

CHURCH DISCIPLINE AND THE REGULATION OF MEMBERSHIP IN THE MORMON CHURCH

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INTRODUCTION

The Church of Jesus Christ of Latter-day Saints, more commonly known as the 'LDS' or 'Mormon' Church, regulates its membership by means of a system that recalls the Old Testament far more than the modern West. All important decisions relating to joining and leaving the church are invested in the inspired discretion of local priesthood authorities who are governed by general standards rather than rules that have the character of law.

This essay will begin with a short explanation of the ecclesiastical structure of the LDS church, and follow with descriptions of the procedures for entering the church—baptism and confirmation—and those for leaving it—excommunication and administrative removal from membership records. It will conclude with a brief comparison of LDS doctrine, policies, and procedures in these matters with Western legal norms.

THE ECCLESIASTICAL STRUCTURE OF THE LDS CHURCH

The Church of Jesus Christ of Latter-day Saints is generally governed and administered by a hierarchical priesthood conferred exclusively upon men.¹ The lesser or 'Aaronic' priesthood is conferred upon worthy boys aged twelve to eighteen.² The higher or 'Melchizedek' priesthood is conferred upon worthy men age eighteen and above.³ The Melchizedek priesthood includes the authority to preside over local ecclesiastical units and to make certain important ecclesiastical decisions on behalf of the church when called upon to do so.

The principal priesthood governing bodies in the LDS church are the Quorum of the First Presidency and the Quorum of the Twelve Apostles.⁴ The Twelve are a group of twelve men sustained by the general membership

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¹ See "Priesthood," *Encyclopedia of Mormonism*, ed. Daniel H. Ludlow, 5 vols. (New York: Macmillan, 1992) [hereinafter cited as *EM*], 3:1137.

² *EM*, 3:1135–36.

³ *EM*, 3:1136.

⁴ See e.g. John A. Widtsoe, *Priesthood and Church Government in the Church of Jesus Christ of Latter-day Saints*, revised edn. (Salt Lake City, UT: Deseret Book, 1954), 255. Elder Widtsoe was a member of the Quorum of the Twelve from 1921 to 1952.

of the church as prophets, seers, and revelators of the church.⁵ By tradition, the most senior Apostle in terms of years of service is called to serve as the President and Prophet of the church.⁶ The President designates from among the other Apostles two to serve as his counsellors; together, the President and these counsellors constitute the Quorum of the First Presidency of the church.⁷

The President, the First Presidency as a group, and the Twelve as a group are each equal to the others in ecclesiastical power and authority.⁸ This equality of ecclesiastical authority has its principal significance in case of the death or incapacitation of the President. In case of death of the President, the First Presidency is dissolved and the church is governed by the Quorum of the Twelve until the senior Apostle is officially designated by the Twelve to serve as the new President, usually within a few days.⁹ In case of the incapacitation of the President, the two counsellors in the First Presidency may govern the church as a majority of the Quorum of the First Presidency.¹⁰ In practice, however, counsellors in the First Presidency tend to exercise their collective authority in close consultation with the Twelve.¹¹ In practice, too, the tradition of succession by seniority has created a strong culture of deference among the Twelve, whereby the more junior Apostles defer to the ecclesiastical decisions and spiritual judgment of the more senior ones. Consequently, the Twelve and the counsellors in the First Presidency generally defer to the judgment of the President on ecclesiastical and spiritual matters.¹²

Although the LDS church has a hierarchical priesthood structure, its ecclesiastical positions are filled by lay volunteers. Little more than a hundred of the church's ecclesiastical leaders, including the First Presidency and the Twelve, perform their ecclesiastical duties as full-time employees of the church, and even these have received no formal training for the ministry.¹³

⁵ See e.g. Widtsoe, 262.

⁶ *EM*, 3:1046.

⁷ *The Doctrine and Covenants of the Church of Jesus Christ of Latter-day Saints* (Salt Lake City, UT: The Church of Jesus Christ of Latter-day Saints, 1989; originally published 1835) [hereinafter cited as *D&C*], 107:24. On several occasions the President of the church has designated as a counsellor a Melchizedek priesthood holder who is not a member of the Quorum of the Twelve, but this does not reflect current practice.

⁸ *D&C* 107:24 ('And [the Twelve] form a quorum, equal in authority and power to the [First Presidency]'); Gordon B. Hinkley, 'The Church is on Course', *The Ensign* (November 1992), 53, 54 (Although all the apostles hold the keys to the priesthood, 'only the President of the Church has the right to exercise them in their fullness'); 'The Church of Jesus Christ of Latter-day Saints', *EM*, 1:278 ('The Quorum of the Twelve collectively holds in latent form the same priesthood authority as the President of the Church'); see also Widtsoe, 254 ('The Prophet, Seer, and Revelator to the Church, holds, by virtue of his office, the authority to give to the people the word and will of the Lord'). President Hinkley is the current President of the LDS church.

⁹ 'Organization', *EM*, 3:1046; Widtsoe, 244, 249.

¹⁰ See *D&C* 102:11, 107:28; Gordon B. Hinkley, 'God Is at the Helm', *The Ensign* (May 1994), 53, 54.

¹¹ Hinkley, 'The Church Is on Course', 59; Hinkley, 'God Is at the Helm', 54, 59.

¹² See Hinkley, 'God Is at the Helm', 59; Hinkley, 'The Church Is on Course', 54.

¹³ 'Organization', *EM*, 3:1044.

