to a historic place of worship. The Committee is made up of a chairman, the archdeacon, and no less than twelve other members. Among these twelve are two people appointed by the Bishop’s Council and three approved by each of the following: the Joint Committee of the National Amenity Societies, English Heritage, and the Local Government Association. The Committee acts as an advisory body for the proposed alterations and assesses possible risks to the historic fabric. The Church of

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48 Emphasis added.
Figure 1. Church of England Faculty Jurisdiction Flow Chart (Alexandra Fairclough)
England tries to incorporate the recommendations of the Newman Report, including the following: the chancellor – not the archdeacon – grants faculties for major alterations and/or repairs; the period for public display is 28 days; the Diocesan Advisory Committee consults with the National Amenity Societies, English Heritage, the Church Buildings Council, and the local authority; and the submission of a ‘Statement of Significance’ and a ‘Statement of Needs’ is required. Any objections to the proposed scheme may be submitted in writing and will be considered at a public hearing. The burden of proof lies with the applicant. In other words, the applicant must prove the necessity for the proposed works, whether or not these works adversely affect the architectural or historical character of the building, and should the court grant permission. It is also possible for the applicants to appeal to the Court of Arches in Canterbury and the Chancery Court in York.50

4.3 Conclusion: Unanswered Criticism

Considering the extensive review process that ecclesiastical exemption has been subjected to over the past decades, it is fair to assume that it should be functioning smoothly. However, observations by two of the exemption’s most outspoken analysts, Marcus Binney and John Newman, have not been wholly satisfied. If these issues remain unaddressed, then perhaps it is time to acknowledge that ecclesiastical exemption is obsolete.

Binney blatantly opposes the exemption, and his remarks from the 1984 Faculty Jurisdiction Commission report reveal faults that have been continually overlooked. First, there is still no universal policy regarding historic property – in England, or the

50 Fairclough, “Ecclesiastical Law and the Church of England.”
United Kingdom as a whole – even after the Crown lost its immunity in 2005.\textsuperscript{51} The Crown relinquished its immunity, with the exception of matters of national security and even these elements need to be reviewed in an appeal process by the Secretary of State.\textsuperscript{52} Binney’s other criticisms about the difficulties surrounding public input and ineffective enforcement have been discussed but are still insufficient compared to the local planning authorities’ systems.

Newman’s report ultimately sides with the retention of the exemption, but I find his writing suggests he is either undecided on the exemption or knows that the government is shying away from an unwanted political battle. As the report progresses, Newman appears to backtrack from this initial position to eventually support the repeal of the exemption. He tries to justify the exemption by arguing that church officials have yet to fully grasp their impact on the built heritage since the early 1990s developments.\textsuperscript{53} Newman’s lack of confidence in the system constantly shows through his writing: “I also recommend that there should be a further review of all six denominations’ systems in three years’ time, and furthermore that, in view of the fact that these denominations enjoy the privilege of an exemption, they should remain in a lesser sense perpetually under review.”\textsuperscript{54} Newman even acknowledges that the Diocesan Advisory Committees will never be as accountable as their secular equivalents. He writes, “It seems to me that

\textsuperscript{51} Faculty Jurisdiction Commission, \textit{The Continuing Care of Churches and Cathedrals}, 21
\textsuperscript{52} 2004 Planning and Compulsory Purchase Act, May 13, 2004.
\textsuperscript{53} “Rather, the exempt denominations need to be encouraged to improve their systems and to acknowledge that they have taken on the guardianship of buildings which are viewed by society as not merely of practical use to the congregations which worship in them week by week, but as embodiments of history, art, and human endeavor values by the community at large.” Newman, pg 22-23
there is no realistic possibility of bringing the systems of the exempt denominations into line with the secular system in this respect.”

The government continues to review the effectiveness of ecclesiastical exemption. In order to consider a denomination’s Diocesan Advisory Committee robust enough, the government compares it to the local planning authority’s procedures. Additionally, the 1994 Order and the recommendations from the 2005 Department of Culture, Media, and Sport Report, Ecclesiastical Exemption: The Way Forward, have created a voluntary system and have strongly encouraged guidance from English Heritage and the planning authority. While historic churches have two separate but related goals – to look after the culturally significant elements of their buildings and to allow for their congregations to effectively use the space – these are not all that different from the goals affecting others living and working in historic structures. A 2010 explanatory memorandum on the Ecclesiastical Exemption Order indicates, “The proposal to end the exemption for buildings now covered by denominational control was welcomed by a range of heritage groups and local authorities... While there will be a burden on affected buildings, none has cited this as a barrier to compliance with the proposed changes.”

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55 “In all the exempt denominations committee members are appointees, not elected. Local authorities whom I have consulted see this as a weakness vis-à-vis the secular system, in that there is no external accountability. However it seems to me that there is no realistic possibility of bringing the systems of the exempt denominations into line with the secular system in this respect.” Newman, Review of the ecclesiastical exemption for listed building controls, 27-28.

5. SCOTLAND

The repeated criticisms of the English form of ecclesiastical exemption initially brought the issues of transparency, prioritization, and accountability to the forefront. In response to these observations, Scotland introduced the *Scheme to Apply Listed Building Controls to the Exteriors of Churches in Ecclesiastical Use* in 2002. This scheme encouraged congregations undergoing alterations to be more closely scrutinized by Historic Scotland and the local planning authority. One example of a church that submitted itself to this scheme is St. Paul’s and St. George’s Scottish Episcopal Church in Edinburgh. Moreover, in 2009, the Historic Environment Advisory Council for Scotland (HEACS) published their *Report with recommendations on the long-term conservation of the ecclesiastical heritage in a time of demographic change*. Though the alterations at St. Paul’s and St. George’s Church did not necessarily motivate the HEACS report, an analysis of these two cases calls attention to the flaws of ecclesiastical exemption as applied in Scotland.

5.1 History of Religion and Preservation

The development of ecclesiastical exemption – and planning law in general – in Scotland echoes England’s policies in many ways. While these two nations have a common legal history, the religious practices in Scotland are quite different from their southern neighbor's.

5.1.1 Brief Religious History

Unlike in England, there is no established church in Scotland. The 1921 Church of Scotland Act declared that the Church of Scotland is the national church, but it is not
formally tied to the government.\textsuperscript{57} The sovereign may attend, but not participate in, the General Assembly. Moreover, neither the Scottish nor the Westminster Parliaments may appoint any positions within the Kirk. The Church of Scotland is a free entity that oversees matters of doctrine, government, and worship.\textsuperscript{58} The Kirk is in no way state-controlled.

