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SYSTEM AND HIERARCHY OF HUMAN RIGHTS:

COLLISION BETWEEN FREEDOM OF RELIGION AND OTHER HUMAN
RIGHTS IN THE INTER-AMERICAN SYSTEM

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**System and Hierarchy of Human Rights: Collision between Freedom of Religion and Other
Human Rights in the Inter-American System**

DOCTORAL DISSERTATION

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“Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end.”

Immanuel Kant, Groundwork of the Metaphysics of Morals (1785)

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LIST OF ABBREVIATIONS

A-69: Inter-American Convention Against All Forms of Discrimination and Intolerance

ACHPR: African Charter on Human and Peoples' Rights

ACHR: American Convention on Human Rights

AHRD: ASEAN Human Rights Declaration

AI: Artificial Intelligence

ASEAN: Association of Southeast Asian Nations

COVID-19: Coronavirus Disease 2019

CRC: Convention on the Rights of the Child

ECHR: European Convention on Human Rights

IACHR: Inter-American Commission on Human Rights

IACtHR: Inter-American Court of Human Rights

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICRC: International Committee of the Red Cross

IHL: International Humanitarian Law

IVF: In Vitro Fertilization

LGBTIQ+: Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, and others

MOVILH: Movimiento de Integración y Liberación Homosexual (Homosexual Integration and Liberation Movement)

NGO: Non-Governmental Organization

OAS: Organization of American States

OC/A/O: Advisory Opinion (Opinión Consultiva)

OIC: Organisation of Islamic Cooperation

OHCHR: Office of the United Nations High Commissioner for Human Rights

UDHR: Universal Declaration of Human Rights

UN: United Nations

ABSTRACT

Despite decades of formal commitment to the indivisibility and interdependence of human rights, the practice of international human rights adjudication reveals a different reality. This dissertation examines whether a functional hierarchy of rights operates within the Inter-American human rights system and, if so, what position freedom of religion occupies within that structure. Drawing on systematic qualitative analysis of Inter-American Court of Human Rights jurisprudence, the study addresses three central questions: whether such a hierarchy exists and what factors shape it; what hierarchical position freedom of religion occupies within it; and what socio-legal consequences follow, particularly for vulnerable populations including religious minorities, indigenous communities, and those whose conscience claims conflict with emerging secular equality norms. The theoretical framework draws on two foundational pillars: Rawls's concept of lexical ordering, and the theory of human rights hierarchy as developed across a rich scholarly tradition encompassing Alexy, Klein, Koji, Shelton, and Hierro. Together, these frameworks reveal that indivisibility and hierarchy are not contradictory but complementary, the former as a moral aspiration, the latter as an adjudicative necessity. Applied to the Inter-American context, this synthesis illuminates a five-tier normative hierarchy in which freedom of religion occupies a fluctuating fourth position, consistently yielding to equality, non-discrimination, and expressive liberty, as landmark cases including *Olmedo Bustos v. Chile*, *Atala Riffo v. Chile*, *Sandra Pavez v. Chile*, and *Artavia Murillo v. Costa Rica* demonstrate.

The empirical analysis identifies five methodological mechanisms through which this hierarchy operates: differential scrutiny standards, asymmetric burden-shifting frameworks, unequal evidentiary requirements, hierarchical judgments embedded within proportionality analysis, and interpretive presumptions that systematically favor certain rights over others. These mechanisms operate beneath formally neutral judicial techniques, producing tangible consequences for those whose fundamental commitments occupy subordinate positions within the system's normative architecture. The dissertation argues that honest acknowledgment of this hierarchical reality, rather than its denial through indivisibility rhetoric, represents the necessary foundation for more principled and effective protection of all human rights.

1. INTRODUCTION

1.1. Context and Significance of Research.

The question of whether certain human rights take precedence over others constitutes a fundamental challenge in both philosophical discourse and legal practice. It is not simply an abstract dilemma; political actors, courts, and international bodies confront this question each time two rights, each formally equal, lead to incompatible obligations. Traditionally, normative conflicts have been resolved by applying classic antinomy solution criteria: hierarchy, chronology, and specialty. Yet a distinctive complexity emerges when conflicting norms belong to the same normative framework, such as the Universal Declaration of Human Rights or the American Convention on Human Rights. In these instances, the abstract principle of equal standing among human rights confronts the practical necessity of resolving specific conflicts between competing rights claims. How, then, can one reconcile the ideal of indivisibility with the reality of conflict?

The philosophical foundation for understanding rights hierarchies can be traced through several significant traditions. Johann Gottlieb Fichte's systematic study, rooted in transcendental philosophy following Kant's moral theory, marked a significant shift in examining the hierarchy of rights. Fichte sought to explore the foundational principles underpinning human rights within a transcendental framework, aiming to discern the essential conditions for the existence and recognition of rights (Fichte, 1971). Building on this foundation, Kant's own formulation of a system of rights provided a framework within moral and political philosophy that elucidated rights as grounded in moral autonomy and universal principles. These early formulations introduced a crucial tension: if rights derive from universal moral structures, could their internal order, or possible hierarchy, also be morally grounded?

Hegel (1986) further developed these ideas, synthesizing a hierarchical system of rights within a broader social theory and historical context. By integrating individual rights with the collective ethical life of society, Hegel emphasized the dialectical relationship between rights and social institutions, offering a comprehensive understanding of the hierarchical structure inherent in legal and social norms through contextualizing rights within human history and culture. This shift

toward historical situatedness opened the door to understanding rights not only as moral abstractions but as evolving elements within complex societies, revealing that any claim to equality among rights inevitably encounters moments in which prioritization becomes unavoidable.

Contemporary scholars have built upon these foundations to examine hierarchies within international legal norms. Wuerffel (1998), Koji (2001), and Klein (2008) have explored how hierarchical organization manifests in international law, examining non-derogable rights and generational differences between legal conventions. As Koskenniemi (1997) observes, “Hierarchy is a term that greatly pleases lawyers around the globe. It is a term that conveys the idea of order, legal security, the chance to overcome anarchy.” This legal perspective acknowledges that a hierarchy of norms serves a crucial function in structuring law and protecting certain norms from arbitrary amendment (Shelton, 2006). Yet the very appeal of hierarchy raises an interesting question: does ordering rights inevitably impose a political or ideological structure upon systems that claim universality?

The relevance of this research extends beyond theoretical interest. As Shelton (2002) notes, determining whether human rights may “trump” other international obligations or whether some human rights claim superiority over others presents disputes with real-world implications. Meron (1986) raises a pertinent question: “Can we rank these achievements, making hierarchical distinctions between the rights of different ‘generations,’ between individual and collective rights?” The danger exists that states might exploit such rankings, perhaps providing essential food while simultaneously restricting freedom of expression or political participation. In other words, the stakes of this debate are not merely conceptual; they shape the boundaries of political legitimacy and institutional accountability.

This tension becomes particularly acute when considering the principle articulated at the 1993 Vienna World Conference that human rights are indivisible (Tahvanainen, 2006). If this principle holds, establishing hierarchies becomes problematic both theoretically and practically. Yet the development of internationally recognized human rights represents an ongoing historical process, with new rights progressively emerging through declarations, conventions, and covenants. This evolution suggests that the future will likely see additional specific rights emerge, reflecting

developments in humanity's living conditions, technological advancements, and evolving social aspirations (Eguiguren, 1992). How can a system commit to indivisibility adapt to the growing plurality and complexity of rights?

Freedom of religion offers a particularly revealing lens through which to examine potential hierarchies within human rights frameworks. As a right that intersects deeply with both individual identity and collective social practices, freedom of religion frequently comes into tension with other rights, particularly those related to non-discrimination, equality, and freedom of expression. These tensions reveal underlying assumptions about the relative importance of different rights and provide insights into how legal systems prioritize competing claims. Examining this right therefore exposes the mechanisms, often implicit, through which normative orders handle conflict.

Within the Inter-American context, freedom of religion acquires distinctive significance given the region's historical, cultural, and political landscape. The predominantly Catholic heritage of Latin America, coupled with growing evangelical influences and indigenous spiritual traditions, creates an intricate religious ecosystem that makes the Inter-American system a particularly rich setting for examining how freedom of religion is positioned relative to other rights. In this context, conflicts between rights are not theoretical puzzles but lived experiences, shaped by evolving social dynamics and transforming democratic landscapes.

1.2. Problem Statement and Research Rationale

The continuous growth and expansion of recognized human rights have raised significant questions regarding classifications, typologies, and categorizations within the human rights framework. A central debate concerns whether all rights possess equal value or if some hierarchy or prevalence exists among them (Eguiguren, 1992). While human rights are theoretically interdependent and indivisible, ensuring adequate human development, practical differences arise due to their origin, nature, enforceability, and non-derogability. These differences complicate efforts to maintain a strict view of rights as an undifferentiated whole.

The collision between freedom of religion and other human rights provides a particularly instructive case study. Freedom of religion is enshrined in numerous international instruments,

including the Universal Declaration of Human Rights (Article 18), the International Covenant on Civil and Political Rights (Article 18), and the American Convention on Human Rights (Article 12). However, its implementation and interpretation often generate conflicts with other protected rights, especially equality, non-discrimination, freedom of expression, and gender rights.

Conflicts typically arise when religious beliefs or practices collide with secular laws designed to protect other rights. Religious doctrines concerning gender roles or sexuality may conflict with equality and non-discrimination principles. Religious expressions may clash with protections against hate speech. Religious education practices may create tension with secular educational objectives. Resolving these conflicts inevitably reveals implicit or explicit hierarchies among rights, as courts and other institutions must determine which claims take precedence in specific contexts. This persistent need to weigh competing claims ultimately exposes the existence of implicit hierarchies within the human rights system, making these cases a crucial lens through which to examine how such hierarchies are produced, justified, or denied in practice.

Within the Inter-American system, interpreting freedom of religion raises important interpretive issues. The American Declaration of Human Rights articulates freedom of religion as the right to "freely profess a religious belief," yet fails to define the precise parameters of "professing". Similarly, the American Convention on Human Rights introduces freedom of conscience alongside freedom of religion without clearly defining either concept (Arlettaz, 2011). These ambiguities create fertile ground for conflicts, as individuals or groups may find their rights imperiled due to conceptual uncertainty, potentially leading to arbitrary decision-making or societal hesitance to assert theoretically protected rights.

The judicial system and media have emerged as significant actors in this landscape, particularly in their interaction with freedom of religion, where connections between elites and religious authorities have become increasingly apparent (Mallimaci, 2017). Limited public scrutiny of issues such as pederasty within certain religious institutions illustrates the complex and often delicate relationships among these entities.