At the local level, all priesthood and other ecclesiastical positions are filled entirely by lay volunteers who are also employed in full-time secular positions unrelated to church ecclesiastical office.¹⁴

LDS congregations are organised geographically as ‘wards’ and ‘stakes’, which roughly correspond to Roman Catholic parishes and dioceses. A ward usually consists of between 200 and 600 members, and a stake is usually composed of about ten wards. Each ward is presided over by a bishop and two counsellors, who together form a ‘bishopric’. Each stake is presided over by a stake president and two counsellors, who together form a ‘stake presidency’.¹⁵ The stake presidency is assisted in administering the temporal and spiritual affairs of the stake by a group of twelve Melchizedek priesthood holders known as the ‘Stake High Council’.¹⁶ The stake president presides over the bishoprics of the various wards in his stake, and bishops are accountable to the stake president for their actions in relation to their respective wards.

JOINING THE LDS CHURCH

Becoming a member of The Church of Jesus Christ of Latter-day Saints actually entails two priesthood ordinances: ‘baptism by immersion for the remission of sins’, and ‘the laying on of hands for the gift of the Holy Ghost’, commonly referred to as ‘confirmation’.¹⁷ Baptism and confirmation are the only means by which one may become a member of the LDS church.

1. *Baptism*

In the LDS church, baptism signifies a saving covenant with the Lord wherein the candidate to be baptised promises to keep the Lord’s commandments and to serve him throughout his or her life, and the Lord in turn promises to redeem the candidate’s sins and to give him or her the gift of the Holy Ghost.¹⁸ The LDS church practices baptism by complete immersion,¹⁹ symbolising that the candidate has ‘buried’ his or her sins and is ready to live a new life consistent with God’s will, as Christ was buried after his crucifixion and then rose from the dead.²⁰ An eloquent statement of the baptismal covenant is contained in *The Book of Mormon*:

[A]nd now, as ye are desirous to come into the fold of God, and to be called his people, and are willing to bear one another’s burdens, that they may be light;

Yea, and are willing to mourn with those that mourn; yea and comfort those that stand in need of comfort, and to stand as witnesses of God at

¹⁴ ‘The Church of Jesus Christ of Latter-day Saints’, *EM*, 1:279.

¹⁵ *Ibid.*; ‘Organization’, *EM*, 3:1048.

¹⁶ *Ibid.*

¹⁷ *The Pearl of Great Price* (Salt Lake City, UT: The Church of Jesus Christ of Latter-day Saints, 1989; originally published 1851) [hereinafter cited as *PGP*], Articles of Faith 4.

¹⁸ See ‘Baptism’, *EM*, at 1:92–93.

¹⁹ *D&C* 20:72–74.

²⁰ See *Romans* 6: 3–6 (King James).

all times and in all things, and in all places that ye may be in, even until death, that ye may be redeemed of God, and be numbered with those of the first resurrection, that ye may have eternal life—

[I]f this be the desire of your hearts, what have you against being baptized in the name of the Lord, as a witness before him that ye have entered into a covenant with him, that ye will serve him and keep his commandments, that he may pour out his Spirit more abundantly upon you?²¹

The LDS church does not recognise baptisms by other Christian denominations.²² Additionally, because the church does not believe in original sin,²³ it does not practice infant baptism.²⁴ Prospective members must have reached the 'age of accountability'—*i.e.*, a level of maturity sufficient to enable them to understand the consequences of their actions, so that they are capable of both sinning and repenting from sin.²⁵ This is set by scripture at eight years of age.²⁶ Mentally disabled persons who are not capable of understanding the consequences of their actions, and thus are not capable of either sinning or repenting, need not be baptised, regardless of their age.²⁷

Each candidate for membership must be interviewed by a member of the bishopric or a missionary leader prior to being baptised.²⁸ LDS missionaries are individuals who are specially called to teach the Gospel to those who are not members of the LDS church. They may be either full-time missionaries—young men and women or older couples called to teach as their exclusive vocation for periods of one and a half to two years—or part-time stake missionaries—men and women who teach part-time as their lay calling in the church. The purpose of the interview is twofold. First, the interviewer confirms that the candidate understands the theological significance of being baptised, and in particular understands the new obligations that come with entering into the church through the covenant of baptism.²⁹ Secondly, in the case of a candidate over the age of eight, the interviewer confirms that the candidate is worthy of being baptised—*i.e.*, that he or she has repented of past sins and forsaken them in favour of living according to the Lord's commandments.³⁰ Married candidates must have the consent

²¹ *The Book of Mormon: Another Testament of Jesus Christ* (Salt Lake City, UT: The Church of Jesus Christ of Latter-day Saints, 1989; originally published 1830) [hereinafter cited as *Book of Mormon*], *Mosiah* 18:8–10.

²² See *D&C* 22:1–4; 'Baptism', *EM*, 1:94.

²³ See *PGP*, *Articles of Faith* 2 ('We believe that men will be punished for their own sins, and not for Adam's transgression').

²⁴ *Book of Mormon*, *Moroni* 8:8, 11 ('[L]ittle children are whole, for they are not capable of committing sin; wherefore the curse of Adam is taken from them in [Christ], that it hath no power over them. [L]ittle children need no repentance, neither baptism').

²⁵ *Book of Mormon*, *Moroni* 8:10; *D&C* 20:71.

²⁶ *D&C* 68:27.

²⁷ 'Baptism', in *Church Handbook of Instructions*, 2 books. (Salt Lake City, UT: The Church of Jesus Christ of Latter-day Saints, 1998) [hereinafter cited as *CH*], 1:26–27.

²⁸ 'Baptism', *CH*, 1:26.

²⁹ See Widtsoe, 350. See generally 'Missionary, Missionary Life', *EM*, 2:910.