Within the Church of Scotland, there is a Committee on Church Art and Architecture (CARTA). This Committee advises congregations and presbyteries on the most appropriate ways to renovate, alter, and re-order the interiors of churches. It is CARTA’s responsibility to ensure that the heritage of the church is protected and that the sanctuary meets the needs of the congregation. CARTA’s goal is to guarantee that alterations are for the advancement of the mission and worship of the church.\textsuperscript{59} However, the Historic Environment Advisory Council for Scotland (HEACS) suggests that CARTA lacks the force necessary to implement a strong standard of conservation.\textsuperscript{60}

The Church of Scotland owned an estimated eighty percent of the then seventeen hundred listed churches in Scotland in 1976. As this suggests, the Church of Scotland is very similar to the Church of England as a guiding force for broad ecclesiastical policy.

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\textsuperscript{58} Church of Scotland Act, July 28, 1921.
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However, the Kirk lacks the resources, procedures, and management demonstrated by the Church of England.61

5.1.2 Preservation Policy in Scotland

The majority of Scotland’s policies concerning architectural conservation came from the English system. Like England, a policy of ecclesiastical exemption began in 1913 with the Archbishop of Canterbury’s protestations. The development of church conservation policy since the early-twentieth century has been remarkably similar to that in England, with the exception of the 1980s and 1990s limitations on denominations permitted ecclesiastical exemption and the public scrutiny of ecclesiastical exemption. This did not occur in Scotland until the 2000s. Today, Section 54 of the Planning (Listed Buildings and Conservation Areas) (Scotland) 1997 outlines the ecclesiastical exemption.62 This legislation is similar to England’s Planning (Listed Buildings and Conservation Areas) Act 1990 and the immunities listed in the 1994 Ecclesiastical Exemption Order.

5.2 Ecclesiastical Exemption

According to a report by HEACS, there are over 3,500 listed ecclesiastical buildings in Scotland. This includes roughly fifteen percent of the nation’s total Category A listed buildings. Well over half of these sites are also believed to be in rural and semi-rural locations.63 What is a more astonishing statistic than the large number of listed places of worship is the fact that even in 2008, when HEACS published Research Report on the Extent of Ecclesiastical Heritage in Scotland, it had to provide a disclaimer for the figures it presents, stating, “... information about the current condition of the ecclesiastical

heritage is very fragmented, making an overall strategic view impossible at the present time. Given the partial nature of the evidence, the figures set out in the report should be treated with caution.\textsuperscript{64} It is curious that the government, Historic Scotland, and other conservation organizations are willing to accept ecclesiastical exemption without fully knowing how much listed building control has been relinquished.

5.2.1 Scheme to Apply Listed Building Control to the Exteriors of Churches in Ecclesiastical Use

In 2002 Historic Scotland, the Scottish Churches Committee, and various local planning authorities introduced the \textit{Scheme to Apply Listed Building Control to the Exteriors of Churches in Ecclesiastical Use} (hereafter referred to as the \textit{Pilot Scheme}). The purpose of the \textit{Pilot Scheme} is to allow places of worship that would otherwise be exempt from listed building control the opportunity to voluntarily undergo the listed building consent process for any alterations that affect the sanctuary's exterior. For full text of the original \textit{Pilot Scheme}, refer to Appendix 11.4.

The \textit{Pilot Scheme} included the following denominations: the Associated Presbyterian Churches, Baptist Union of Scotland, Church of Scotland, Free Church of Scotland, Free Presbyterian Church, Methodist Church, Roman Catholic Church, Scottish Episcopal Church, United Free Church of Scotland, and the United Reformed Church Scotland Synod.\textsuperscript{65} If one of these churches proposes to alter a building's exterior and wishes to participate in the \textit{Pilot Scheme}, it first approaches the local planning authority to determine if planning permission is required. If the proposal – had it not been for the


\textsuperscript{65} Historic Scotland, \textit{Scheme to Apply Listed Building Control to Exteriors of Churches in Ecclesiastical Use, 2002 to 2004} (Edinburgh, Crown Copyright, 2002), 4.
exemption – normally requires listed building consent, then the church may choose to submit an application under the *Pilot Scheme*. The planning authority should then notify Historic Scotland and review the application as it would any other, including advertisement and consultations with amenity bodies.  

When considering an application, there are two possible outcomes. First, if the local planning authority and applicant come to an agreement and the building in question is either Category A or B, then the planning authority refers the application to Historic Scotland’s Buildings Inspectorate. Historic Scotland does not review Category C cases. If the Buildings Inspectorate approves the plans, then the planning authority will inform the applicant and the works may proceed as agreed. In the second scenario, either the applicant and the local planning authority cannot agree or the Buildings Inspectorate rejects the plans. When this happens and the applicant still wishes to proceed, it may submit its application to the appropriate denomination’s Decision Making Body. This body should follow the *Memorandum of Guidance on Listed Buildings and Conservation Areas* that Historic Scotland published in 1997. For full text of the *Memorandum of Guidance* refer to Appendix 11.5. The applicant is expected to adhere to the Decision Making Body’s ruling. Finally, the parameters of the *Pilot Scheme* do not include a review of works to the church’s interior. No matter which method a church uses to obtain consent, any work to the interior should be considered by the denomination’s own scheme of self-regulation.

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66 Historic Scotland, *Scheme to Apply Listed Building Control to Exteriors of Churches in Ecclesiastical Use*, 5.
67 Today this position is called ‘Heritage Management.’
68 This document has since been superseded. The portion of the *Memorandum* in 11.5 is all that was retained.
69 Historic Scotland, *Scheme to Apply Listed Building Control to Exteriors of Churches in Ecclesiastical Use*, 5-6.
70 Ibid., 7.
The *Pilot Scheme* first ran from January 1, 2002 until December 31, 2004. Historic Scotland, in conjunction with the Scottish Churches Committee, Convention of Scottish Local Authorities, and Scottish Society of Directors of Planning, intended to review the *Pilot Scheme* every three years. As this scheme has avoided any severe scrutiny, it is still in place.

### 5.2.2 Case Study: St. Paul’s and St. George’s Church, Edinburgh

While the Kirk owns the majority of ecclesiastical buildings in Scotland, the Scottish Episcopal Church and the Roman Catholic Church are the next two largest owners of ecclesiastical property.\(^{71}\) To better understand the *Pilot Scheme*, this report presents the case of St. Paul’s and St. George’s, a Scottish Episcopal church in Edinburgh. Designed by Archibald Elliot in the early 1800s and extended at the turn of the next century by Kinnear and Peddie, St. Paul’s and St. George’s Church is a prime example of neo-gothic ecclesiastical architecture in Scotland. The building is within the Edinburgh World Heritage Site, the New Town Conservation Area, and is Category A-listed.\(^{72}\) In 2002, the growing congregation began working on plans to update the church.\(^{73}\) St. Paul’s and St. George’s Church entered into the *Pilot Scheme* in the fall of 2004. After a long process, work began in 2006 and finished in 2008.\(^{74}\)

St. Paul’s and St. George’s Church created an ambitious plan to accommodate current and future growth in its congregation. The project’s intention was to make the church more welcoming with an exterior glass pavilion and gallery which seats three hundred


\(^{73}\) Reverend Dave Richards. Interviewed by Patricia Lipton. St Paul’s and St George’s Church, Edinburgh. June 4, 2013.