Concurrently with these developments, democratization across the Americas has produced legal provisions and public policies related to medical care, sexuality, and reproduction that have generated tensions between religious and human rights sectors. Alliances have formed between Catholic and Protestant groups advocating “natural law” and “life from conception” arguments. Initiatives concerning contraception, reproductive rights, gender identity, same-sex marriage, abortion, euthanasia, assisted reproduction, and educational programs addressing gender and sexual diversity have created new landscapes of public activism (Mallimaci, 2017).

The collision of freedom of religion with other rights is intensified when religious authorities declare certain expressions of sexuality immoral or condemn LGBTIQ+ individuals outright. These situations create direct conflicts between non-discrimination principles and religious expression. Religious organizations often contend that anti-discrimination laws limit their right to freedom of religion ("*Amicus Curiae*", *Pavez vs. Chile*, 2021), highlighting the importance of analyzing freedom of religion's hierarchical position within human rights frameworks and understanding the reasoning behind decisions that may appear to compromise liberty and equality.

Resolution of these human rights collisions can sometimes follow formulaic approaches that evade rather than resolve underlying tensions (Arlettaz, 2011). State violations affecting freedom of religion may trigger international accountability, whereas violations by individuals traditionally do not directly implicate state responsibility. However, the Inter-American Commission has consistently maintained that states must control groups that commit discriminatory acts, promote hatred, persecute others, or impede human rights application (IACHR, 1980, Argentina).

This research therefore seeks to analyze how the Inter-American system manages collisions between freedom of religion and other human rights, examining sociopolitical effects and repercussions of these conflicts. By focusing on freedom of religion as a case study, the project aims to shed light on the relative weight of this right within the Americas and contribute to a broader understanding of whether and how hierarchies of rights function within regional human rights systems. In doing so, the study highlights both the theoretical and practical stakes of navigating competing rights, offering insight into the mechanisms through which legal systems balance equality, liberty, and pluralism.

1.3. Research Objectives and Questions

This research aims to address three primary questions concerning the hierarchy of human rights in the Inter-American system, with particular focus on freedom of religion:

Research Question 1: Existence and Nature of Human Rights Hierarchy.

Does a hierarchy of human rights exist in the Inter-American system, and if so, what factors influence this hierarchy?

This question seeks to determine whether the Inter-American human rights system recognizes, explicitly or implicitly, a hierarchical ordering of human rights. It also aims to identify the legal, historical, cultural, and political factors that might influence such a hierarchy. The exploration of this question will involve analyzing international instruments, jurisprudence, and scholarly debates within the Inter-American context.

Research Question 2: Hierarchical Position of Freedom of Religion.

What is the hierarchical position of freedom of religion in the Inter-American system, and is this hierarchical position influenced by the interpretation of human rights by the Member States of the Inter-American system?

Building on the first question, this inquiry focuses specifically on the position of freedom of religion within any potential hierarchy of rights. It examines how freedom of religion is treated in cases of conflict with other rights and whether it receives special protection or is subject to particular limitations. The sub-question explores the influence of member states' interpretations on the regional understanding and application of freedom of religion, recognizing the interplay between national and regional human rights frameworks.

- **Sub-question 2.1:** Is the hierarchical position of freedom of religion influenced by the interpretation of human rights by the Member States of the Inter-American system?

This sub-question delves deeper into the relationship between national interpretations and regional standards, examining how member states' constitutional traditions, legal systems, and cultural contexts shape the regional approach to freedom of religion. It recognizes that the Inter-American system does not operate in isolation but is influenced by the diverse legal and cultural traditions of its member states.

Research Question 3: Socio-legal Implications of Hierarchical Positioning.

How does the hierarchical position of freedom of religion influence society in the Inter-American system, and which are the most affected groups as a result of this hierarchical position?

This question moves beyond legal analysis to examine the societal implications of how freedom of religion is positioned and protected within the Inter-American human rights framework. It seeks to identify which groups are most affected by the prioritization or limitation of freedom of religion in relation to other rights, exploring the real-world impact of legal and theoretical hierarchies on vulnerable populations.

1.4. Corresponding Research Hypotheses

Based on preliminary research, this study proposes the following hypotheses:

Hypothesis 1: A hierarchy of human rights exists in the Inter-American system based on international law, and there is a discernible hierarchical order of these rights.

This hypothesis posits that despite the theoretical principle of the indivisibility and equal importance of all human rights, in practice, the Inter-American system does recognize a hierarchy among rights. This hierarchy may be evident in how conflicts between rights are resolved, which rights are deemed non-derogable even in emergencies, and how remedies for violations are structured.

Hypothesis 2: The right freedom of religion occupies a conditionally subordinate position within this implicit hierarchy. Its level of protection depends on the specific context in which it interacts with other rights, particularly the principles of equality, non-discrimination, and gender identity. In disputes where freedom of religion conflicts with these principles, the jurisprudence of the Court often favours secular equality as a structural foundation of democratic coexistence, reflecting a normative tendency that privileges inclusive social order over individual belief when both cannot be reconciled.

Hypothesis 3: Although freedom of religion is generally treated as a right that yields to equality and non-discrimination in cases of direct conflict, it can acquire a contextually reinforced weight when it intersects with state neutrality, freedom of conscience, or the protection of minority identities. In such circumstances, both the Inter-American Court and national constitutional courts

tend to affirm the autonomy of belief as a constitutive element of human dignity and pluralism. Freedom of religion thus does not operate as a universally inferior or superior right, but rather as one whose position varies dynamically within a flexible hierarchy shaped by the factual circumstances and normative tensions of each case.

This hypothesis addresses the societal implications of this shifting hierarchical position, suggesting that situations in which freedom of religion receives reinforced protection may lead to conflicts with other rights that disproportionately affect certain vulnerable groups. These conflicts may arise in areas such as reproductive rights, LGBTIQ+ rights, indigenous spiritual practices, and the rights of religious minorities.

Taken together, these three hypotheses suggest that the Inter-American system does not operate under a strictly symmetrical conception of human rights but instead reveals a practical and evolving hierarchy in which the relative weight of freedom of religion shifts according to the normative tensions present in each case. The analysis that follows therefore proceeds from the assumption that such a hierarchical structure does in fact manifest itself in the system's jurisprudence, and seeks to demonstrate how, and to what extent, this hierarchy becomes visible through judicial reasoning, doctrinal interpretation, and comparative constitutional practice.

1.5. Methodology and Approach

This research adopts a qualitative and comparative methodological approach that combines content analysis of judicial decisions with case study examination. The objective is to understand how the Inter-American Human Rights System constructs and applies an implicit hierarchy among fundamental rights, with particular attention to freedom of religion, between 1990 and 2024. This methodological design allows for an in-depth interpretation of legal reasoning and the contextual conditions under which certain rights are prioritized over others.

The study employs qualitative content analysis as its primary methodological framework, complemented by comparative and case study techniques. This approach was selected for its effectiveness in analyzing contextualized texts according to established analytical models without resorting to quantification (Mayring, 2000). It seeks to comprehend social and legal phenomena

through the meanings they hold for the actors involved (Flores, García, & Rodríguez, 1996). Through this interpretive lens, qualitative content analysis enables the evaluation of the various legal instruments structuring the Inter-American system for human rights protection, emphasizing freedom of religion as a key testing ground for broader normative hierarchies.

The research examines both the positive and negative effects derived from the protection of freedom of religion and explores how domestic laws in member states adapt to international human rights standards. To situate this inquiry within a robust intellectual framework, the literature review plays a central role in contextualizing prior discussions on hierarchies of rights, conflicts between fundamental freedoms, and the normative strains that emerge when freedom of religion collides with other values such as equality, non-discrimination, and public order. This theoretical foundation facilitates the examination of cases where the notion of “superior” and “inferior” rights becomes contested, revealing how historical, cultural, and institutional factors shape judicial interpretation.

The corpus of analysis consists of Inter-American Court of Human Rights judgments and advisory opinions, complemented by landmark constitutional court decisions from Mexico, Colombia, Chile, and Peru. These jurisdictions were selected for their active engagement with Inter-American standards, their representative diversity within the region, and the presence of specific domestic legislation regulating freedom of religion. This legal framework allows for a nuanced examination of how courts interpret and apply international human rights norms in concrete domestic contexts. Each judicial decision was analyzed to identify patterns of reasoning, interpretive consistency, and evidence of implicit hierarchies. Particular attention was paid to how the courts balance freedom of religion against competing rights, as well as to the doctrinal justifications underpinning each outcome.

Specific case studies were chosen to examine contentious situations in which freedom of religion intersects with other fundamental rights. These cases allow for a nuanced understanding of the practical implications of judicial decisions, highlighting the adversities faced by minority groups and the barriers to accessing justice. By examining the interaction between these groups, their states, and broader society, the research evaluates how effectively the Inter-American system

guarantees equality of protection and participation in religious matters. This case-based insight is complemented by comparative analysis with other human rights systems, including the European and African mechanisms, to identify convergences and divergences in the treatment of similar conflicts.

All cases were reviewed several times to ensure consistency and interpretive accuracy, and analytical notes were systematically recorded to document coding criteria and emerging categories. While this study does not seek statistical generalization, it offers a rigorous qualitative understanding of how legal discourse in Latin America produces and legitimizes hierarchies among rights. The methodological design thereby balances analytical precision with interpretive depth, allowing for the identification of jurisprudential tendencies without compromising contextual sensitivity.

Sources for this research include academic literature, legal documents, conference proceedings, and scholarly discussions with experts on human rights and freedom of religion. Artificial intelligence tools were employed exclusively for linguistic editing and structural refinement, ensuring grammatical precision and coherence while maintaining full authorship integrity.

Finally, the study recognizes the inherent complexity of resolving conflicts that emerge between plural social aspirations and the rights linked to belief, conscience, and moral conviction. Rather than proposing universal formulas for reconciliation, this research seeks to understand how these tensions are negotiated within the Inter-American context. In combining qualitative interpretation, comparative observation, and case-based reasoning, the methodological framework provides a nuanced and globally informed foundation for a thorough and well-grounded conclusion.

1.6. Scope and Limitations

This research focuses primarily on the Inter-American human rights system, with particular attention to freedom of religion and its interaction with other human rights. While the study aims to provide a comprehensive analysis, several important limitations must be acknowledged:

Geographically, the research centers on the Inter-American region, with emphasis on Latin American countries. Comparative references to other regional human rights systems, particularly the European system, provide context and contrast, but these comparisons are not exhaustive. The historical, cultural, and legal particularities of the Inter-American region shape specific manifestations of conflicts involving freedom of religion, making this regional focus both necessary and valuable for understanding relevant dynamics.