³⁰ *D&C* 20:37. See also *infra* text accompanying notes 93–97.

of their spouses, and minor children must have the consent of their parents or legal guardians, before they may be baptised.³¹

In the case of a child who has been raised as a Latter-day Saint, the principal responsibility for teaching the child the meaning and purpose of baptism falls upon the parents.³² In the case of an adult candidate for baptism, this responsibility is undertaken by Latter-day Saint missionaries.³³

Although the LDS church does not practice infant baptism, it is common practice for LDS infants to be 'blessed' and formally given a name.³⁴ This is a priesthood ordinance performed before the local congregation in a Testimony Meeting, a worship service held on the first Sunday of each month.³⁵ Nevertheless, Latter-day Saints do not believe that the blessing of infants is an ordinance essential to their salvation, and the failure of an infant or child to be blessed prior to being baptised entails no adverse theological or spiritual consequences.

LDS church membership records list infants and other children under the age of nine who have been blessed as unbaptised members, regardless of the membership status of their parents.³⁶ Unblessed infants and other children under the age of nine are also carried on the church's records as unbaptised members, so long as at least one parent is a member and both parents consent to the creation of a membership record.³⁷ If a child reaches the age of nine without being baptised, however, he or she is no longer carried on the membership records of the church.³⁸

2. Confirmation

Latter-day Saints believe that part of the baptismal covenant is the Lord's promise that those who are baptised will receive the Holy Ghost. Accordingly, following a baptism, two or more Melchizedek priesthood holders 'confirm' the baptised person a member of the church and confer upon him or her the gift of the Holy Ghost. Latter-day Saints believe that although the Lord can and does send the guidance of the Holy Ghost to anyone, regardless of his or her religious affiliation, one who has received the gift of the Holy Ghost by the laying on of hands is entitled to have the constant companionship of the Holy Ghost so long as he or she lives worthily, and thus to receive the promptings of the Holy Ghost as personal revelation from the Lord on a regular basis.³⁹

³¹ 'Baptism', *CH*, 1:27.

³² See *ibid.* See generally *D&C* 68:25–28, 93:40–42.

³³ 'Teaching, Baptizing, and Confirming', *CH*, 2:252.

³⁴ See *D&C* 20:70 ('Every member of the church of Christ having children is to bring them unto the elders before the church, who are to lay their hands upon them in the name of Jesus Christ, and bless them in his name').

³⁵ See 'Blessings', *EM*, 1:129.

³⁶ 'Membership Records', *CH* 1:127.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Teachings of the Prophet Joseph Smith*, ed. Joseph Fielding Smith (Salt Lake City, UT: Deseret Book, 1972), 199.

Confirmation is performed by the laying on of hands.⁴⁰ This ordinance is performed immediately following the baptism proper or at the next Testimony Meeting, in case of young children, and at a convenient Testimony or Sacrament Meeting, in case of adult converts or older children.⁴¹ A Sacrament Meeting is the weekly public Sunday worship service, at which members pray together, partake of the sacrament of the Lord's supper, and hear short sermons delivered by other members of the congregation. Following confirmation, the candidate is considered a full and official member of The Church of Jesus Christ of Latter-day Saints.

LEAVING THE LDS CHURCH

There are two procedures by which one may lose one's membership in the LDS church: by excommunication pursuant to the decision of a formal church disciplinary council, or by administrative removal of one's name from church membership records.

1. *Disciplinary Councils and Excommunication*

Following baptism, members who violate the moral and other behavioural standards of the LDS church generally resolve these transgressions within an informal system of confession and counselling with their bishop or stake president.⁴² Certain exceptionally serious sins, however, may require that the bishop or stake president convene a 'disciplinary council', composed of the three-member ward bishopric or the fifteen members of the Stake Presidency and Stake High Council.⁴³ The stated purposes of disciplinary councils are to encourage repentance and reformation by the transgressor, to protect the innocent, and to safeguard the integrity and good name of the church.⁴⁴

Although a disciplinary council is not considered by the church to be a legal proceeding, the church seeks to observe basic procedural fairness.⁴⁵ For example, the accused member is given written notice of the date and time of

⁴⁰ 'Confirmation', *CH*, 1:29.

⁴¹ See *ibid.*

⁴² Russell M. Ballard, 'A Chance to Start Over: Church Disciplinary Councils and the Restoration of Blessings', *The Ensign* (Sept. 1990), 12, 14–15. Elder Ballard is currently a member of the Quorum of the Twelve. For a careful study of the theological dimensions and historical development of confession in the LDS church, see Edward L. Kimball, 'Confession in LDS Doctrine and Practice', *BYU Studies* 36:2 (1996–97), 7.

⁴³ 'Disciplinary Procedures', *EM*, 1:386. The scriptural foundation for disciplinary councils is *D&C* 102. For a succinct history and insightful analysis of LDS disciplinary councils and their predecessors, 'church courts', see Kif Augustine-Adams, 'The Web of Membership: The Consonance and Conflict of Being American and Latter-day Saint', *Journal of Law and Religion* XIII:2 (1998–99), 567, 577–95.

⁴⁴ 'Formal Church Discipline', *CH*, 1:94.