\(^{74}\) Reverend Dave Richards Interview.
and fifty more worshipers. To provide for a larger community, the plan also included a multi-story addition to the north side of the building, which allows for a kitchen and classrooms. Finally, the church updated the sound and projection system to bring this nineteenth-century sanctuary into the twenty-first century.\footnote{St. Paul’s and St. George’s Church, “Project Twenty One – Funding Application Form,” 6.} In 2004, St. Paul’s and St. George’s decided to move forward with the alterations. The church elected to undergo the \textit{Pilot Scheme} and applied for listed building consent. In the early stages church officials met with representatives of the City of Edinburgh Council and Historic Scotland to discuss the proposed plans. The design received mixed responses.\footnote{Reverend Dave Richards Interview.}

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{fig2.png}
\caption{West Façade of St. Paul’s and St. George’s Church, Before (Royal Commission for Ancient and Historic Monuments of Scotland)}
\end{figure}

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{fig3.png}
\caption{West Façade of St. Paul’s and St. George’s Church, After (Scotland Churches Trust)}
\end{figure}

In a consultation brief to the City of Edinburgh Council, Historic Scotland voiced its strong objections to the scale of the design and the detrimental effects it would have on the building’s character. In regards to the proposed glass reception space, Historic Scotland worried that the addition would impair the view of the symmetrical west
façade, especially the tracery stained glass window, molded doorway, octagonal turrets, and crenellated gable (See figs. 2 & 3). Historic Scotland also disapproved of the alterations to the interior of the church. However, this space is protected by ecclesiastical exemption and did not require planning permission or listed building consent (See figs. 4, 5, & 6). Therefore, Historic Scotland tried other means to have their objections heard. St. Paul’s and St George’s Church received a grant from Historic Scotland in 1995, with the condition:

That for a period of 11 years from the date of this letter any proposal to alter, extend or demolish the property or any part thereof will require the approval of the Secretary of State (now the Scottish Ministers), who, in considering any proposal for alteration or extension, will have regard to whether it is likely to affect the character of the building. This is in addition to any requirement there may be to obtain listed building consent, or any other permission.78

Even with this appeal to prevent alterations to the building’s interior, the Scottish Ministers ruled in favor of the St. Paul’s and St George’s Church. Ultimately, the City of Edinburgh Council granted listed building consent for the addition to the north elevation because it is not noticeable from either the east or south facades – the church’s principle elevations. Regarding the addition of the glass pavilion, the council took comfort in the fact that the façade would remain largely intact and the work is easily reversible. Also, the existing space between the church and the 1960s office block contributed very little to the conservation area.79 For the full text of the City of Edinburgh Council’s decision, see Appendix 11.6.

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78 Ibid., 10.
79 Ibid., 4.
Figure 4. Interior of St. Paul’s and St. George’s Church (Scottish Churches Trust)

Figure 5. Glass pavilion at St. Paul’s and St. George’s Church (MJSFerrier Photography)

Figure 6. View from rear of the nave, St. Paul’s and St. George’s Church (Tricia Lipton)
5.3 Conclusion: Critics of Ecclesiastical Exemption

In England, the 1984 Faculty Jurisdiction Report redefined the working relationship between approved denominations, local planning authorities, and English Heritage. Both this report and the 2009 HEACS publication note the trend of shrinking congregation sizes and a lack of available funds. The Faculty Jurisdiction Commission and HEACS proposed methods to refine the exemption.\textsuperscript{80} Although both reports refer to the unresolved critiques of ecclesiastical exemption, they each suggest the program should continue. For the executive summary of the HEACS report, refer to Appendix 11.7.

The Scottish Minister commissioned HEACS to provide strategic advice on issues facing the historic environment, specifically “how best to secure the long-term conservation of Scotland’s rich and diverse ecclesiastical heritage in a time of demographic change.”\textsuperscript{81} The report initially concerned itself with religious institutions’ declining congregations and lack of funds, but the result was a detailed report outlining the current failures of and possible remedies for the conservation of churches and churchyards in ecclesiastical use. Some of the major flaws with the current approaches to church conservation include: a lack of systematic information; insufficient available funding; deficient property management; and inadequate review and enforcement within the ecclesiastical exemption process.\textsuperscript{82}

HEACS recommends an approach created by religious groups, influenced by independent expert and professional advice, and aided by the local planning authority

\textsuperscript{80} HEACS, \textit{Report with Recommendations}, 8.
\textsuperscript{81} Ibid., 3.
\textsuperscript{82} Ibid., 38-39.
and Historic Scotland. The best way to achieve this is by creating Joint Agreements paired with Action Plans between denominations and – not only Historic Scotland but also – the local planning authority and community interest groups. Some of HEACS’ other recommendations included urging the Church of Scotland to hire conservation architects and architectural historians to work exclusively on ecclesiastical structures. This plan relies on the Kirk’s willingness to share these knowledgeable individuals with other denominations. The report also put forward the idea that the Royal Commission on the Ancient and Historic Monuments of Scotland create an inventory of the country’s ecclesiastical heritage.

In the end, HEACS acknowledges that the exemption is an anomaly, especially in the eyes of the conservation community. However, churches continue to defend it. If the exemption must continue, HEACS wishes to see more stringent conditions and administration applied. Specifically, this report referenced the English system of ecclesiastical exemption as a model because it requires the exempt denominations to prove their internal review structure is equal to, if not more rigorous than, the local planning authority’s. The HEACS report continually repeated the need to examine each denomination’s internal review mechanisms in order to determine if they are robust enough to compare to the secular procedure.

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84 Ibid., 37.  
85 Ibid., 7.  
86 Ibid., 19.  
87 Ibid., 25.  
88 Ibid., 39.  
89 Ibid., 4.  
90 Ibid., 4.
The HEACS report recognizes the legal complexities contiguous with ecclesiastical exemption prevent its full removal, though it appears that the only true legal complexity is the very public and controversial debate that would ensue. Both England and Scotland already restrict the denominations with any form of exemption and do so by using the local planning authority system as a comparison.

HEACS’s report stresses the need for a working relationship between church review committees, Historic Scotland, the local planning authority, and the conservation-minded public. In England, too, the 2005 Department of Culture, Media, and Sport report described the ideal relationship between regulated and regulator. However, before a denomination can even qualify for this amicable relationship, its internal structure must first be evaluated by Historic Scotland.

Historic Scotland should be made responsible to determining that the internal systems used by each denomination are indeed robust, and, in particular, that denominations have access to and pay due regard to expect and professional advice.