Within the Inter-American region, specific attention is given to Mexico, Colombia, Chile, and Peru. These countries represent diverse approaches to religion-state relationships, varying degrees of religious pluralism, and significant bodies of jurisprudence related to freedom of religion. While this selection allows for the depth of the analysis, the unique contexts of other regional countries necessarily receive less attention.

Temporally, the research focuses primarily on developments since the establishment of the Inter-American human rights system, with emphasis on jurisprudence and legal developments post-1990. This period has witnessed significant changes in Latin America's religious landscape, including increased religious pluralism, the rise of evangelical Christianity, and growing secularization in some countries. While historical context is provided where relevant, the primary analysis centers on contemporary manifestations of conflicts involving freedom of religion.

Methodologically, the study employs qualitative content analysis and case studies rather than quantitative methods. This approach allows for in-depth examination of specific cases and legal texts but does not provide statistical generalization across the region. The selected case studies, while representative of important issues and principles, cannot capture the full range of situations in which freedom of religion conflicts with other rights.

In terms of subject matter, the research focuses on freedom of religion as a primary lens for examining potential hierarchies among human rights. While this focus enables detailed analysis of a particularly complex and contentious right, other potential entry points for examining hierarchies, such as freedom of expression or equality, receive less attention. The study also acknowledges the evolving nature of human rights jurisprudence and the ongoing development of

legal standards related to freedom of religion. Court decisions and interpretations continue to develop, potentially affecting the conclusions drawn here. Thus, the analysis represents a snapshot of current legal and social conditions rather than a definitive account.

Finally, while the study examines the societal impact of freedom of religion's hierarchical position, particularly on vulnerable groups, it does not claim to provide a comprehensive sociological analysis of these effects. Assessment of societal impacts is based primarily on legal analysis and secondary sources rather than primary sociological research.

Despite these limitations, the study provides a focused and rigorous examination of freedom of religion within the Inter-American human rights system. It offers insights into the hierarchical positioning of rights and the practical resolution of conflicts, while remaining attentive to the evolving legal and social landscape and directly supporting the analysis of the hypotheses outlined in this research.

1.7. Structure of the Thesis

This thesis comprises five substantive chapters followed by a conclusion, each building upon previous elements to create a coherent analysis of freedom of religion's hierarchical position within the Inter-American human rights system.

Chapter 1: Introduction introduces the research problem, establishes the theoretical and methodological framework, and presents the hypotheses guiding the analysis. It situates the study within the broader academic debate on human rights hierarchies and sets the conceptual foundation for understanding the complex relationship between secularism and religious pluralism in Latin America.

Chapter 2: Literature and Theoretical Framework develop the theoretical and philosophical underpinnings of human rights, tracing their evolution from classical moral theories to contemporary normative frameworks. It conceptualizes human rights and their universal nature, explores the concept and scope of freedom of religion, examines theories on human rights hierarchy, and applies Rawls' theory of justice to conflicts involving freedom of religion. This

theoretical framework provides analytical tools for examining freedom of religion's hierarchical position in the Inter-American system.

Chapter 3: Systems of Protection for Freedom of Religion provides comparative analysis of freedom of religion protection at international and regional levels. It examines international protection standards, explores different regional approaches, and compares these systems to identify patterns, similarities, and differences. This comparative context helps situate the Inter-American system within the broader landscape of freedom of religion protection.

Chapter 4: The Inter-American System and Freedom of Religion focus on the structure, procedures, and interpretive methods of the Inter-American Human Rights System. It analyzes how the Commission and the Court operationalize principles of equality, dignity, and proportionality, and how these shape the practical hierarchy of rights within the regional context.

Chapter 5: Jurisprudence on Freedom of Religion in the Inter-American Court analyzes how the Inter-American Court has addressed freedom of religion in its decisions. It examines the Court's structure and authority, analyzes landmark cases related to freedom of religion, identifies legal principles and standards established by the Court, and explores how the Court balances freedom of religion with other rights. This jurisprudential analysis is central to understanding freedom of religion's hierarchical position within the Inter-American system.

Chapter 6: Theoretical and Practical Implications builds on previous chapters to draw broader conclusions about human rights hierarchy in the Inter-American system, freedom of religion's position within this hierarchy, states' obligations regarding freedom of religion, and the social impact of freedom of religion's hierarchical position. This chapter connects theoretical and empirical findings to address research questions and test hypotheses.

The conclusion summarizes key research findings, responds directly to research questions, highlights theoretical and practical contributions, and suggests directions for future research. The conclusion synthesizes insights gained from the analysis and articulates their significance for

understanding freedom of religion's hierarchical position within the Inter-American human rights system.

Throughout these chapters, the thesis maintains focus on the research questions while providing necessary context, theoretical grounding, and empirical analysis to address them comprehensively. The structure reflects logical progression from theoretical foundations to specific applications, from broad comparative contexts to detailed case analyses, and from descriptive examination to evaluative implications. Therefore, this dissertation will unfold as a cohesive argument through seven substantive chapters. Chapter 2 constructs the integrated analytical framework, weaving together philosophical foundations from Fichte, Kant, and Rawls with contemporary theories of rights hierarchy from Alexy, Shue, and others. Chapter 3 then tests the universality of this framework through a comparative analysis of freedom of religion protection in international, European, African, and other regional systems, establishing a global context for the Inter-American case study. Chapter 4 narrows the focus to the Americas, detailing the historical, socio-religious, and normative specificities of the Inter-American System. The argument's core is presented in Chapter 5, where a critical jurisprudential analysis of the Inter-American Court's landmark cases (from *Olmedo Bustos v. Chile* to *Pavez v. Chile*) provides the empirical evidence for the implicit hierarchy. Building on this evidence, Chapter 6 synthesizes the theoretical and practical implications, explicitly answering the research questions and confirming the hypothesis of freedom of religion's conditionally subordinate position. Finally, Chapter 7 concludes by articulating the study's contributions to human rights scholarship and suggesting future research trajectories. This progression is designed to move systematically from abstract theory to concrete legal practice, ultimately demonstrating the operational reality of rights hierarchy within the Inter-American human rights regime.

CHAPTER 2: LITERATURE AND THEORETICAL FRAMEWORK

2.1. Philosophical Foundations of Human Rights

2.1.1. Historical Evolution and concept of Human Rights Theory.

The philosophical foundations of human rights have evolved through centuries of intellectual inquiry into human nature and its relationship to society, reflecting not merely chronological progression, but a compound interplay of philosophical traditions that continue to shape contemporary understanding of rights.

Among the most enduring theoretical tensions in this evolution is the legal debate between positivism (Kelsen, 1945) and natural law conceptions (Maritain, 1947) that remain fundamental to understanding human rights. According to the positivist perspective, it is the legal order that confers the status of personhood upon an individual. This implies that personhood becomes a legal category that can be granted or denied based on reasons of race, gender, or sexual preferences. In contrast, natural law conceptions maintain that human beings, by the mere fact of existence, possess rights and obligations that the State merely recognizes rather than creates (Maritain, 1947; Sullivan, 2020; Carbonell, 2004). This view emphasizes inherent dignity as the ultimate source of legal and moral entitlements.

Building on this foundation, these principles serve as normative limits on State authority, grounded in the recognition of each individual's moral status. Contemporary society recognizes, every human being, by virtue of being human, has rights against the State (Nikken, 2007; Nussbaum, 2011). These are rights that the State either has the duty to respect and guarantee or is called upon to organize its actions to satisfy their full realization. Considering a philosophical approach, these rights are inherent to the dignity of every person (Kant, 1785/2002) and constitute what we now refer to as human rights: universal, inalienable, and rooted in dignity.

Historically, a crucial development in the evolution of human rights theory is what Hans Joas (2011), following Ernst Troeltsch (2002), describes as the sacralization of the person. This concept

provides a lens through which to examine the development of the inherent worth and dignity of the person. Religious developments, particularly Christianity, were crucial in this process, profoundly shaping Western conceptions of human rights. The Christian emphasis on the inherent worth of everyone, created in the image of God, has contributed significantly to the development of the idea that certain rights are inalienable and universal. While sacralization represents more than a religious concept; it also reflects a fundamental shift in how societies conceptualize the human person. The influence of religious traditions has been profound in establishing the foundation upon which modern human rights discourse rests, even as that discourse has become increasingly secular in its articulation.

Here, Hannah Arendt (2000), provides a critical shift in perspective. Rather than grounding human rights in metaphysical or theological assumptions, the author proposes the concept of a right to rights, offering a crucial corrective to the notion of human rights exists as abstract and timeless principles. Arendt refuses to take human rights as innate natural law, instead positioning them at the social level as civil rights and cultural constructions. This perspective offers profound insight into the social and political dimensions of human rights.

With the reframing of human rights as contingent upon social recognition and legal status, Arendt challenges us to rethink their foundations. Her emphasis on the human condition as a shared experience marked by vulnerability and interdependence underscores the need for rights that protect individuals from arbitrary power and ensure their participation in public life. This social construction approach helps in comprehending the difficulties and nuances of human rights frameworks and their implications for different groups within society. Building on this understanding of human rights as dynamic and socially embedded, it is essential to explore the distinctive characteristics that define their nature and scope. These essential features provide a foundation for how human rights are recognized, interpreted, and applied in diverse contexts.

2.1.2. Essential Characteristics of Human Rights

Human rights possess distinctive characteristics that define their nature and scope. First and foremost, universality stands as perhaps the most fundamental characteristic, meaning that every human being possesses a series of rights irrespective of the country of birth or residence (Carpizo,

2003). This principle forms the essence of the Universal Declaration of Human Rights and the UN covenants of 1966.

However, universality does not imply uniformity. Hesse (1996) notes: the Constituent cannot overlook extralegal factors such as political evolution, culture, idiosyncrasy, and the characteristics and peculiarities of each nation. Thus, there exists a margin of national appreciation a concept developed in European human rights jurisprudence, particularly by the European Court of Human Rights (ECHR, Case Palomo Sánchez and Others v. Spain, Judgment of 12 Sept. 2011; ECtHR, Case Otto-Preminger Institut v. Austria, 1994; Case Wingrove v. United Kingdom, 1996), that allows for contextual application while maintaining universal principles. This universality emphasizes that human rights issues are not merely matters for each State but concerns of the international community. The State retains authority to incorporate each right into its constitution in the manner it deems most suitable, without violating international declarations and instruments it has ratified or the *jus cogens*.