⁴⁵ 'Disciplinary Procedures', *EM*, 1:386–87. The basic procedures for a stake disciplinary council are set forth in *D&C* 102. A somewhat dated description of the procedures for a bishop's disciplinary council is found in Widtsoe, 215–222. A more current (but less authoritative) description of procedures for a bishop's disciplinary council is found in Lester E. Bush, Jr., 'Excommunication and Church Courts: A Note From the General Handbook of Instructions', *Dialogue: A Journal of Mormon Thought* 14:2 (Summer 1981), 74, 88–93.

the council. The member has the right to speak at the council,⁴⁶ and in a stake disciplinary council several members of the high council are specifically designated to speak on behalf of the accused member, to help to ensure that the accused is not insulted or verbally abused by one-sided advocacy.⁴⁷ Nevertheless, unlike advocacy proceedings in courts in the United States and elsewhere, LDS disciplinary councils are focused on spiritual reconciliation rather than on ensuring a procedurally fair confrontation between legal adversaries,⁴⁸ and neither secular rules of procedure or admissibility of evidence nor other secular legal norms are deemed relevant.⁴⁹ To the contrary, the resolution of most procedural matters is left to the spiritual discretion of the bishop or stake president presiding at the council.⁵⁰

Following a hearing of all of the testimony and evidence, the bishop or stake president, in consultation with the other members of the council, determines whether the accused member has committed the transgressions, and further determines what action the council should take with respect to the member.⁵¹ These decisions are then presented to and ratified by the other members of the council.⁵²

A disciplinary council has no jurisdiction over civil matters, but is only empowered to impose restrictions or sanctions on a person's membership in the LDS church.⁵³ A council can impose three such sanctions: formal probation, disfellowshipment, and excommunication.⁵⁴ Additionally, it may determine not to impose any formal sanction, even if it finds that the accused has committed the transgressions for which the council was convened.⁵⁵ In such a circumstance, the council may decide that the normal system of informal counselling is adequate to protect the interests of the church and to encourage repentance.⁵⁶ Finally, a disciplinary council may exonerate the member by finding that he or she did not commit the transgressions for which the council was convened.

⁴⁶ See e.g. *D&C* 102:18.

⁴⁷ *D&C* 102:15–17.

⁴⁸ See Augustine-Adams, 589; see also Bush, 'Excommunication', 95 ('Within the church judicial system, the procedural subtleties are of little consequence in comparison to the personal judgments and "inspiration" of the presiding authority').

⁴⁹ This is not to deny that secular legal norms may sometimes exert some subtle pressure on the presiding officer's exercise of discretion. The determination what constitutes 'fair' procedure, for example, is obviously influenced by norms of procedural fairness reflected in the legal system of the country in which the disciplinary council is being held. Thus, a presiding officer of a disciplinary council held in a country whose legal system values procedural due process of law may be more solicitous of the procedural interests of the accused in a disciplinary council than a presiding officer in a country lacking such a due process tradition. Nevertheless, there is no occasion for a presiding officer formally to consider the applicability of secular law in a disciplinary council, be it procedural or substantive.

⁵⁰ See Bush, 'Excommunication', 89–92.

⁵¹ *D&C* 102:19.

⁵² *Ibid.*

⁵³ *D&C* 134:10–11.

⁵⁴ 'Disciplinary Councils', *CH*, 1:97.

⁵⁵ *Ibid.*

⁵⁶ Ballard, 16.

‘Formal probation’ imposes temporary restrictions upon certain privileges of membership, until the member shows adequate progress towards repentance.⁵⁷ ‘Disfellowshipment’ is a temporary suspension of all of the privileges of church membership for a specified period of time.⁵⁸ Disfellowshipment formally designates a person as not being a member in good standing. Disfellowshipped members are encouraged to attend church meetings and to continue paying tithes and offerings to the church, but are prohibited from giving public prayers or sermons, holding or performing church callings, partaking of the sacrament, voting in the sustaining of church officers, or otherwise participating in church meetings or performing priesthood and other church functions beyond simply attending worship services.⁵⁹

A subsequent disciplinary council is convened to determine whether a member on formal probation or a disfellowshipped member has satisfied the conditions imposed by the earlier council and is otherwise sufficiently repentant to be restored to full privileges and membership in the church. Such a council would also be convened to consider the imposition of additional sanctions in case of members for whom initial formal or informal sanctions turn out to be inadequate to protect the interests of the church or to bring the disciplined member to repentance.⁶⁰

‘Excommunication’ is a permanent suspension of all of a person’s privileges of membership, and completely severs the formal affiliation between the excommunicant and the church.⁶¹ Excommunicants may not pay tithes or other offerings, and, although they may attend public church meetings, they may not otherwise participate in church activities or meetings.⁶² Excommunication is considered an exceptionally harsh penalty that is rarely imposed: In contrast to disfellowshipped members and members on formal probation, who remain on church records as official members, excommunicants are not considered members of the church, and the notation ‘excommunicated’ is entered on their membership records.⁶³ Excommunication is generally imposed only upon (i) members who have committed serious transgressions of the moral law of the church; (ii) members for whom disfellowshipment has not led to reformation and for whom excommunication may offer the best hope for full repentance; (iii) members whose conduct makes them a threat to prey upon others or who use their church membership to access victims or to damage the reputation of the church; and (iv) church leaders or prominent members whose transgressions significantly damage the reputation of the church or dilute its moral influence.⁶⁴

Among the Latter-day Saints, neither disfellowshipment nor excommunication entail ‘banishment’, ‘shunning’, or other such social isolation of the

⁵⁷ ‘Formal Church Discipline’, *CH*, 1:94.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Widtsoe, 190.

⁶² ‘Formal Church Discipline’, *CH*, 1:94.

⁶³ ‘Disciplinary Procedures’, *EM*, 1:387.