Even though other conservation groups and the planning authority would be involved in the proposed Joint Agreements, it is Historic Scotland that will be the main arbiter. It appears that Historic Scotland and HEACS are seeking out ‘yes man’ denominations, because Historic Scotland gets to determine which congregations are willing to listen to their advice. It seems that the relationship between regulated and regulator has bred more disdain than collaboration. In Scotland, much like England, there is a politicized aspect within the preservation field, and the tension only increases when religion is

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92 Department for Culture, Media and Sport, Ecclesiastical Exemption: The Way Forward, 8.
94 Reverend Dave Richards Interview.
involved. Both nations are attempting to make the exemption transparent and accountable, but this results in nothing more than an exemption in name alone. Why continue this charade?
6. **UNITED STATES OF AMERICA**

Preservation policies in the United States are quite different from those in the United Kingdom. This chapter includes a brief background of the separation of Church and State in the U.S. and a review of significant court cases and acts of Congress that have had an impact on the nation’s historic preservation policies. Although not always directly related to preservation, these examples all address matters related to the First Amendment and the free exercise clause. The topics of substantial burden and non-discriminatory laws continually influence cases argued on the grounds of religious injustice. Moreover, two cases in particular demonstrate the unique battle in America over religious freedom, preservation, and financial opportunity. This struggle is best illustrated through the 1990 case *St. Bartholomew’s v. New York Landmarks Preservation Commission* and the 2004 building proposal by Chicago’s Fourth Presbyterian Church; these churches tried to build modern high-rises on their land and both faced much opposition.

### 6.1 History of Religion and Preservation

The preservation of historic places of worship in the United States is essentially a legal balancing act. The separation between Church and State is at the root of the problem. Two centuries after the writing of the Constitution, the free exercise and establishment clauses put forward in the First Amendment are still widely debated. As historic preservation laws in the U.S. rely on implementation at the nation, state, and city levels, this plays a role in almost every level of government.
6.1.1 Brief History of Religion in the United States of America

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.\footnote{United States Constitution. Amendment I.}

While the First Amendment of the United States Constitution protects citizens’ inalienable right of religious freedom, the interpretation of this clause remains contentious. This complicates the preservation of historic houses of worship and has given rise to debates on the matter.\footnote{Diane Cohen and A. Robert Jaeger. \textit{Sacred Places at Risk: New Evidence on How Endangered Older Churches and Synagogues Serve Communities} (Philadelphia: Partners for Sacred Places, 1998), 34-35.} The most simplified form of this debate results in two sides: separatists and neutralists. Separatists oppose both landmarking of religious sites and providing government funds to the owners of landmarked houses of worship. On the other hand, neutralists favor the regulation of and necessary support required to maintain historic places of worship so long as it is equal to the regulation and support of secular buildings.\footnote{Andie Ross, “Historic Preservation: First Amendment Considerations.” (MSc Diss., University of Pennsylvania, 2004), 8.} According to the National Trust for Historic Preservation’s guide, the government approaches these issues of religion with neutrality. Therefore, if a law were to provide funding solely to religious schools or exempts religious properties from building code requirements, it may be found in violation of the First Amendment.\footnote{National Trust for Historic Preservation, “Preservation Law 101: Religious Protection,” \url{http://www.preservationnation.org/information-center/law-and-policy/legal-resources/preservation-law-101/constitutional-issues/religious-protection.html#Ue0azWTwJmk}.} This guide goes on to argue that the object of preservation laws is to protect the historic built fabric, not to suppress religious practices. It is this tension between religion and regulation that causes frustration for preservationists in the United States.

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\footnotesize
\begin{enumerate}
  \item \footnote{United States Constitution. Amendment I.}
  \item \footnote{Andie Ross, “Historic Preservation: First Amendment Considerations.” (MSc Diss., University of Pennsylvania, 2004), 8.}
\end{enumerate}
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6.1.2 Approaches to Preservation at National, State, and Local Levels

In the mid-twentieth century, the United States became more conscious of its architectural treasures. In an effort to protect them, Congress created the National Historic Preservation Act in 1966. This Act created the National Register of Historic Places and Section 106 Review to aid in the preservation of architecturally and historically significant buildings. While this Act does not mandate preservation, Section 106 Review encourages it. In cases where a project may cause physical destruction, alteration, relocation, reuse, neglect, or transfer of a historic property, Section 106 Review may be invoked.\footnote{Advisory Council on Historic Preservation, Protecting Historic Properties: A Citizens Guide to Section 106 Review (Washington, D.C.: Advisory Council on Historic Preservation, 2002).} This applies to any historic property that is listed or eligible to be listed on the National Register for Historic Places.\footnote{National Historic Preservation Act. 16 U.S.C. 461 et seq.} This review process makes the federal agency responsible for both the projects carried out, approved, or funded and those projects that cause severe damage or demolition of a historic property.\footnote{Advisory Council on Historic Preservation, “Protecting Historic Properties: A Citizen’s Guide to Section 106 Review.”} However, the National Register typically excludes religious properties. In order for a historic house of worship to make it onto the Register, its primary significance must derive from the building’s “architectural or artistic distinction or historical importance.”\footnote{National Historic Preservation Act, 16 U.S.C. § 470, et seq. (2000).} Another stipulation is that grants are only available for the preservation, stabilization, restoration, or rehabilitation of a religious building if the purpose of the funding is secular and seeks to protect the building’s historically significant features.\footnote{National Historic Preservation Act, 16 U.S.C. § 470, et seq. (2000).} This can be complicated when features such as stained glass windows or decorative sculpture are in need of repair.
In matters of historic preservation in the United States, it is the state and city policies that have a larger role in dictating the landmarking and regulation of religious buildings. Two states – Washington and California – have court decisions that make the landmarking of a historic place of worship difficult. In the 1997 case *Munns v. Martin*, the Washington State Supreme Court found Walla Walla’s demolition requirements unconstitutional with respect to a church because it prohibited St. Patrick’s Roman Catholic Church free exercise of religion.\(^{104}\) In the state of Washington, if a government action is found to have a coercive effect on religious exercise then the burden of proof rests with the government to verify that there is a compelling state interest and that the measures are carried out in the least restrictive means possible.\(^{105}\) The majority opinion in *Munns v. Martin* noted that there is a necessary concession granted in matters of historic preservation and religious exercise. The right to religious freedom is “paramount” to historic preservation and this is the “price we must accept.”\(^{106}\)

In California, the state allows for religious properties to gain exemption in cases of “substantial hardship.” *East Bay Asian v. State of California* challenged the constitutionality of this state law in 2000, but the law was upheld.\(^{107}\) The dissenting judges wrote that California Constitution guarantees “free exercise and enjoyment of religion without discrimination or preference.”\(^{108}\) Rather than being neutral, this law allows religious organizations exemption from a generally applicable law. In any other state, this ruling could have gone the other way.

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\(^{105}\) Ibid., 26.