Closely linked to the principle of universality is the notion of historicity which refers to three distinct aspects of human rights: (a) the evolution of civilization; (b) new problems, needs, and challenges; and (c) the social and cultural context of each country (Carpizo, 2003; Pirjola, 2005). The recognition of human rights and their content is, to a large extent, a result of universal history and civilization and, consequently, subject to evolution and modification (Johannessen, 2015). This characteristic acknowledges that human rights are not static but evolve with changing social conditions and emerging demands. The historical development of rights reflects humanity's growing consciousness of dignity and justice, responding to new forms of oppression and new possibilities for human flourishing.

Another defining feature is the indivisibility of human rights. The characteristic of indivisibility implies that all rights, whether civil, political, economic, social, cultural, or of solidarity, form a unity. Human rights are interdependent; they support each other to form a unified bloc (Whelan, 2010). The indivisibility characteristic differs from the issue of whether all rights have the same hierarchy, a tension (Meron, 1986) that will be explored further in subsequent sections. This principle was boldly proclaimed at the Vienna World Conference in 1993 (Tahvanainen, 2006), establishing that human rights cannot be fully realized in isolation from one another. The idea that

civil and political rights require economic and social conditions for their meaningful exercise, just as economic and social rights require civil and political freedoms for their achievement, forms the theoretical foundation of indivisibility. The indivisibility of rights reinforces the foundational principle of human dignity, which underlies and gives coherence to the entire system of rights.

Central to human rights is the concept of inherent dignity, which distinguishes and characterizes the person from other living beings, owing to their reason, will, freedom, equality, and historicity. From a legal perspective, human dignity is the foundation of the political, legal, and social order of a community, and its validity is ensured through the defense and protection of human rights of the most diverse nature, as recognized in constitutions and international instruments (Eide, 2001; Whelan, 2010). Human rights correspond to the person essentially, simultaneously in their corporeal, spiritual, and social aspects, and must be recognized and respected by all power, authority, and positive legal norms, yielding in their exercise only to the demands of the common good. These rights are inalienable, and they cannot be surrendered, transferred, or renounced, as they are intrinsic to human nature itself.

Furthermore, the characteristic of progressiveness implies that national, regional, and international conception and protection of rights are irreversibly expanding, both in terms of their number and content and the effectiveness of their control. It represents the impressive expansion of the concept and its content (Carpizo, 2003). The protective aspect ensures coverage of every human person, recognizing that even the most powerful may come to need protection (Nikken, 1989).

Finally, the principle of direct efficacy establishes that human rights enshrined in constitutional texts and ratified international treaties create immediate and binding obligations for all state actors and civil society, although this characteristic can create tensions with domestic traditions of the country (Wagnerova, 2005). This means that every branch of government (Executive, Legislative, Judicial) along with autonomous constitutional bodies, public authorities, private groups, and individual citizens, should respect, protect, and fulfill these rights from the moment of their constitutional recognition.

Crucially, this obligation exists independently of any implemented legislation. Even when a constitution explicitly calls for the creation of specific laws to regulate a particular right, the

absence of such legislation does not suspend or diminish the right's legal force (Nogueira, 2009). The constitutional guarantee itself provides sufficient legal basis for individuals to claim protection and for courts to enforce these rights directly, without waiting for legislative development or regulatory frameworks to be put in place.

Having established the foundations and essential characteristics of human rights, it is necessary to examine how these principles apply to specific rights. Particularly in the case of freedom of religion, as it embodies both the internal dimensions of human dignity and the external manifestations that often create tensions with other rights.

2.2. Freedom of Religion: Conceptual Dimensions

2.2.1 Definitional Parameters and Normative Scope

Freedom of religion is doctrinally understood as comprising internal and external dimensions, a distinction that shapes both the intensity of its protection and the limits of lawful state interference. Its normative scope also encompasses the question of whether and to what extent the right operates in individual or collective terms.

2.2.1.1. Internal Dimensions (Forum Internum)

The internal dimension, or forum internum, represents the most protected aspect of freedom of religion. According to Article 12 of the American Convention on Human Rights, this right encompasses the freedom to hold, change, profess, and disseminate one's religion or beliefs (IACHR, 2001). This internal sphere is foundational to democratic society, as it safeguards the convictions and moral autonomy of individuals.

The forum internum includes the absolute and unconditional right to profess and change religion (or not profess any), and the State cannot interfere with this internal sphere. The State must guarantee neutrality and impartiality, ensuring mutual tolerance and autonomy of religious denominations. As established by the European Court of Human Rights, the State cannot indoctrinate any religious belief (ECtHR, Case Kjeldsen, Busk Madsen and Pedersen v. Denmark, 1975), force anyone to manifest or make evident their religious choice (ECtHR, Case Sinan Işık

v. Turkey, 2010), or assess the legitimacy of religious beliefs (ECtHR, Case Eweida and Others v. United Kingdom, 2013).

2.2.1.2. External Manifestations (Forum Externum)

The external dimension of freedom of religion encompasses the right to manifest and practice religion through worship, teaching, practices, and the performance of rituals. This includes both individual and collective expressions of faith in public and private settings. Regarding this, Diez-Picazo (2021) notes, freedom of religion protects a legal good consisting of the rejection of all forms of coercion motivated by a professed religion or belief or by the absence of religion or beliefs, protecting both conscience and thought.

However, unlike the forum internum, external manifestations may be subject to limitations. These limitations must be prescribed by law and necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others (Article 9 of the ECHR). The balance between protecting religious expression and safeguarding other societal interests represents one of the most important complications in human rights jurisprudence.

2.2.1.3. Individual versus Collective Rights

Within the framework of the Inter-American System of Human Rights, the expression "Every person" in Article 12 of the American Convention appears to limit the holder of the right to individuals, as it cannot be interpreted otherwise according to Article 1.2 of the ACHR, which defines a person as every human being. However, the collective dimension of the right has been highlighted from various perspectives, such as the recognition of the right to legal personality for groups (Arlettaz, 2012).

This recognition takes into account the reality of the group and the need to protect vulnerable groups and cultural minorities whose rights are not guaranteed by the mere declaration of individual rights in the abstract (Arlettaz, 2012). The Inter-American Commission confirmed in an advisory opinion that legal entities do not have rights facing the Inter-American System, except for unions and indigenous peoples in certain specific cases (I/A Court H.R., Advisory Opinion OC-22/16). In the case of indigenous peoples, their identity and certain individual rights, such as

the right to property or territory, can only be exercised through the community to which they belong.

2.2.2. Normative Development of Freedom of Religion in International and Regional Human Rights Law

The normative development of freedom of religion illustrates how historical processes have shaped its current conceptual and legal contours. From the Peace of Westphalia to contemporary international treaties, shifts in political authority, religious tolerance, and state intervention have defined both the scope of protection and the balance between individual autonomy and collective regulation.

2.2.2.1. Historical Development from Westphalia to Present

Freedom of religion is historically renowned as the first recognized fundamental right due to its demand for tolerance during the reformation process sparked by crisis within Catholicism (Diez-Picazo, 2021). The evolution of this right from the Peace of Westphalia (1648) to contemporary international law reflects profound changes in how societies conceptualize the relationship between religious belief, individual autonomy, and state authority.

The protection of freedom of religion on an international scale has become extensive, as evidenced by its inclusion in Article 18 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Moreover, United Nations General Assembly Resolution 36/55 provides explicit support for this right through its declaration against all forms of intolerance or discrimination based upon religious conviction since 1981.

2.2.2.2. Regional Interpretations and Variations

The interpretation and application of freedom of religion varies significantly across regional human rights systems. In the Inter-American context, the OAS Charter contains the first mention of freedom of religion in the American region, declaring that individuals have certain rights regardless of their race, nationality, creed, or sex. The American Declaration on the Rights and Duties of Man adopts these principles and specifically acknowledges freedom of religion by stating that "Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private."

The American Convention on Human Rights reaffirms earlier declarations but also delves deeper into what constitutes freedom regarding religion while identifying restrictions placed upon States wishing to regulate this right thoroughly. This regional interpretation reflects the unique historical and cultural context of the Americas, particularly the influence of Catholic tradition and the growing religious pluralism in the region.

2.2.2.3. Intersection with Secularization Processes

The relationship between freedom of religion and secularization processes presents particular complications in Latin America. Secularization represents a ceaseless transformation where religious influence dwindles as technological progress and capitalist modernity advance (Mallimaci 2017; Casanova, 2010). This process significantly impacts on how freedom of religion is understood and implemented in contemporary societies.

While personal conscience and religious voluntarism serve as the foundation for individual liberty (Wood Jr., 1996), secularization necessitates that faith-based institutions either engage with or assimilate into ideological frameworks determined by both individuals and governments. This dynamic can result in increased animosity, discrimination, and intolerance toward religions unwilling to conform to this new reality, and this is an issue that persists despite efforts toward resolution (Zarandona, 2008).

Ivan Vallier (1970) proposed in his influential book *Catholicism, Social Control, and Modernization in Latin America*, that if the Catholic Church wants to maintain its influence over culture, society, and politics of Latin America, then it should abstain from political involvement. However, this viewpoint was confronted with practical obstacles posed by new trends such as liberation theology along with leftist movements formed within Catholicism. As Levine (2009) identifies, religion has witnessed an impactful transformation brought upon by three critical factors: violent characteristics, democracy reinstatement, and emergence of civil society.

Building upon these philosophical and historical foundations, it becomes evident that while broad theoretical reflections offer essential insight into the nature, scope, and evolution of human rights, a focused analytical lens is required to examine the structural dynamics and practical hierarchies at play within contemporary legal systems. The theoretical frameworks that follow, principally

Rawls's conception of justice and the hierarchical approach to rights, provide the conceptual tools necessary to interpret and assess how freedom of religion interacts with other fundamental rights in both principle and practice. Situating these frameworks within the context outlined above allows the discussion to move from abstract reflection to a structured theoretical basis for analyzing the normative tensions, interpretive choices, and juridical reasoning that define the functioning of human rights hierarchies.

2.3. Rawlsian Theory of Justice and Rights

2.3.1 Foundational Principles of Justice as Fairness

Rawls's theory of justice offers a structured approach to evaluating how societies can protect fundamental rights while ensuring fairness. This framework, grounded in the principles of justice as fairness, provides the analytical tools to examine both individual liberties and the broader normative ordering of rights. The following sections introduce the foundational concepts of Rawls's model, setting the stage for its application to freedom of religion conflicts in diverse social and institutional contexts.