⁶⁴ ‘Formal Church Discipline’, *CH*, 1:95.

transgressor, as they do in some other religious traditions.⁶⁵ To the contrary, LDS scripture explicitly provides that excommunicants are to be admitted to all public worship services,⁶⁶ and members are counselled to love and support excommunicants in the hope that they will eventually reform and re-enter the church.⁶⁷

The decision of a bishop's disciplinary council may be appealed to the stake presidency, and from there to the First Presidency.⁶⁸ The decision of a stake disciplinary council is appealed directly to the First Presidency.⁶⁹

2. *Request for Removal from Church Membership Records*

Disaffected Latter-day Saints sometimes request that their names be removed from the membership records of the church. Although for many years the LDS church complied with such requests by convening disciplinary councils to excommunicate such people, more recently it has instituted an administrative procedure to honour such requests without the formal action of a council.

The church only acts on written, signed requests.⁷⁰ As a matter of policy, it does not respond to requests that appear to be form letters or other communications apparently prepared by someone other than the requesting member.⁷¹ Requests by minor children must be countersigned by all adults who have legal custody of the child before the church will act.⁷² If a request comes while the bishop or stake president is considering whether to convene a disciplinary council for transgressions by the requesting member, the request will not be acted upon until church discipline has been imposed or the bishop or stake president has determined that no council is necessary.⁷³

Once it is determined that the request is in the proper form, the bishop in whose jurisdiction the requesting member falls seeks to ensure that the member understands that the requested removal will cancel the effects of the member's baptism, withdraw the priesthood from a male member, and otherwise permanently terminate all of the privileges of membership.⁷⁴ If the bishop is satisfied that the requesting members understands the consequences of removal and still wishes to proceed, he forwards the request to

⁶⁵ Bush, 'Excommunication', 93.

⁶⁶ See e.g. *Book of Mormon*, 3 *Nephi* 18:28–32.

⁶⁷ See e.g. Widtsoe, 208; 'Members who have been disfellowshipped or excommunicated should not be avoided or persecuted by the membership of the Church. On the contrary, they should be dealt with kindly and prayerfully, in the hope that they may turn from their mistakes, and receive again the full privileges of Church membership. Every effort should be made to show love to such persons, so that they may be encouraged to live so as to merit, again, the full privileges of the Church'.

⁶⁸ Widtsoe, 190–91.

⁶⁹ *D&C* 102:27.

⁷⁰ 'Removing Names from Church Records', *CH*, 1:130.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

the stake presidency for its review.⁷⁵ If the stake presidency concurs, the requesting member is notified in writing that his or her name will be removed from the membership records of the church pursuant to the member's request unless the stake presidency receives the member's written rescission of the request within thirty days.⁷⁶ If no such rescission is received within the appointed period, the request is forwarded to LDS church headquarters and the member's name is removed from the membership records.⁷⁷

3. *Rebaptism*

Both excommunicants and those whose names have been administratively removed from membership records must be rebaptised in order to re-enter the church. The rebaptism of an excommunicant requires that a disciplinary council be reconvened to determine whether the excommunicant has made sufficient changes in his or her life to justify readmittance to the church.⁷⁸ A person who was administratively removed from membership may generally be rebaptised following a bishop's interview. Excommunicants and those who were administratively removed who are guilty of murder, incest, child abuse, apostasy, a serious transgression while holding a prominent church position, or embezzlement of church funds, or who submitted to an elective sex-change operation, must obtain the approval of the First Presidency before they may be rebaptised.⁷⁹

The inclusion of elective sex change operations among those serious moral transgressions that require First Presidency approval for rebaptism is a relatively recent development that represented a change in the church's treatment of transsexuals. Until the 1980s, church policy did not expressly deal with questions relating to transsexuality, leaving them to the discretion of local leaders.⁸⁰ This sometimes resulted in local rulings that allowed those who had undergone sex change operations to remain in the church and to retain access to the priesthood and to other ordinances of the church.⁸¹ In 1980, however, the church altered its policy to mandate permanent excommunication of those who underwent such operations.⁸² Although this policy

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ 'Ending Formal Probation, Disfellowshipment, or Excommunication', *CH*, 1:104.

⁷⁹ *Ibid.*

⁸⁰ See Lester E. Bush, 'Ethical Issues in Reproductive Medicine: A Mormon Perspective', *Dialogue: A Journal of Mormon Thought* 18:2 (Summer 1985), 40, 58.

⁸¹ See, e.g., R. Jan Stout, 'Sin and Sexuality: Psychobiology and the Development of Homosexuality', *Dialogue: A Journal of Mormon Thought* 20:2 (Summer 1987) 29, 37 (referencing case of genetically female pseudohermaphrodite who received hormonal therapy and a hysterectomy, and eventually was ordained to the priesthood and married as a male, apparently without church objection).

⁸² Bush, 'Ethical Issues', 58 (quoting 'The Church Judicial System', replacement ch. 8, p.2 [Oct. 1980], to *The General Handbook of Instructions* [Salt Lake City, UT: The Church of Jesus Christ of Latter-day Saints, 1976]); see also Bush, 'Excommunication', 87 (noting that the 1980 Handbook announced the 'most extensive handbook proscriptions to date' in relation to 'transsexual surgery').

has softened since 1980,⁸³ those readmitted to the church after having undergone an elective operation remain permanently barred from receiving ordination to the priesthood and certain saving ordinances, including those that form part of LDS temple worship.⁸⁴