Very few cities include an ecclesiastical exemption within their landmarks policies. The two largest cities in the U.S. to do so are Chicago and Pittsburgh. In 1987, the city of Chicago altered its ordinance to include the following: “No building that is owned by a religious organization and is used primarily as a place for the conduct of religious ceremonies shall be designated as a historical landmark without the consent of its owner.”\(^ {109}\) This only applies to the sacred space; other buildings owned by religious institutions - such as schools or rectories – must still abide by the landmarks ordinance. In 2005, nine aldermen – including the one who originally introduced this ordinance in the 1980s - tried to remove the exemption, but strong resistance from the Catholic Archdiocese and other religious organizations prevented its repeal.\(^ {110}\) Today, only twenty-three of the over three hundred churches in Chicago are landmarked, and many of those were instated prior to the 1987 ordinance change. Of these twenty-three structures, only thirteen are individually listed; the others are within historic districts.\(^ {111}\) As Chicago began landmarking places of worship, the early majority were sanctuaries used by largely African-American congregations in the inner-city trying to save their church.\(^ {112}\)

The city of Pittsburgh altered its policy in 2003, even though the Historic Review Commission and the Planning Commission unanimously agreed that the City Council should not adopt this legislation. In their testimony, these Commissions noted that


between the late 1970s and 2002, the Commissions had approved ninety-five percent of the applications from the owners of designated historic houses of worship, including two demolition requests.¹¹³

6.2 Legal Precedence and Preservation

The United States Constitution strives to make the separation of Church and State clear, but there is room for interpretation. Over the years, cases like Employment Division, Department of Human Resources of Oregon v. Alfred Smith (hereafter referred to as Employment Division v. Smith) and City of Boerne v. Flores, have brought forth issues of using religion as a means to evade neutral and generally applicable laws. While not all cases directly relate to historic preservation, these rulings shaped how the court applies the First Amendment.

6.2.1 Employment Division, Department of Human Resources of Oregon v. Alfred Smith

Prior to the landmark 1990 ruling in Employment Division v. Smith, Sherbert v. Verner was the leading precedent. In this case, a textile-mill changed from a five-day to a six-day workweek. One employee, Adell Sherbert, was an active member of the Seventh-Day Adventist Church and refused to work the added day for religious reasons. She was fired without state unemployment benefits. She took her former employer to court. The U.S. Supreme Court sided with Sherbert and created the Sherbert test. This test determines whether or not an individual’s right to free exercise was violated. First, the court must determine if an individual has a claim involving a sincere religious belief and

¹¹³ Angelique Bamberg, Testimony on behalf of the Department of City Planning and staff for the Historic Review Commission & Planning Commission on the Proposed Exemption of Religious Properties From Nomination as City Historic Structures Except By their Owners of Record, Pittsburgh History and Landmarks Foundation.
if a government action is a substantial burden on the person’s ability to act on their belief. If these elements are proven, then the government must determine if this suppression of an individual’s constitutional rights is in the furtherance of a “compelling state interest” and if it was pursued in the manner least restrictive to religion.\textsuperscript{114}

*Employment Division v. Smith* determined that the state could deny unemployment benefits to people fired for violating the Oregon state law against the use of peyote, even though the defendants used the drug as part of a religious ritual. The U.S. Supreme Court denied the religious freedom claim, stating, “The right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the grounds that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).”\textsuperscript{115} This means that if the restriction on religious practice is the side-effect rather than the object of the law, there is no violation of the First Amendment, because the law is a religion-neutral provision.\textsuperscript{116} In the majority opinion of *Employment Division v. Smith*, Justice Antonin Scalia wrote, “The mere possession of religious conviction which contradict the relevant concerns of a political society does not relieve the citizens from the discharge of political responsibilities.”\textsuperscript{117} In other words, a neutral and generally applicable law created for the betterment of society may not be circumvented on the grounds that it violates the First Amendment. *Employment Division v. Smith* essentially replaced the Sherbert test of compelling government interest.

\textsuperscript{114} Sherbert v. Vernier, 374 U.S. 398 (1963)
\textsuperscript{115} Employment Division, Department of Human Resources of Oregon v. Smith. 763 US 146. United States Supreme Court, 1990.
\textsuperscript{117} Employment Division, Department of Human Resources of Oregon v. Smith. 763 US 146. United States Supreme Court, 1990.
6.2.2 Religious Freedom Restoration Act

In 1993, Representative Howard McKeon [R-CA] introduced the Religious Freedom Restoration Act (RFRA). The bill’s declaration of purpose includes a statement that the Congress finds that even neutral laws can burden religion without compelling justification and that the compelling state interest test removed in Employment Division v. Smith should be re-instated.\(^{118}\) Congress felt that this was a workable test set forth in earlier court rulings and served to mediate between religious liberty and governmental objectives.\(^{119}\) Although a number of preservation suits have been brought in court under both national and state RFRA grounds, no court has ever ruled in favor of the religious property owner.\(^{120}\) For the full text of the Religious Freedom Restoration Act, refer to Appendix 11.8.

6.2.3 City of Boerne v. Flores

The U.S. Supreme Court ruled on City of Boerne v. Flores in the summer of 1997. Archbishop Patrick Flores applied with the City of Boerne, Texas to enlarge St. Peter’s Roman Catholic Church, a 1923 mission-style structure in a historic district (See fig. 7). The local zoning authority rejected the application on the grounds that the proposed alterations would adversely affect the historic neighborhood. Flores filed suit under RFRA claiming that the expanding congregation required this addition and to deny the alterations was a substantial burden on the free exercise of religion without a compelling state interest.\(^{121}\) The Supreme Court ruled that Flores’ argument relied on RFRA, which was fundamentally unconstitutional on the grounds that it violated the


\(^{121}\) City of Boerne v. Flores. 73 US 1352. United States Supreme Court, 1997.
separation of power doctrine by attempting to alter the ruling in Employment Division v. Smith.122 According to Justice John Paul Stevens, RFRA gave preferential treatment to religious organizations, which is in clear violation of the First Amendment:

If the historic landmark on the hill in Boerne happened to be a museum or an art gallery owned by an atheist, it would not be eligible for an exemption from the city ordinance that forbid an enlargement of the structure. Because the landmark is owned by the Catholic Church, it is claimed that RFRA gives its owner a federal statutory entitlement to an exemption from a generally applicable, neutral civil law. Whether the church would actually prevail under the statute or not, the statute has provided the Church a legal weapon that no atheist or agnostic can obtain. This governmental preference for religion as opposed to irreligion, is forbidden by the First Amendment.123

Not only did City of Boerne v. Flores result in the ruling that the Religious Freedom Restoration Act was unconstitutional, but it also aided the work of historic preservationists around the country. Before City of Boerne v. Flores, the otherwise neutral zoning and historic preservation ordinances were subject to strict scrutiny to determine a compelling state interest. This case not only brought historic preservation into the national spotlight, but it paved the way for a decade of preservation victories.