2.3.1.1. The Original Position and Veil of Ignorance

The original position constitutes Rawls's seminal thought experiment for determining the principles that should govern a just society. In this hypothetical scenario, individuals design the basic structure of society without knowledge of their own place within it, ensuring impartiality and fairness. Campbell (2002) emphasizes that participants are positioned symmetrically with respect to one another, highlighting the foundational equality inherent in the thought experiment.

Central to this framework is the veil of ignorance, which precludes individuals from knowing their personal characteristics, moral values, or social standing. As Bielefeldt (2017) clarifies, the veil of ignorance does not abstract from all contextual factors but serves to eliminate egoistic interests and biases that could distort judgments of justice. By ensuring that no one can tailor principles to their own advantage, the veil guarantees that the resulting framework prioritizes fairness and protects the most vulnerable members of society.

Justice, in Rawls's conception, is the moral capacity to evaluate social arrangements, support these judgments with reasoned argument, act accordingly, and anticipate that others will do the same (Rawls, 1997). Within this structured hypothetical, the original position and the veil of ignorance jointly generate principles that rational actors would select to establish a just and impartial social order.

2.3.1.2. Priority of Liberty Principle

Rawls establishes two fundamental principles in lexical order, with the principle of liberty taking priority. According to Rawls (1997), a person enjoys or disposes of the principle of liberty when their actions or non-actions are protected from any interference by another person or group. This extends to freedom of conscience and belief, as individuals must be free of obstacles that prevent, limit, or determine the selection of their freedom of religion, political, or moral principles.

This principle supposes that each person in society should be guaranteed the freedom to achieve their own life plan while recognizing this privilege in other members of society. As Rawls (1997,) explains regarding freedom of religion: "But an understanding of religious obligation and of philosophical and moral first principles shows that we cannot expect others to acquiesce in inferior liberty. Much less can we ask them to recognize us as the proper interpreter of their religious duties or moral obligations."

The priority of liberty means that basic liberties can only be restricted for the sake of liberty itself. While Rawls deliberately avoids the term 'hierarchy,' he conceptualizes this priority through a 'lexical order' of principles (Rawls, 1971). For Rawls, this lexical order functions as a *de facto* hierarchy or a 'ranking of rights' (Rawls, 1971), requiring the satisfaction of the first principle (liberty) before moving to the second. This creates what Muller (2018) describes as a transcendental order rather than merely serial or logical. This theoretical framework provides a crucial foundation for analyzing whether a similar lexical ordering, or hierarchy, operates within the jurisprudence of the Inter-American Court.

2.3.1.3. Equality and Difference Principles

The principle of equality in Rawls's framework tells us that all parties have "equal value," possess the same characteristics, and are located equally in the veil of ignorance within the original position

(Rawls, 1971; Campbell, 2002). This principle establishes that people participating in the construction are equal in the sense that they all have the minimum properties necessary to be legal people, and their claims have the same force and validity.

Rawls frames the relationship between equality and liberty, emphasizing that equality must prevail to guarantee liberty (Rawls, 1997). While it may seem that freedom and equality are inherent aspects of liberal culture, their significance stems from centuries of development within specific historical contexts. They are not as contentious as the religious beliefs from which they likely originated would be overly optimistic (Trigg, 2012).

The difference principle allows inequalities only if they benefit the least advantaged members of society. This principle ensures that while perfect equality may not be achievable or even desirable, any departures from equality must work to improve the situation of those worst off. This framework provides a method for evaluating social arrangements and their impact on different groups within society.

2.3.2. Application to Freedom of Religion Conflicts

2.3.2.1. Lexical Ordering versus Contextual Balancing

In applying Rawls's theory to freedom of religion conflicts, the tension between lexical ordering and contextual balancing becomes apparent. While Rawls initially proposed a lexical approach where rights are satisfied in strict order, he acknowledges that a lexical approach does not seem very promising (Rawls, 1971). Instead, he suggests that a contextualized ordering makes sense to the extent that in certain social circumstances, a serial ordering of principles offers a solution to priority problems (Rawls, 1971).

When applied to freedom of religion, this framework suggests that while religious liberty holds fundamental importance, its exercise must be balanced against other basic liberties. The Inter-American region's approach to this balance reflects Rawls's insight that discrimination allowed by law destroys equality (Merriman, 2017). Rawls described self-respect (Pole, 1993) as perhaps the most important primary good (Rawls, 1997), and being unable to exercise one's religious beliefs or live according to one's conscience would seem to be the antithesis of that self-respect.

2.3.2.2. Public Reason and Religious Pluralism

Rawls's concept of public reason provides a framework for addressing religious pluralism in democratic societies. John Rawls wishes to distinguish between public standards of justification and private beliefs that citizens may happen to have (Trigg, 2005). This distinction becomes crucial when religious beliefs influence public policy and law.

In the context of religious pluralism, public reason requires that citizens and officials justify political decisions using reasons that all reasonable citizens could accept, regardless of their comprehensive religious or philosophical doctrines. This does not mean that religious citizens must abandon their beliefs but rather that they must translate their concerns into publicly accessible reasons when engaging in political discourse. Neutrality in this context does not imply cultural emptiness; rather, it refers to ensuring that the basic structure of the state and its laws and policies are not derived from or justified by religious beliefs (Cohen, 2016). This perspective aligns with Rawls's concept of a 'political conception of justice' that can be endorsed by citizens holding diverse comprehensive doctrines.

2.3.2.3. Critiques and Limitations

Despite its influence, Rawls's approach to freedom of religion faces several critiques. In his *Political Liberalism*, the problem of priority of liberties is still not based on the idea of hierarchy (Rawls, 2005). However, his idea of an 'Original Position' already presupposes principles such as equality, reciprocity, and consensus, which point towards a preliminary hierarchy of principles (Rawls, 2001).

Despite the appeal of Rawls's theory of public reason to foster democratic legitimacy in plural societies, a significant body of criticism highlights its limitations when confronted with deeply held religious worldviews. Critics argue that Rawls's demand to justify political positions in terms acceptable to "reasonable" citizens may disproportionately burden religious individuals whose convictions stem from an identity that is not easily segregated into secular public discourse (Dyer & Stuart, 2013; McIlroy, 2013).

Additionally, critics like Wolterstorff stress that for many believers, religion is not a private doctrine but a fully integrated way of living and asking them to compartmentalize their faith

undermines the authenticity of their participation (Wolterstorff, 1997). More recently, authors such as Morrow, Kabala, and Hartness (2023) have proposed a hybrid model that allows religious arguments to be voiced publicly before being translated into secular reasons, thereby reconciling public justification with the integrity of religious commitments. These critiques and alternative proposals enrich the theoretical lens of this thesis by highlighting the need for a more flexible conception of normative hierarchy, one capable of accommodating both the demands of justice and the particularities of faith.

Furthermore, the application of Rawlsian principles in the Inter-American context must account for the region's particular history of church-state relations and the ongoing influence of religious institutions in public life. The social reality and limits of dominant traditions in the Inter-American system make it important to develop and renew foundations of equality and liberty in social justice, reevaluate recognition and participation, and rebalance support for a progressive social model based on justice, especially concerning freedom of religion facing other human rights.

Applying Rawlsian principles to the Inter-American Court's jurisprudence illuminates both alignments and tensions. The Court's reasoning mirrors Rawls's priority of liberty by protecting freedoms even when it offends religious sensibilities (IACtHR, *Olmedo Bustos vs Chile*, 2001). The Court implicitly applies the original position test: behind the veil of ignorance, not knowing whether one would be religious or secular, Catholic or Protestant, orthodox or dissenting, rational actors would choose a system protecting diverse viewpoints over one enforcing religious orthodoxy through censorship (Rawls, 1971).

However, the Inter-American court jurisprudence (IACtHR, *Sandra Pavez vs Chile*, 2022) reveals also tensions with Rawls's framework. The Court's categorical subordination of religious institutional autonomy to individual equality claims suggests that behind the veil of ignorance, rational actors would always prioritize individual autonomy over communal religious identity. This assumption may not hold in Latin American contexts where religious community membership provides essential social support and meaning (Levine, 2009; Bastian, 2010). Rawls's later work in *Political Liberalism* recognizes that comprehensive doctrines, including religious worldviews, deserve accommodation within the overlapping consensus (Rawls, 2005).

Although Rawls's framework establishes a clear theoretical priority for liberty, the jurisprudence of the Inter-American Court demonstrates that, in practice, freedom of religion can be subordinated to principles such as equality and non-discrimination. This divergence highlights the contextual and sociopolitical factors that shape the application of rights in concrete cases, revealing the limits of purely abstract models and emphasizing the need to consider how normative principles interact with real-world institutional and societal dynamics.

The Court's exclusion of religious convictions as 'parameters of conventionality' (IACtHR, OC-24/17, 2017) highlights a tension with Rawls's nuanced framework, revealing that practical adjudication sometimes subordinates religious autonomy to equality claims. While Rawls provides a foundational approach for balancing rights, his model alone cannot fully account for the implicit hierarchies that emerge in practice. Recognizing these gaps underscores the need for a complementary theoretical lens. The following section introduces the theory of rights hierarchies, offering a framework to analyze how freedom of religion is positioned relative to other fundamental rights and how normative and institutional factors shape this dynamic within the Inter-American context.

2.4. Theoretical Approaches to Rights Hierarchy

Understanding how fundamental rights are prioritized is essential for analyzing conflicts where liberties intersect, such as freedom of religion versus equality claims. Theoretical approaches to rights hierarchy provide frameworks for assessing which rights may take precedence under different circumstances, offering both conceptual clarity and practical guidance for legal interpretation. The following subsections review key scholarly models and paradigms, ranging from fixed hierarchies to flexible and non-hierarchical arrangements, highlighting their relevance for judicial reasoning and normative analysis.

2.4.1 Scholarly Frameworks on Rights Prioritization

2.4.1.1. Liborio Hierro: Liberty Supremacy Theory

Liborio Hierro, drawing on Rawls's proposal on the ordering of principles of liberty and equality, argues that rights of liberty can only be restricted by other rights of liberty. Hierro (2001) posits that rights associated with liberty should have primacy, suggesting that considerations of equality

and security are subordinate. According to Hierro, in cases of conflict between rights, the exercise of individual liberty should not be unduly constrained by equality or security concerns.