Although no official explanation of the church's policy on sex change operations has ever been offered, the rationale undoubtedly rests on the special theological significance that Latter-day Saints attach to sexuality and gender. Church leaders have long preached that sex and gender are part of every person's eternal identity, conferred upon each of us by God.⁸⁵ This doctrine has been authoritatively confirmed by the First Presidency and the Quorum of the Twelve.⁸⁶ Actions that wilfully alter or repudiate one's sexual identity or gender, therefore, are viewed as especially serious moral transgressions because they constitute human interference with the divine order.⁸⁷

Regardless of the reason for his or her excommunication, a rebaptised member who remains repentant and faithful following baptism is generally not required by the church to repass through the normal procedures to obtain the priesthood office and other membership privileges that the member pre-

⁸³ For example, the modifier 'elective' has been added to the statement of the policy, impliedly suggesting that some sex change operations are permissible under the policy, such as those that resolve the sex of persons born with biologically ambiguous genitalia. Cf. Bush, 'Ethical Issues', 59 n.9 (noting the need for such an exception to the older restrictive policy, at least as applied to children). Additionally, excommunication is no longer mandated even for elective sex change operations, and those excommunicated for having undergone elective operations are not permanently excommunicated, although rebaptism of such persons does require approval of the First Presidency. See *CH*, 1:26,27.

⁸⁴ *CH*, 1:66.

⁸⁵ For a survey of statements by church leaders in this regard, see Jeffrey E. Keller, 'Question: Is Sexual Gender Eternal?' *Sunstone* (July 1986), 38.

⁸⁶ The First Presidency and the Twelve, "The Proclamation on the Family," *The Ensign* (Nov. 1995), at 102, available at <http://www.lds.org/library/display/0,4945,161_1_11_1,00.html> (last visited October 7, 2002).

⁸⁷ See, e.g., 'Recommends to Enter a Temple', *CH*, 1:66 (members who undergo elective sex-change operations are barred from LDS temples, though not from normal weekly worship services); 'Disciplinary Councils', *CH*, 1:96 (noting that the church advises against elective sex-change operations, and that undergoing such a procedure may subject a member to church discipline); 'Policies on Moral Issues', *CH* 1:159 (condemning homosexual behaviour as violative of divine commandment, inconsistent with the purposes of human sexuality, and distortive of loving relationships).

The special theological significance of sexual identity and gender also manifests itself in affirmation by LDS leaders of traditional, gender-specific roles and personality traits, and condemnation of relatively benign unisex phenomena, such as the mimicking of other-sex fashions. See, e.g., Spencer W. Kimball, *The Teachings of Spencer W. Kimball*, ed. Edward L. Kimball (Salt Lake City, UT: Bookcraft, 1982), 274 ("Some people are ignorant or vicious and apparently [are] attempting to destroy the concept of masculinity and femininity. More and more girls dress, groom, and act like men. More and more men dress, groom, and act like women. The high purposes of life are damaged and destroyed by the growing unisex theory. God made man and woman in his own image, male and female made he them. With relatively few accidents of nature, we are born male or female. The Lord knew best. Certainly, men and women who would change their sex status will answer to their Maker."). President Kimball was the president of the LDS church from 1973 to 1985.

viously held in the church; rather, these are returned to the member through a procedure known as a 'restoration of blessings'.⁸⁸ A restoration of blessings is granted by a specially designated priesthood leader upon authorisation by the First Presidency,⁸⁹ and usually requires a waiting period after baptism of at least one year. Following rebaptism and restoration of blessings, the church creates a new membership record for the rebaptised member showing his or her original dates of baptism, confirmation, ordination to the priesthood, and so on, so that the record presents the member information as if the member had never been out of the church.⁹⁰

THE UNIVERSAL APPLICABILITY OF MEMBERSHIP NORMS

The foregoing procedures, policies and standards governing membership in the LDS church are universally applicable, both geographically and demographically. These norms, in other words, generally apply in all countries throughout the world, and irrespective of the leadership or other theological status or position which a member might occupy within the church. This is not to say that problems in the application of norms might not exhibit geographic or demographic patterns. In a country which does not permit civil divorce, for example, a mission president might be more inclined to approve baptism for a candidate who is cohabiting out of wedlock,⁹¹ assuming that the current relationship is monogamous and the candidate has been separated from his or her legally married spouse for many years, than he would in a country in which civil divorce can readily be obtained. Similarly, although the norms on leaving the church apply generally to all church members, a disciplinary council is more likely to be held, and a more severe sanction reached by such a council, when the transgressor holds or has held a prominent leadership position in the church, such as general authority, stake president or bishop.⁹² Nevertheless, whatever special problems of application a situation might raise, the procedures, policies and standards remain the same.

DISCRETION AND THE 'JUDGE IN ISRAEL'

Most decisions of consequence in the governance of the LDS church, including virtually all matters of judgment relating to baptism and church discipline, are left to the discretion of the bishop and stake president. The

⁸⁸ See Ballard, 16.

⁸⁹ Ibid; Widtsoe, 191.

⁹⁰ Ballard, 16.

⁹¹ See 'Baptism', *CH*, 1:26 (specifying, *inter alia*, mission president authorisation for baptism of such a person).

⁹² See 'Disciplinary Councils', *CH*, 1:96 (specifying that a disciplinary council is mandatory when a member holding a prominent church position has committed a serious and deliberate moral transgression, such as attempted murder, rape, forcible sexual abuse, spouse abuse, adultery, robbery, embezzlement or fraud, and that excommunication may be necessary when transgressions by such a member have damaged the good name of the church in the community where the transgressions occurred).