Figure 7. St. Peter’s Roman Catholic Church, Boerne, Texas (MeAvp)

123 City of Boerne v. Flores. 73 US 1352. United States Supreme Court, 1997.
6.2.4 Religious Land Use and Institutionalized Persons Act

In 2000, a version of Sherbert’s compelling state interest test returned with the creation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The Act states:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrated that imposition of the burden on that person, assembly, or institution –(A) is in furtherance of a governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.¹²⁴

Some religious organizations interpret RLUIPA, in conjunction with the Free Exercise Clause, to mean that historic preservation laws do not apply to places of worship.¹²⁵ However, the original intention of RLUIPA was to prevent zoning boards from discriminating against various faiths and is typically invoked by incarcerated individuals who feel that the prison system violated their religious freedom.¹²⁶ When broadly interpreted RLUIPA can be seen to give religious institutions an exemption from historic preservation laws.¹²⁷ In an effort to clarify the purpose of the bill, Senator Edward Kennedy [D-MA] said, “This act does not provide religious institutions with immunity from land use regulations, nor does it relieve religious institutions from applying for variances, special permits or exemptions, hardship approval, or other relief provisions in land use regulations, where available without discrimination or unfair delay.”¹²⁸ For a religious institution to file a suit under RLUIPA, it must first prove a substantial burden. This is difficult, because according to the Second, Third, Fifth, Nineth, and Eleventh Circuit Courts, inconvenience or financial difficulties do not qualify as a substantial burden. But if an organization can prove a substantial

¹²⁸ Ibid., 7.
burden, then the local preservation ordinances will not make it through the process of strict scrutiny since historic preservation is not a compelling government interest.\textsuperscript{129}

For the complete text of RLUIPA, see Appendix 11.9.

6.3 Comparison: St. Bartholomew’s Church, New York City v. Fourth Presbyterian Church, Chicago

The cases of St. Bartholomew’s Church and Fourth Presbyterian Church address the crucial topics of preserving historic places of worship in the United States: substantial burden and free exercise. Although these cases involve contrasting city ordinances regarding landmarking places of worship, the outcome of each example provides an important understanding of profitability, historic structures, and landmark regulations.

6.3.1 The Rector, Wardens, and Members of the Vestry of St. Bartholomew’s Church v. The City of New York and the Landmarks Preservation Commission of the City of New York

While the court case occurred in 1990, the contentious relationship between St. Bartholomew’s Church and the New York Landmarks Preservation Commission began in 1967. In this year, the Commission designated this Byzantine-style church and the adjacent community house in the heart of Manhattan (See fig. 8). This designation means that the church is required to do continual maintenance of its structures and is prohibited from any alteration to the church’s exterior without the consent of the Landmarks Preservation Commission.\textsuperscript{130} St. Bartholomew’s wished to raise funds to further its community outreach and other programs by developing the church’s property to include a high-rise with space to both hold congregation activities and rent


\textsuperscript{130} Sheehy, ”Religious Landmark Preservation Under the First and Fifth Amendments,” 554-555.
to businesses. When St. Bartholomew’s submitted an application to the Preservation Commission to demolish the community house and replace it with a fifty-nine-story office building, the New York City Planning Department denied the request. The church submitted a revised plan in 1984 to erect a forty-seven-story building in place of the community house; this, too, was denied.

Unsatisfied with this decision, St. Bartholomew’s filed a suit against the Landmarks Preservation Commission in 1986, arguing that the Landmarks Law, as applied, violated the First Amendment’s Free Exercise Clause and the Fifth Amendment’s protection of property. The case of The Rector, Wardens, and Members of the Vestry of St. Bartholomew’s Church v. The City of New York and the Landmarks Preservation Commission of the City of New York (hereafter referred to as St. Bartholomew’s v. New York City) reached the Second Circuit Court in 1990. The court concluded that there was no violation of either the First or Fifth Amendments. Citing Employment Division v. Smith, the Second Circuit Court determined that because the landmarks law is neutral, generally applicable, and neither discriminated against the congregation’s ability to practice religion nor coerced members to alter their beliefs, the Landmark Preservation

Figure 8. St. Bartholomew’s Church, New York City, New York (Museum Planet)

Commission's decision was constitutional. Moreover, the prosecution referred to *Penn Central Transportation Co. v. New York City*, but the court determined that the church could use the community house to continue its historic, religious, and charitable activities; therefore the Commission's decision did not violate the Fifth Amendment.\textsuperscript{132} Additionally, St. Bartholomew’s claimed that it would suffer financial hardship if the real estate development failed; however, the court quickly rejected this petition because the church had an eleven million dollar endowment.\textsuperscript{133} It has never been held to be a substantial burden for a landmarking body to deny a religious group’s proposal to alter or demolish a historic structure.\textsuperscript{134}

\textbf{6.3.2 Fourth Presbyterian Church, Chicago, Illinois}

The church at 876 North Michigan Avenue played a large role in altering Chicago's landmarks ordinance in the 1980s. In the early 2000s, Fourth Presbyterian Church entered the spotlight once again when it proposed to sell its air rights to a developer and erect a high-rise on its land.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{fourth_presbyterian_church.png}
\caption{Fourth Presbyterian Church, Chicago, Illinois (Rick Boggs)}
\end{figure}

\textsuperscript{132} Sheehy, "Religious Landmark Preservation Under the First and Fifth Amendments," 572-5.


\textsuperscript{134} Stockton, "Preserving Sacred Places: Free Exercise and Historic Preservation," 22.
In 1987 the Chicago Landmarks Commission wished to designate Fourth Presbyterian Church. Designed by Ralph Adams Crams and Howard Van Doren Shaw, the sanctuary and its adjacent buildings were added to the National Register of Historic Places in the mid-1970s (See fig. 9). However, the congregation and the district’s alderman, Burton Natarus, adamantly opposed landmarking at the local level. Furthermore, the former Chicago Planning Commissioner, Elizabeth Hollander, disapproved of the designation because the church was an interruption in the densely commercial district. Natarus was less concerned about the economic disruption; he believed that to landmark a religious structure violated the First Amendment. But Natarus had to fight to get his revisions to the landmark ordinance implemented. Nancy Kaszak, then a commissioner on the city’s Landmarks Commission and head of the subcommittee on churches, stated that churches had been an architectural and historical corner stone for Chicago neighborhoods. She said, “The Commission doesn’t presume to tell congregations how to run their churches,” but it does hope to preserve or convert buildings that may suffer from a dwindling congregation or possible demolition. The pastor at All Saints Episcopal Church, a Chicago landmark, said, “I understand in a theoretical sense what Fourth Presbyterian is saying, but it was never an issue for us. The church has a responsibility to preserve anything of value in society, be it a building or a family or moral values. These things are our gift to the community.” Even the Commission chairman, Peter Bynoe, tried to assure religious leaders that a designation would not be an obstacle to the faith’s basic goals nor would there be additional costs for necessary


139 Ibid., 71.
repairs or improvements.\textsuperscript{140} But the typical fears of economic loss and overbearing restrictions won out in the end, and the city council added an ecclesiastical exemption to its landmarking policy. In 2005, Natarus – the very same alderman that introduced the exemption – worked with eight other aldermen to have the policy removed. Their efforts were unsuccessful.\textsuperscript{141}