This hierarchical arrangement implies that rights related to equality and security would be considered subordinate to rights of liberty in the event of a conflict. Hierro's framework reflects a strong libertarian approach to rights prioritization, emphasizing individual autonomy over collective considerations. This perspective has significant implications for how conflicts between freedom of religion and other rights might be resolved, as religious liberty would take precedence over equality-based claims in many circumstances.

2.4.1.2. Rubio Llorente: Protection Levels Framework

Building on Hierro's emphasis on liberty, Rubio Llorente expands the discussion by proposing criteria for systematically establishing a hierarchy among right. Rubio Llorente (2001) identifies three criteria for establishing a hierarchy of rights when analyzing constitutional rights: (a) differences in the level of protection, (b) differences in the statement of rights, and (c) possibilities of suspension of the application of a right. Applying these criteria to human rights suggests that rights enjoying higher levels of protection, clear articulation, and limited suspension may be recognized as core human rights.

Rubio further introduces a new criterion: the universality of the possession of the right. According to this criterion, the more widespread the possession of human rights, the greater its importance (Rubio-Llorente, 2001). This approach provides a structured method for identifying which rights should be considered most fundamental based on objective criteria rather than philosophical preference.

The protection levels framework offers a practical approach to rights hierarchy that can be applied across different legal systems. By examining how rights are protected in practice, through constitutional guarantees, judicial enforcement mechanisms, and limitations on governmental power to restrict them. This framework provides empirical grounding for hierarchical analysis. While Rubio Llorente offers a structured, general framework, Marks shifts the focus to emergency situations, highlighting which rights remain inviolable even under extreme conditions.

2.4.1.3. Marks: Emergency Rights Theory

Marks (1984) proposes a different approach by analyzing human rights in emergency situations. He identifies certain rights that must always be respected and cannot be suspended under any circumstances. In this framework, core human rights are those that cannot be suspended or restricted in practice, even during states of emergency or armed conflict.

This approach aligns with international human rights law's recognition of non-derogable rights. For instance, the American Convention on Human Rights, established in San José, Costa Rica, permits the suspension of certain rights during severe emergencies under Article 27. However, Article 27.2 explicitly identifies a core set of non-derogable rights that cannot be suspended, including the right to life, prohibition of torture, and freedom of conscience and religion.

As Klein (2008) emphasizes, "if a right is non-derogable, it must not be suspended during times of emergency, but may still be restricted as in normal circumstances, according to the principle of proportionality." The emergency rights theory thus provides a practical test for identifying which rights occupy the highest tier in any hierarchical system, those that remain inviolable even in the most extreme circumstances.

Constructing on the frameworks outlined by Hierro, Rubio Llorente, and Marks, it becomes clear that understanding rights prioritization requires moving from abstract principles to concrete models of organization. The following section explores these models, ranging from fixed hierarchies to flexible arrangements and non-hierarchical pluralism, highlighting how theoretical approaches are translated into practical judicial reasoning and decision-making within human rights systems.

2.4.2. Models of Hierarchical Organization

The conceptualization of rights hierarchies exposes the profound philosophical and juridical architecture underlying human freedoms. The relative weight, interdependence, and normative interplay of rights reveal the principles through which legal systems navigate conflicts, reconcile competing claims, and sustain the delicate equilibrium between individual autonomy and collective justice.

2.4.2.1. Fixed Hierarchy Paradigm (Shue, Farer)

The fixed hierarchy paradigm posits that there is a solid, unchanging hierarchy among human rights, with some rights having greater abstract weight than others. Henry Shue (1996) speaks of 'basic rights' in his empirical approach, focusing on fundamental human needs such as subsistence and security. Although he does not develop a philosophically grounded theory of hierarchy (Farer, 1992), Shue argues that violation of these basic rights directly affects all other human rights (Koji, 2001).

According to this argument, basic human needs described as human rights are less dependent than the rest of human rights, therefore suggesting human rights with a higher hierarchy (Shue, 1996). For example, it is argued that life and liberty are above all other rights, as their absence would imply the absence of almost all other rights. Recognizing a person's right to health or education would be ineffective without explicitly or implicitly recognizing their right to life.

This approach assumes that rights, as expressions of certain values, should be ordered according to the hierarchy of those values, as any theory of values would suppose (Ekmekdjian, 1985). Gillman (1994) considers that certain rights hold greater importance for the maintenance of a democratic system, aligning with the doctrine of preferred freedoms. This doctrine assumes that some rights are a necessary condition for the realization of others and therefore precede them in importance. However, Klein (2008) notes, it is likewise not conclusive to argue that some human rights are superior to others because they must not be restricted. The lack of limitation clauses indicates the scope of the right but does not say anything with regard to other rights and how to solve a possible conflict between them. The need for balancing them may still arise.

2.4.2.2. Flexible Hierarchy Approach (Alexy, Guastini)

A second position holds that although there may be hierarchies between rights, this hierarchy is not fixed but flexible. Rainer Forst (2007) starts with the idea that people are rational and dialogical beings whatever cultural differences there may be among them. Guastini (2011) indicates, such a hierarchy is not logical but axiological: it depends on the evaluations of the interpreter.

In this case, hierarchies depend on context and the way in which rights are presented by interpreters in concrete cases. This position is in palpable contradiction with the one that defends fixed

hierarchy of rights. Bin (2000) point at, what matters in a system of flexible hierarchies is the existence of a greater concrete weight of some rights over others in particular cases.

Robert Alexy (2008) provides the most systematic approach to flexible hierarchies through his famous "weight formula." In this formula, the relevant argument is that the specific weight of a principle is a relative weight, which will depend on the case in which this principle is applied and the weight, greater or lesser, the principle represents in that case. Even so, Alexy's formula links concrete weight to abstract weight (Alexy, 2003). This position, which aims to reconstruct the arithmetic of weighting, attributes numerical values to different principles according to the degree of intervention on a right with "serious," "average," or "moderate" valuation.

The flexible hierarchy approach acknowledges that the relative importance of rights can shift based on circumstances, cultural contexts, and the specific nature of conflicts that arise. This model reflects the reality of judicial decision-making, where courts must weigh competing rights claims in light of particular facts and social conditions.

2.4.2.3. Non-Hierarchical Pluralism (Equal Weight Theory)

A third position holds that there are no fixed hierarchies among rights, this means all rights are equal and have the same weight. This view is exemplified in Ecuador's 2008 Constitution, article 11, no. 6, which explicitly states the equal hierarchy of all constitutional rights. According to Perez Royo (2007), the rule must be interpreted in such a way that the sacrifice of a right or value for the sake of another right or value does not occur.

This approach emphasizes seeking balance and putting rights in agreement (Guastini, 2010). The argumentation of equal hierarchy tells us that all provisions of a right under the same normative body correspond to the same weight and hierarchy, and this argument would be more valid when discussing human rights (Oyarte, 2006).

The principle of indivisibility of human rights, recognized in legal doctrine and international documents of the United Nations, supports this non-hierarchical view. In this regard, Garcia-Manrique (2001) argues: human rights form a unique framework at the service of individual self-determination; any piece of the framework is necessary for such self-determination, and only the whole could be considered sufficient. If we prioritize certain rights over others, we promote the

self-determination of some individuals while undermining that of others, which is incompatible with the egalitarian presupposition underlying any theory of human rights.

However, there are arguments that can raise a hierarchy between human rights for reasons of origin, nature, enforceability, and non-derogability (Van Boven, 1984). It is misleading to assert that indivisibility of human rights determines "equality" between all of them and that there is no predominance, hierarchy, or at least priorities between human rights (Van Boven, 1984). For those who use hierarchical mechanisms, there is the conviction that they will always end up configuring criteria that will define hierarchy with greater or lesser difficulty depending on the case. It can be difficult to search for scales and comparisons in some cases, but in others it is easy, and it is always possible (Bidart, 1991).

While theoretical models of hierarchical organization offer distinct frameworks for understanding the relative weight of rights, their practical significance emerges only through the operationalization of these concepts within international law. Fixed, flexible, and non-hierarchical approaches inform the ways legal systems categorize rights, determine their enforceability, and resolve conflicts among competing claims. These operational distinctions illuminate how abstract principles translate into concrete legal norms and institutional practices, providing a foundation for analyzing the normative status and implementation of rights.

2.5. Legal Categorization and Normative Status

2.5.1 Operational Classifications in International Law

2.5.1.1. Negative and Positive Rights Implementation

The distinction between negative and positive rights emerged primarily in the mid-20th century, during the development of international human rights law. This period was marked by a strong emphasis on civil and political rights, often framed as protection from state interference. These rights, such as freedom of speech, religion, and assembly, were seen as essential for individual liberty and democratic governance.

The traditional categorization of human rights into negative and positive rights, while historically useful, has limitations in capturing the complex and interconnected nature of these rights. Negative

rights, frequently associated with civil and political liberties, are generally construed as protections from state interference, such as the right to life, liberty, or freedom of expression. Positive rights, typically linked to economic, social, and cultural entitlements, concern the provision of services or resources, including education, healthcare, or housing.

As Dumitrache (2016) notes, the dichotomy persists in legal doctrine but does not adequately reflect the empirical reality that many rights require both state action and restraint. For instance, safeguarding civil and political liberties often demands positive measures, such as establishing judicial institutions or guaranteeing due process. Conversely, economic and social rights also entail negative obligations, such as preventing forced evictions or arbitrary dismissal. Chauffour (2011), in his analysis of freedom and development, similarly emphasizes that the distinction between freedoms from interference and freedoms to access essential goods becomes increasingly blurred in contemporary governance. According to his findings, both dimensions of rights shape individual agency and social opportunity, challenging a rigid conceptual separation between negative and positive rights.

However, this binary framework oversimplifies the intricate relationship between different types of rights. Sen (1999) argues that capabilities, or the freedom to achieve certain valued functioning, are essential for human flourishing. This perspective underscores the interdependence of various rights, as the ability to exercise one right often depends on the realization of others. For instance, the right to freedom of expression is meaningless without access to education, which equips individuals with the knowledge and skills to participate effectively in public discourse.

Moreover, the distinction between negative and positive rights can obscure the state's role in protecting and promoting both types of rights. While negative rights may appear to require solely abstention from interference, effective protection often necessitates positive state action. For example, ensuring the right to life involves not only criminalizing homicide but also providing access to healthcare, public safety, and social services. Similarly, the realization of positive rights demands not only the provision of goods and services but also the establishment of enabling environments and the protection of related freedoms.