General Handbook of Instructions repeatedly commends questions about the meaning and application of policies and procedures to the judgment of the bishop or stake president, 'as guided by the Spirit'.⁹³

For example, specific behavioural prerequisites for baptism are few. Candidates for baptism must commit to live the law of chastity, which requires abstention from sexual relations outside marriage, and the law of tithing, which requires that ten per cent of one's income be donated to the church; candidates must also be abiding by the church's law of health, which requires abstention from coffee, tea, alcoholic beverages and illegal drugs.⁹⁴ Persons who have been convicted of crimes are not baptised until they have completed their terms of imprisonment and any probationary or parole conditions,⁹⁵ and candidates who have been involved in a murder, who are cohabiting out of wedlock, or who have undergone an elective sex-change operation, committed a homosexual transgression, or undergone, encouraged or arranged for an abortion require special clearance from higher church authorities before they can be baptised.⁹⁶

Beyond this, the bishopric member conducting a baptismal interview is merely advised to 'allow himself to be guided by the Spirit and by the counsel given in *Doctrine and Covenants* 20:37'.⁹⁷

Similarly, bishops and stake presidents have always enjoyed remarkable latitude in deciding whether to convene a disciplinary council and, once

⁹³ E.g. 'Baptism', *CH*, 1:26; see also 'Disciplinary Councils', *CH*, 1:99.

⁹⁴ See *Missionary Guide: Training for Missionaries* 234–35 (Salt Lake City, UT: The Church of Jesus Christ of Latter-day Saints, 1988), available at <<http://www.lds4u.com/Discussions/Interview.htm>> (last visited October 7, 2002).

⁹⁵ 'Baptism', *CH*, 1:27.

⁹⁶ 'Baptism', *Ibid.* 1:26, 27. LDS theology provides that one may not be forgiven for the sin of murder: see e.g. *D&C*, 42:18, which is defined as the deliberate, unjustified taking of human life, 'Formal Church Discipline', *CH*, 1:95. Accordingly, a baptismal candidate who has been convicted of or who has publicly or privately confessed to having committed murder must have the approval of the First Presidency before being baptised: 'Baptism', *CH*, 1:27. The significance of sexual identity and gender in LDS theology is discussed *supra* in the text accompanying notes 79–87. A baptismal candidate who has undergone an elective sex-change operation or who has been involved in homosexual transgressions must have the approval of the full-time mission president before being baptised, and candidates contemplating a sex-change procedure are not to be baptised. 'Baptism', *CH*, 1:26. LDS theology generally condemns abortion as a sin comparable to murder, and specifies that members may undergo abortions only when it is evident that the foetus will not survive birth or when the pregnancy has resulted from rape or incest, threatens the life of the mother, or presents a serious threat to the health of the mother. Accordingly those who have been implicated in an abortion are required to obtain approval of the mission president before being baptised. See 'Abortion', *CH*, 1:157.

⁹⁷ See 'Baptism', *CH*, 20:37. *D&C* 20:37 reads in pertinent part: 'All those who humble themselves before God, and desire to be baptized, and come with broken hearts and contrite spirits, and witness before the church that they have truly repented of all their sins, and are willing to take upon them the name of Jesus Christ, having a determination to serve him to the end, and truly manifest by their words that they have received the Spirit of Christ unto the remission of their sins, shall be received by baptism into his church'.

convened, what the outcome of such a council will be.⁹⁸ Currently, the church requires that a disciplinary council be held in cases of murder, incest, child abuse, apostasy, a repeated pattern of serious transgressions, transgressions involving predatory behaviour that threatens others, or a serious transgression which was committed while holding a prominent church position or which is widely known.⁹⁹ ‘Serious transgressions’ have been authoritatively defined as abortion, transsexual operation, attempted murder, rape, forcible sexual abuse, intentionally inflicting serious physical injuries on to others, adultery, fornication, homosexual relations, child abuse (sexual or physical), spouse abuse, deliberate abandonment of family responsibilities, robbery, burglary, embezzlement, theft, sale of illegal drugs, fraud, perjury, or false swearing’. Moreover, the church dictates the outcome of a disciplinary council in only two circumstances, instructing that those guilty of murder are to be excommunicated, and that those guilty of incest are almost always to be excommunicated.¹⁰⁰ Again, beyond these specific situations, the bishop is encouraged to seek ‘the inspiration and guidance of the Spirit of the Lord’, and prayerfully to consider what the situation requires in order to encourage repentance by the transgressor, to protect the innocent, and to safeguard the integrity of the church.¹⁰¹

In short, the LDS church’s doctrines, policies and procedures relating to joining and leaving the church bear little resemblance to what in the West would be recognised as a legal system. Procedural requirements are skeletal, substantive rules are few, and most questions of importance are left to the judgment of an interviewing officer or presiding authority who ‘has discretion far beyond that of a secular judge’.¹⁰² Decisions of disciplinary councils are not reported or otherwise circulated, and consequently there is no body of ‘common ecclesiastical law or doctrine’ available for authorities to con-

⁹⁸ Bush, ‘Excommunication’, 78.

⁹⁹ ‘Formal Church Discipline’, *CH*, 1:95–96; see also ‘Disciplinary Procedures’, *EM*, 1:386. ‘Apostasy’ is defined as (i) repeated actions which indicate one’s intentional, public opposition to the Church and its leaders, (ii) persistence in teaching false doctrine despite having been corrected by church leaders, or (iii) continuing to follow the teachings of ‘apostate sects’—notably those that practice or advocate polygamy—despite having been advised to the contrary by church leaders: ‘Formal Church Discipline’, *CH*, 1:95–96; see also James E. Faust, ‘Keeping Covenants and Honoring Priesthood’, *The Ensign* (Nov. 1993), 36, 38 (‘Those men and women who persist in publicly challenging basic doctrines, practices, and establishment [sic] of the Church sever themselves from the Spirit of the Lord and forfeit their right to place and influence in the Church’). President Faust is currently a member of the First Presidency.