In the early 2000s, Fourth Presbyterian wished to sell its air rights to a developer and erect a seven hundred foot (over two hundred meter) tall condo-tower (See fig. 10). This project would have earned the church over twenty-five million dollars to fund the congregation’s programs and community outreach. It is worth noting, that even without this money, Fourth Presbyterian is amongst Chicago’s most affluent churches.\textsuperscript{142} The Landmarks Commission was not permitted to speak out about the aesthetic impact of these plans, but the proposal still required planning permission. The strong public outcry against the planned tower was a large contributing factor to why Chicago’s planning authority rejected the project.\textsuperscript{143} Though most of the concerns involved increased traffic congestion, not the compromised aesthetic value of the church and neighborhood. Rather than a high-rise, Fourth Presbyterian Church built a five-story, cantilevered, and copper-covered modern addition to house various parish programs (See fig. 11).\textsuperscript{144}

\textsuperscript{142} Blair Kamin, “Abandoning high-rise plans, Fourth Presbyterian ready to unveil design for a five-story addition to its historic North Michigan Avenue church,” \textit{Chicago Tribune}, Aug 6, 2010.
\textsuperscript{143} Kamin, “Abandoning high-rise plans.”
\textsuperscript{144} Ibid.
Figure 10: Fourth Presbyterian Church, High-rise Proposal (Project Light)

Figure 11. Fourth Presbyterian Church, Completed Addition (Cheryl Kent)
Unlike St. Bartholomew’s Church, Fourth Presbyterian Church is not a landmark and - according to the City of Chicago landmark ordinances – is not subject to landmark restrictions. Although Fourth Presbyterian Church is on the National Register, the high-rise would demolish mid-twentieth century auxiliary buildings and not the primary church structure; therefore, not even Section 106 Review could prevent the resulting visual atrocity.

6.4 Conclusion: Historic Places of Worship, Capitalist Ambitions, and Generally Applicable Laws

Both St. Bartholomew’s Church and Fourth Presbyterian Church wished to gain a small fortune by selling the air rights above their properties. This is a common tactic used by the owners of secular historic buildings, but they only do so after a public process overseen by a local planning authority. If a religious organization wants to take advantage of the opportunities available to them in the capitalist, American economy, then they must comply with the same regulations. The First Amendment is there to create a free and equal society, but by insisting on privileges not available to secular property owners, religious organizations are manipulating what the nation’s founding fathers put in place. Surely, the greatest sign of freedom is equality in the eyes of the law, but how can religious institutions be equal if they insist on being treated as weaker and in need of more protection?

The national, state, and local landmarks laws are not there to hinder religion, they exist to help preserve a communities’ heritage. For many communities, historic places of worship define the built environment. Religious groups claim landmarking prevents
them from utilizing their assets, therefore infringing on their religious beliefs. As much as churches, synagogues, and mosques are entitled to determine the use of their property, the result will undoubtedly affect the community at large, including those within and outside the congregation.

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7. **Analysis**

The previous chapters demonstrate the complexities of conserving historic places of worship. Though each nation has its own challenges to confront, the experiences of England, Scotland, and the United States can help inform the decisions other countries face when it comes to the matter of preserving religious structures. Surely, the truest sign of equality is uniform application of the law; yet churches, temples, synagogues, and mosques continue to maintain a privileged position in listed building controls and landmark ordinances. Moreover, this oddity in planning law creates an inaccessible and perplexing system for maintaining and altering religious buildings.

7.1 **A Privileged Position**

Trying to understand the convoluted modern system of ecclesiastical exemption is an arduous task, but even with a full grasp of these policies, the greater question of *why* these systems exist is even more difficult to resolve. In the United Kingdom, the root of the exemption dates to the Archbishop of Canterbury’s demand in 1913. In the United States, on the other hand, the exemption is not an explicit law everywhere, but an implied division of Church and State. Where the exemption does exist in a state’s or city’s landmarks ordinance, its imposition is highly contentious. After noting the dubious origins of the exemption, the question arises: should ecclesiastical exemption be removed?

In England, Binney and Newman present opposing conclusions. The former gives a nine-point list of the incurable flaws in the practice of ecclesiastical exemption. The latter takes the side of the exemption, but only after presenting the entirety of the
opposition's argument and then struggles to counter it. Binney contends that all historic buildings should be subject to the same system of control.\textsuperscript{146} Even Newman acknowledges that there is no good reason given for why a worshipping community's requirements of a historic building are different from that of commercial or domestic ambitions.\textsuperscript{147} After its creation, the exemption went unchecked for too many decades. This resulted in idleness within the planning community until the Faculty Jurisdiction Commission in the 1980s and Newman's report in the 1990s. Both reports scrutinized the internal review systems of exempt denominations, but ultimately allowed the practice to continue.

The Historic Environment Advisory Council for Scotland's study in 2009 accepted that the removal of ecclesiastical exemption embodied too many legal complexities. With no opportunity for a simple removal, HEACS concluded that the exemption should continue "subject to stringent conditions."\textsuperscript{148} These conditions included limiting the exemption to faith groups that demonstrate a robust internal system and requiring involvement from conservation bodies, like Historic Scotland, and the local planning authorities. Similar to England, these restrictions beg the question, when is ecclesiastical exemption an exemption in name alone? In lieu of removing the exemption, the local planning authorities and conservation bodies intervene as much as is acceptable in each denomination's review procedure. This misrepresentation is not fair to religious communities, local authorities, conservationists, or members of the public.

\textsuperscript{146} Binney, "Minority Report," 183.
\textsuperscript{147} Newman, \textit{Review of the ecclesiastical exemption for listed building controls}, 18.
The privileged position of places of worship in relation to other historic buildings in the United States first originated from an argument of constitutionality in landmarking ordinances. In order to prove that imposing preservation laws on historic religious buildings does not violate the First Amendment, the petitioner must prove substantial burden and compelling state interest. If a petitioner can prove a substantial burden, then the preservation laws will not be able to demonstrate a compelling state interest because the national, state, and local governments do no consider preservation a priority. In the case of Chicago – where houses of worship are exempt from the landmark ordinance – it took eighteen years before the same alderman who proposed the exemption suggested its removal. Predictably, the faiths that gained from the exemption fought to keep it.149

Once any government grants an exemption, those who enjoy this privileged position will seldom give it up without a fight. In all three countries, there is reluctance to enter into the contentious battle to remove the exemption. It is the reluctance to confront this issue by the government and conservationists alike that has created a perpetual series of reports with reviews and recommendations but no results.

### 7.2 Transparency and Accountability

Today, society strives for equality and openness. Ecclesiastical exemption is not antiquated merely because it disproportionately elevates religion, but because it discourages public involvement and allows church officials to proceed without justifying their decisions. England and Scotland tried everything short of removing the

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149 Landmarks Illinois, “Should Religious Properties be Landmarked?”
exemption to make each denominations’ internal review system as accountable as possible, but it is not clear if this will be enough.