2.5.1.2. Derogable versus Non-Derogable Rights (Article 27 ACHR)

In international human rights covenants and conventions, a distinction is drawn between rights that can be suspended under certain circumstances and those that are non-derogable. This differentiation suggests a hierarchy among human rights. The American Convention on Human Rights permits the suspension of certain rights during severe emergencies under Article 27. However, Article 27.2 explicitly identifies a core set of non-derogable rights that cannot be suspended, even in emergencies. This distinction does not simply reflect textual differences within treaties; it also delineates varying levels of protection that determine how rights operate during exceptional circumstances.

Klein (2008) notes that non-derogable rights retain their binding force even during states of emergency, and that any limitations applied to them must still conform to ordinary proportionality standards. He further explains that suspending such rights would either fail to address the emergency effectively, constitute a disproportionate response, or undermine foundational values recognized by the international community. This framework offers a structured lens for analyzing the prioritization of rights by clarifying the balance between absolute protection and permissible limitations. The examination of emergency rights reveals how hierarchical considerations materialize within human rights systems and demonstrates the interdependence of different rights. Proportionality therefore emerges as a central analytical tool to assess when restrictions are justified, providing conceptual and practical guidance without predetermining judicial outcomes.

While the majority of non-derogable rights belong to the first generation of rights, it is important to note that not all rights within this category enjoy this protection. Some second-generation rights also possess non-derogable characteristics, particularly those concerning life and physical integrity, such as healthcare and housing. Although these rights are not always explicitly designated as non-derogable within treaty texts, their essential components, often understood through minimum core obligations, are treated in practice as indispensable for safeguarding human dignity. Thus, non-derogable rights reflect a differentiation, prioritization, or hierarchy among rights that are fully protected within the human rights system. These could be termed elementary or suprapositive rights within a democratic state of law (Van Boven, 1984).

A similar distinction exists in Article 3 common to the Geneva Conventions of 1949, which is part of international humanitarian law (IHL). Among these norms are the grave breaches of IHL outlined in the 1949 Geneva Conventions, specifically in Articles 50, 51, 130, and 147 of the First, Second, Third, and Fourth Geneva Conventions, respectively. These articles codify serious violations such as willful killing, torture, and inhumane treatment of individuals protected under IHL (Nnawulezi and Magashi, 2023). This correspondence between non-derogable human rights and the core protections of IHL illustrates how both regimes establish a minimum and inviolable standard that applies even under the most extreme conditions.

Furthermore, the convergence of IHL with international human rights law strengthens the overall legal framework for protecting vulnerable populations, including civilians, children, and survivors of sexual violence (Orzeszyna, 2023). International resolutions and declarations consistently reaffirm the principle that these core rights and protections must be upheld under all circumstances, solidifying their non-derogable status (Radhakrishnan et al., 2017; Casey-Maslen and Vestner, 2022). Taken together, these norms and doctrinal interpretations demonstrate that non-derogability functions as a key instrument for identifying the essential core of rights protection in contemporary international law, and they also reinforce the normative hierarchy that applies even in exceptional circumstances.

2.5.1.3. Immediate versus Progressive Realization

Building on the preceding discussion on derogability and the nature of state obligations, the classical distinction between immediate civil and political rights and progressively realized economic, social and cultural rights further illustrates the differentiated structures within international human rights law.

This distinction consists in the affirmation that while civil and political rights have an immediate application, economic, social and cultural rights are subject to progressivity (Tasioulas, 2017). This understanding translates into rights of a programmatic nature, whose concrete application depends on a certain gradualness and the development of public policies and subsequent legislative decisions that ensure the viability and effective realization of the right. This differentiation between immediacy and gradual implementation has historically influenced the interpretation of both categories of rights within international law.

From the conceptual and historical point of view, such a distinction appears valid. While the concrete validity of civil and political rights would require the abstention of the State to guarantee the application and existence of autonomous individual and personal spheres, understood as rights against the State, the development of economic, social and cultural rights imposes on the State a corresponding obligation to act. This obligation consists of creating the material conditions that make the realization and satisfaction of these rights possible. Although classical doctrine framed this contrast as a defining difference in the nature of obligations, contemporary scholarship has shown that civil and political rights also require positive measures for their effective protection, and that economic, social and cultural rights likewise entail negative obligations. Nonetheless, the traditional distinction remains a useful analytical point of departure for understanding the evolution and implementation of these rights.

In his work *The International Covenant on Economic, Social and Cultural Rights: Travaux Préparatoires*, Asbjørn Eide (2001) emphasizes the active nature of the obligations attached to economic, social and cultural rights. He states: "In contrast to civil and political rights, the rights enshrined in the International Covenant on Economic, Social and Cultural Rights impose on States Parties the obligation to undertake positive action in order to promote and protect these rights." This observation underscores the centrality of state initiative, institutional capacity and resource allocation in giving concrete effect to such rights.

The seminal work *The International Bill of Rights: The Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights* by Louis Henkin (1981) offers a comprehensive analysis of these differentiated obligations. The authors emphasize that economic, social and cultural rights require affirmative action from the State in order to create enabling conditions for their realization. Within this framework, the Committee on Economic, Social and Cultural Rights provides a foundational interpretation in its General Comment No. 3. The Committee states: "The obligation to take steps to achieve progressively the full realization of economic, social and cultural rights is a core obligation of the Covenant," highlighting the continuous and forward-moving nature of these obligations (Committee on Economic, Social and Cultural Rights, 1990). This interpretation affirms that progressivity is not a permissive standard but a binding requirement that commits States to sustained, deliberate and measurable efforts to ensure the effective enjoyment of economic, social and cultural rights.

2.5.1.4. Basic Needs and Minimum Core Obligations

Another approach is based on basic human needs. This analysis tells us that the effectiveness of all human rights requires the fulfillment and guarantee of basic human needs (Koji, 2001), because human rights cannot be guaranteed without first guaranteeing basic human needs such as health, life, and food. Therefore, we face the problem of recognizing which are the basic human needs, and sometimes it is at the discretion of societies to include more needs. This perspective introduces an additional layer of complexity to the interpretation of rights because identifying essential needs and determining their scope is a socially and historically contingent process.

Basic human needs are born from the thought of humanity, and their mission is to dynamize societies in favor of their existence and harmony. According to Sosa (2015), the non-satisfaction of these basic needs places the existence of the human being at risk, so we should not confuse these needs with desires or preferences, because satisfying them is the main prerequisite to satisfy other human rights objectives such as equality and freedom. This observation reinforces the idea that basic needs constitute a foundational platform for the realization of the broader human rights framework.

Grassetti (2018), following the theoretical approach proposed by Maslow (1954), states that the most basic needs are defective, and they are constituted by a lack in society and must be satisfied to avoid an undesirable situation. If we apply this idea to the area of satisfaction related to human rights, the most basic human needs are measurable with compliance indicators that are absolute in terms of compliance and non-compliance. They are human needs that are measurable according to the result in terms of the impact of the public policies of the States, since they can only be satisfied by the specific conditions of these rights. This suggests that the fulfillment of basic needs can be evaluated through concrete indicators, which provides a methodological tool for assessing the effectiveness of state action in ensuring the material conditions required for the realization of human rights.

2.5.2. Hierarchical Legal Status

2.5.2.1. Jus Cogens

When we attempt to explain the normative foundation of jus cogens, we refer to Article 53 of the Vienna Convention on the Law of Treaties of 1969, establishing that a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Analyzing the Vienna convention, we could derive at least four characteristics of the norms of jus cogens: they belong to general international law; they are accepted and recognized by the international community as a whole (Trindade, 2003, AO 18/03), as norms that do not admit agreement to the contrary, which means, they are non-derogable norms; they can only be modified by rules of the same character.

As noted by Klein (2008), certain treaty provisions are considered non-derogable, meaning they cannot be altered through reservations. These provisions often embody fundamental principles of international law. Jus cogens norms represent the apex of this hierarchy. In essence, jus cogens norms establish minimum standards of behavior for states and cannot be overridden by treaty stipulations, including through reservations.

One could ask whether it is possible to invoke jus cogens to portray higher norms of human rights (Dugard, 2006). Many international bodies and courts on the universal and regional level as well as lawyers have accepted the concept without clearly pronouncing on the conceptual derivation. Usually, the finding boils down to remarks on human conscience, the link between law and ethics, or the necessarily value-oriented approach of law.

2.5.2.2. Treaty-Based versus Customary Rights

In addressing the relationship between jus cogens and human rights, we must consider the distinction between treaty-based and customary rights. Article 53 of the 1969 Vienna Convention

on the Law of Treaties does not specify about human rights and does not establish what these rights are "Jus cogens" (Schwelb, 2017). Likewise, other authors point out that article 53, is an incomplete definition that focuses on the consequences derived from the imperative nature of a right in cases of collision with a conventional international right (Cebada, 2002). In this regard, jus cogens have not been precisely defined in international law (Villan, 2002).

Most human rights are treaty-based. However, there is broad agreement that at least some of these rights also have a parallel foundation in customary law and general principles of law. These rights might better qualify as peremptory norms, yet no definitive conclusion can be drawn solely from their legal sources. The sources of international law, such as treaties, customary law, and general principles, are considered equivalent (Dupuy, 1995).

The Human Rights Committee expressly affirms that the prohibition of torture and arbitrary deprivation of life are norms of jus cogens (General Comment No. 24), as well as the right to minimum procedural guarantees, especially the right to presumption of innocence (General Comment No. 29). The Inter-American Court of Human Rights has indicated within its jurisprudence, both contentious and advisory, that several norms for the protection of human rights have the character of jus cogens, such as access to justice, called by this court right to right. The Inter-American Commission on Human Rights, in the Michael Domingues v. United States case (IACtHR, 2002), affirmed that there was a jus cogens right that prohibited the application of the death penalty for crimes committed by minors (paragraph 5).

2.5.2.3. Regional Variations in Normative Priority

The human rights guaranteed in a treaty create obligations among all states parties which may claim their respect in relation to each other; they are obligations erga omnes. There might be some human rights which are truly valid erga omnes, obligating all states, and, perhaps, all members of the international community (Ragazzi, 1997). Based on that we can say that human rights are inherent to all individuals by virtue of their humanity, regardless of whether a state is a party to a particular treaty or not.

It can be confirmed that, for the moment, the human rights group, in the jus cogens concept, would include the prohibition of arbitrary deprivation of life, physical and moral integrity, the prohibition

of slavery and servitude, the prohibition of torture and other treatment or inhuman or degrading penalties, and the right to due process are part of this common minimum aspiration. Other rights, such as the right to nationality, freedom of movement, the right to property, and the right to seek asylum, cannot be considered universally binding, since the States have not expressed their political will in this regard (Villan, 2002).