¹⁰⁰ ‘Formal Church Discipline’, *CH*, 1:95. Additionally, the First Presidency has instructed local leaders that in cases of incest, child abuse, apostasy, serious transgression while holding a prominent church position, elective sex-change surgery, or embezzlement of church funds, a disciplinary council may not impose formal probation as a sanction, but must either disfellowship or excommunicate the transgressor.

¹⁰¹ ‘Formal Church Discipline’, *CH*, 1:99.

¹⁰² Augustine-Adams, 592; see also at 591 (noting that the ‘lack of procedure and formal representation and the mixing of roles’ in disciplinary councils is sometimes criticised as ‘undermining their fairness’); Lester E. Bush, Jr., ‘Excommunication: Church Courts in Mormon History’, *Sunstone* (July/Aug. 1983), 24, 29 (noting a ‘wide and very unsystematic variation in the convening of church courts and the penalties imposed on transgressors’).

sult to ensure that discretion is exercised to treat similarly situated transgressors in more or less the same way.¹⁰³ In stark contrast to the ‘rule of law’, which values norms of procedural fairness, fixed and certain rules, and equal treatment at least as much as ‘correct’ substantive outcomes,¹⁰⁴ Latter-day Saint procedures and policies relating to entering and joining the church generally seek to free local priesthood authorities to do right by general standards as they may be inspired to understand them in the context of a single person and a single situation.¹⁰⁵ Indeed, the LDS church seems more than willing to bear the cost of varying and even apparently inconsistent applications of its doctrines and policies by local leaders in order to preserve to the maximum extent the discretion of these leaders to exercise untrammelled judgment in individual cases under the influence of the Holy Ghost.¹⁰⁶

Instead of modern western legal norms, LDS doctrines, procedures, and policies recall the role of ancient judges in the Old Testament. ‘Judges and officers shalt thou make thee’, God commands the Israelites, ‘and they shall judge the people with just judgment’.¹⁰⁷ When King Jehoshaphat commissions judges after Israel’s return from exile, he enjoins them, ‘Take heed what ye do: for ye judge not for man, but for the Lord, who is with you in the judgment. / Wherefore now let the fear of the Lord be upon you’.¹⁰⁸

Bernard Jackson explains that Old Testament judges ‘are told simply to act justly and avoid corruption. They are not asked to follow any particular rules’.¹⁰⁹ Even so, the judges were not free to decide cases however they pleased: Their ‘sense of justice was to be tempered by the conventional norms of practical wisdom’, so as to enable them to ‘reconstruct the values

¹⁰³ Augustine-Adams, 588.

¹⁰⁴ See e.g. Frederick Pollock, *Jurisprudence and Legal Essays*, ed. A.L. Goodhart (New York: St. Martin’s, 1961), 20 (‘[T]he normal and necessary marks, in a civilised commonwealth, of justice administered according to law, [are] Generality, Equality, and Certainty’). See generally George P. Fletcher, *Basic Concepts of Legal Thought* (New York: Oxford University Press, 1996), ch. 1.

¹⁰⁵ Cf. Augustine-Adams, 588 (‘Latter-day Saint disciplinary councils entertain questions of individual transgressions, not questions of church doctrine’); *ibid.* 591 (noting the ‘individual rather than precedent-setting nature of Latter-day Saint ecclesiastical discipline’); Bush, 95 (‘[W]ithin the church judicial system, the procedural subtleties are of little consequence in comparison to the personal judgments and “inspiration” of the presiding authority’).

¹⁰⁶ Cf. H.L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961), 127 (contrasting ‘the need for certain rules which can, over great areas of conduct, safely be applied by private individuals to themselves without fresh official guidance or weighing up of social issues’, with ‘the need to leave open for later settlement by an informed official choice, issues which can only be properly appreciated and settled when they arise in concrete situations’).

¹⁰⁷ *Deuteronomy* 16 : 18 (King James).

¹⁰⁸ *2 Chronicles* 19 : 6–7 (King James).

¹⁰⁹ Bernard S. Jackson, ‘Legalism and Spirituality: Historical, Philosophical, and Semiotic Notes on Legislators, Adjudicators, and Subjects’, in *Religion and Law: Biblical-Judaic and Islamic Perspectives*, ed. Edwin B. Firmage, Bernard G. Weiss and John W. Welch (Winona Lake, IN: Eisenbrauns, 1990), 243, 245.

inherent in an individual but total situation'.¹¹⁰ So it is with LDS bishops and stake presidents. Each is invested with priesthood authority to be a 'judge in Israel',¹¹¹ but also to judge 'according to the laws and kingdom which are given by the prophets of God'.¹¹²

In short, the LDS doctrines, policies, and procedures that regulate entrance into and exit from the church are neither modern nor Western. They reflect the legal norms of a society which continues to trust in the ability of inspired (albeit human) judges to discern the will of God in each individual situation.

¹¹⁰ Jackson, 245, 260. Karl Llewellyn argued that this approach to judging properly plays a part in Anglo-American common law systems, though it has become controversial in our formalist age. See Karl N. Llewellyn, *The Common Law Tradition: Deciding Appeals* (Boston: Little, Brown, 1960), 120–128 (noting that particular situations suggest their own internal 'law' that requires vindication of one litigant's interests even in the face of a contrary legal rule).

¹¹¹ *D&C* 107:72.

¹¹² *D&C* 58:18.