England requires members of English Heritage, the local planning authority, and other invested organizations to be involved in the Diocesan Advisory Committees. However, the committee members are appointed and not elected, which means the ecclesiastical system is without external accountability. In order to counteract this – and to avoid the battle to remove the exemption – the Secretary of State suggests that the exemption process remain continually under review. This would mean the exemption would be, in some sense, accountable to the wider community. But as Binney argued, the system has “no teeth” and the government lacks the time and money to continually evaluate each denominations’ internal review process.

In Scotland, the Pilot Scheme made it possible for churches to undergo the secular review process without surrendering all ecclesiastical rights. However, this secular review does not take into consideration the interior of historic churches. For example, some conservationists find it difficult to cope with the alterations at St. Paul’s and St. George’s Church in Edinburgh because there was no reliable review system in place. Even the church’s reverend admitted that the Scottish Episcopal Diocesan Committee was unaccustomed to evaluating such a considerable alteration.

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150 Newman, Review of the ecclesiastical exemption for listed building controls, 27.
151 Ibid., 28.
undergone the complete listed building control as applied to a comparable A-listed building, at least there would be some solace knowing that it was duly reviewed and aptly permitted.

The United States needs a clear appeal process for the religious institutions that feel historic preservation guidelines encumber sacred elements of their faith. Since historic preservation ordinances are generally applicable and are not intended to burden religious practice, religious institutions must comply with them. As demonstrated in the cases of St. Bartholomew’s Church and Fourth Presbyterian Church, many owners of historic buildings wish to profit from the sale of their development rights. While these cases may be prevented by the standard planning review process, the notion that churches, synagogues, mosques, or temples many not necessarily be scrutinized because of their religious affiliation is preposterous.

Additionally, each nation has a method of recognizing the historic places of worship that are more historically and architecturally valuable. England uses grading, Scotland has categories, in the U.S. there is the National Register and local authorities each have their own methods. When the exemption is removed, country should apply these secular systems to the religious structures without bias.

### 7.3 An Informed Suggestion

These key concepts – equality amongst historic building policy, the need for transparency, a sense of accountability – guide my recommendations for the future of ecclesiastical exemption. These themes also resonate within each country, and the mistakes or successes of one can help inform another.
8. CONCLUSION: HISTORIC PRESERVATION WITHOUT ECCLESIASTICAL EXEMPTION

At the moment, England, Scotland, and the United States choose to ignore the problem of ecclesiastical exemption, only facing it when the problem requires evading. In order for religious buildings to smoothly transfer into the secular sphere, the countries need to prepare their religious institutions and heritage bodies for this specialized work. In the United Kingdom, religious and secular conservation bodies are so closely intertwined already that it should not be difficult. In the United States, since such regulations can only be effective at the local level, cities and states should remove the exemption, if one is in place, and find a way to acknowledge heritage as a matter of state interest. Beyond these priorities, historic places of worship will need to be, if they are not already, added to the secular listed building or ranking catalogue. One of the inevitable changes of switching to the secular system will be the prioritized control of change. Moreover, themes discussed earlier – transparency and accountability – already exist within the secular system, but must also allow for the altering spiritual needs of the congregation. Finally, the financial matter of supporting the upkeep of historically and architecturally significant structures must be addressed, because funding – with or without the exemption – is required to keep these buildings in a useable state for the congregation and in an enjoyable state for the local community.

8.1 Preservation: Management of Change

The removal of ecclesiastical exemption and the implementation of a clear and transparent appeal process does not necessarily mean that historic houses of worship will become museums perpetually stuck in old religious practices and unable to adapt
to the needs of modern congregations. The purpose of preservation is not to prevent change but to manage it. Ideally, by requiring places of worship to undergo review by the planning authority, the changes made will not only benefit the congregation but the community at large. Alterations like that of St. Paul’s and St. George’s Church could still occur under this review. Moreover, if this church had undergone a full secular review for listed building consent, then there might have been less controversy and more acceptance of the alterations amongst the conservation community. As Binney argues, it is a matter of prioritizing. Worshipping in a high-quality, landmarked sanctuary should not be a burden, but a quality embraced by the congregation.

8.2 Learning from the English, Scottish, and American Experiences

These countries have varied experiences with the exemption, but all three face the same challenges: how best to account for the altering spiritual needs of a congregation while still caring for the features of a historic house of worship and how best to fund projects for church maintenance?

In order to account for the spiritual needs of each congregation, there should be an easily understood appeal process. For the United Kingdom, this appeal process may resemble the one granted to the Crown for matters of national security after it resigned immunity. In the United States this should be founded in the right of free exercise of religion and account for the past precedence. However, it must not overly favor religion, as the establishment clause is there to prevent both religious discrimination and
favoritism. Additionally, all three countries could benefit from implementing an appeal process that includes a statement of spiritual burden.

There is a relatively large amount of funding in the United Kingdom for the conservation of historic religious buildings. However, this is only relative to the United States where funds for religious structures are difficult to acquire. The U.S. government cannot find a way to support work to religious structures without violating the First Amendment. Partners for Sacred Places is a non-profit organization that provides funding to places of worship that support community outreach programs. Partners for Sacred Places conducted a report in 1998 that shows the number of at risk religious structures and the works these churches provide to the community. The report concludes by suggesting, amongst other things, that legislation be drafted to help churches with capital repairs. However there is still a wariness of such a grant scheme’s constitutionality.

8.3 Removal of the Ecclesiastical Exemption

In order to remove the ecclesiastical exemption and convert to the secular system, there would inevitably be a public and political battle. Since it is unavoidable, each nation should use the next appropriate opportunity to expose the antiquated exemption system and allow for public scrutiny. In the case of the United Kingdom, an ideal situation to address the exemption would be when a large alteration occurs within the Church of England. Since this denomination is responsible for the implementation of the

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155 United States Constitution. Amendment I.
exemption, only it can lead the charge to remove it. Another option would be for the Department of Culture, Media, and Sport to call for a review of the process. A review to the scale of the Faculty Jurisdiction Commission's and Newman's review has not occurred in over fifteen years.

In the United States, the exemption only exists in a handful of locations. In Chicago, there was an unsuccessful effort to remove the exemption in 2005, and in Pittsburgh, the city's planning authority strongly opposed the implementation of the exemption. In the case of California and Washington, the court cases that allowed religious institutions a privileged status within planning law resulted in a close vote. In any other state, the verdict could have been different. There are clearly grounds for the exemption's removal; many other cities and states across the country have managed their built heritage without an exemption.

How each nation begins the process to remove the exemption is the difficult question, but the simple fact remains: the exemption is outdated. The conservation community has grown and government oversight has developed. Once the exemption helped to protect a specialized architectural form, but now it only allows for an unnecessary and often abused privilege.

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