Article 40 of the 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts highlights the notion of serious violations and aggravated responsibility, emphasizing the significance of peremptory norms in the context of state responsibility. Jus cogens norms represent a cornerstone of international law, reflecting fundamental values upheld by the global community.

But jus cogens norms are not only prohibitions; it is essential to recognize that they also encompass positive obligations. These positive obligations require states to take proactive measures to ensure the protection and fulfillment of fundamental human rights, including implementing legislative and administrative measures, investigating and prosecuting violations, and providing effective remedies to victims.

The diverse theoretical perspectives and legal categorizations examined thus far require integration to create a coherent analytical framework. This synthesis must bridge philosophical ideals with practical legal requirements while remaining sensitive to the specific context and institutional frameworks of the Inter-American human rights system.

2.6. Integrated Analytical Framework

2.6.1. Synthesis of Theoretical Perspectives

2.6.1.1. Reconciling Rawls with Hierarchy Theories

The integration of Rawls' principles of justice with theories of human rights hierarchy provides a sophisticated framework for analyzing the Inter-American system. While Rawls avoids the notion of a rigid 'hierarchy,' his concept of lexical ordering offers valuable insights into how rights might be prioritized. Rawls's ordering is transcendental in nature, reconstructing the principles that make the realization of subsequent rights possible (Muller, 2018).

This transcendental ordering aligns with hierarchy theories, which recognize that certain rights establish the conditions necessary for exercising others. The combination of these perspectives suggests that, although all human rights are inherently valuable, practical adjudication requires principled methods for resolving conflicts. Rawls's emphasis on protecting the most vulnerable complements hierarchy approaches that prioritize rights essential to human dignity, autonomy, and survival.

The Inter-American system embodies this synthesis. The Court has recognized that freedom of conscience and religion protects both the inner convictions of individuals and their outward practice, framing it as necessary for a democratic society (IACHR, 2001). This positioning places freedom of religion among the system's core rights while acknowledging that it may, in specific circumstances, come into tension with other fundamental rights. By conceptualizing freedom of religion in this way, the Court underscores the importance of balancing competing interests without automatically privileging one over another.

2.6.1.2. Bridging Philosophy and Legal Practice

The gap between philosophical ideals and legal practice presents ongoing risks for human rights implementation. Ideologically, the indivisibility of human rights is defined, but in practice, it is difficult for human rights to constitute an integral concept and maintain a relative interdependence (Van Boven, 1984).

This bridge requires acknowledging that while philosophical foundations provide normative guidance, legal systems must develop practical mechanisms for rights adjudication. The Inter-American Court's jurisprudence demonstrates this bridging function. The theoretical frameworks of Hierro, Rubio Llorente, and Marks offer different approaches to this bridging function. Each provides criteria for making philosophical principles operational in legal contexts. The synthesis of these approaches suggests that effective human rights protection requires both clear normative foundations and flexible implementation mechanisms responsive to contextual factors.

2.6.1.3. Addressing the Indivisibility Paradox

The principle of indivisibility creates a paradox when confronted with practical necessity of resolving rights conflicts. The need for balancing them may still arise even when rights are

considered indivisible (Klein, 2008). This paradox is not merely theoretical. The Inter-American Commission has noted that the principle of indivisibility of human rights is based on the assumption that there are not hierarchies of human rights, and if a conflict happens, it can only be a minor conflict, that through the dispute resolution method, will disappear (Macdonald, 2001). Yet experience shows that conflicts between rights can be profound and persistent.

The integrated framework addresses this paradox by recognizing that indivisibility operates at the level of human dignity and conceptual unity while practical implementation requires contextual prioritization. This approach maintains the normative ideal of indivisibility while providing tools for principled decision-making in concrete cases. As Comment No. 3 of the Committee on Economic, Social and Cultural Rights (1999) demonstrates, even while emphasizing indivisibility, minimum core obligations such as ensuring access to essential foodstuffs must be identified.

2.6.2. Methodological Application to the Inter-American System

2.6.2.1. Regional Specificities and Cultural Context

The Inter-American system operates within a unique regional context shaped by specific historical, cultural, and political factors. Latin America is a mosaic of countries with common traits but also differences. Within the first, language and religion stand out (Berg, 2011; Barrantes-Montero, 2017). This linguistic uniformity, extending from the southern United States to Patagonia with few exceptions, reflects a shared cultural identity (Lobera, 2021).

The religious substrate marks another common identifying trait. Latin America traditionally had a consistent Catholic majority, and Catholicism was for long the official religion of almost all states. The predominantly Catholic heritage has historically shaped the region's approach to freedom of religion. While religious homogeneity once characterized most Latin American nations, contemporary demographic shifts reveal growing diversity. According to Pew Research Center (2025), Catholic identification has declined from 92% in 1970 to approximately 69% in 2020, while evangelical Protestantism has grown to 19% of the population. This transformation, coupled with increasing religious disaffiliation and the persistent presence of indigenous spiritual traditions, has created unprecedented pluralism.

Despite this diversification, the Catholic Church continues to occupy a privileged position in many national contexts, reflected in concordats, constitutional references, and cultural hegemony (Vaggione, 2018; Thorsen, 2023). The Catholic base continues to mark societies, including in legal documents, and in all countries, the Catholic Church maintains, in fact and often in law, a predominant presence. This duality between formal secularism and practical Catholic dominance creates distinctive tensions when freedom of religion conflicts with emerging rights claims, particularly regarding gender equality, sexual orientation, and reproductive autonomy. The Inter-American Court operates within this complex landscape, navigating between traditional religious influence and evolving human rights norms.

This context shapes how the theoretical framework applies to the Inter-American system. The historical confrontation between liberal ideology, often anticlerical, and conservative forces close to the Church has varied in intensity across countries. In some, like Mexico and Colombia, confrontation was intense, while in others, like Argentina and Uruguay, it remained primarily political (Mabat, 2019). These historical confrontations continue to influence contemporary approaches to freedom of religion and its interaction with emerging rights claims.

2.6.2.2. Framework for Jurisprudential Analysis

The methodological framework for analyzing Inter-American jurisprudence must account for the system's distinctive features. The Inter-American Court has developed what we can describe as judicial activism, going beyond specific issues to establish broad rules shaping regional human rights standards. The Court has also promoted the doctrine of control of conventionality, urging states to align domestic laws with international obligations.

This framework recognizes that the Inter-American system's jurisprudence reflects both universal human rights principles and regional particularities. Analysis must consider how the Court balances competing rights while respecting cultural contexts. The framework also acknowledges institutional factors. As both political and administrative as well as judicial authorities of signatory states are obligated to screen decisions through conventionality control (Articles 1.1 and 2 ACHR), the framework must analyze how different institutional actors interpret and apply human rights norms.

2.6.2.3. Parameters for Case Study Evaluation

The parameters for evaluating case studies within this framework include several key elements. First, the identification of rights in conflict and their respective normative foundations within the Inter-American system. This requires examining not only the American Convention but also advisory opinions, commission reports, and related instruments.

Second, analysis of how the Court or Commission characterizes the nature and scope of conflicting rights. As seen in *Sandra Pavez vs. Chile* (IACHR, 2021), the characterization of discrimination based on sexual orientation as violating fundamental rights shapes how conflicts with freedom of religion are resolved.

Third, examination of the reasoning employed to resolve conflicts, including whether the adjudicative body applies fixed hierarchies, flexible balancing, or attempts to harmonize rights without explicit prioritization. The Court's approach in different cases reveals patterns in how certain rights receive priority in specific contexts.

Fourth, consideration of remedial measures and their implications for the hierarchical relationship between rights. The types of remedies ordered, whether requiring constitutional amendments, legislative changes, or policy modifications, indicate the relative weight given to different rights.

Finally, evaluation must consider the broader societal impact of decisions, particularly on vulnerable groups identified in the research: youth, women, LGBTIQ+ communities, indigenous peoples, and religious minorities. This parameter connects legal analysis with social reality, assessing how theoretical hierarchies translate into lived experiences of rights protection or violation.

These parameters enable systematic analysis while remaining sensitive to contextual factors that shape rights adjudication in the Inter-American system. They provide a structured approach for examining how the theoretical framework operates in practice while identifying patterns that reveal implicit or explicit hierarchies among rights.

CHAPTER 3: COMPARATIVE ANALYSIS OF FREEDOM OF RELIGION PROTECTION REGIMES

Having established the theoretical foundations for understanding rights hierarchies, this chapter situates that framework within the global and regional landscape of freedom of religion protection. It undertakes a comparative analysis of international and regional mechanisms, tracing how different systems address the inherent tensions between religious liberty and other fundamental rights. Beginning with the universal framework articulated in the ICCPR and clarified in General Comment No. 22, the discussion moves to regional regimes whose approaches reflect distinct cultural, historical, and legal traditions. By examining the European, African, Islamic, and ASEAN approaches, this chapter highlights the diversity of methodologies for balancing competing rights, the variations in judicial reasoning, and the ways in which regional traditions shape freedom of religion protection.

3.1. International Legal Standards

The evolution of international legal standards for freedom of religion represents a progressive expansion from basic recognition to comprehensive protection mechanisms. This development reflects not merely chronological advancement but a deepening understanding of the multifaceted aspects inherent in protecting religious liberty within pluralistic societies.

3.1.1. Evolution of Normative Protection in International Instruments

The international protection of freedom of religion has undergone significant transformation since the mid-twentieth century. The Universal Declaration of Human Rights (UDHR) established the foundational framework in 1948, with Article 18 proclaiming that "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance" (UDHR, 1948). This formulation represented a watershed moment, establishing freedom of religion as a universal human right rather than a privilege granted by states.

The subsequent development of binding treaty law marked a crucial evolution. The International Covenant on Civil and Political Rights (ICCPR) of 1966 expanded upon the UDHR's foundation, adding critical provisions regarding limitations and the protection of children's rights. Article 18 of the ICCPR not only reaffirmed the right to freedom of thought, conscience, and religion but also specified that "the freedom to manifest one's religion or beliefs may be subject only to limitations prescribed by law and necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others" (ICCPR, 1966). This articulation of permissible limitations introduced a framework for balancing freedom of religion with other societal interests that would profoundly influence subsequent jurisprudence.

The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief further refined the normative framework by detailing specific manifestations of freedom of religion. Article 1 asserts the freedom to have a religion or belief of one's choice and to manifest it in public or private, while Article 3 condemns discrimination on grounds of religion as a violation of human rights (UN, 1981). This declaration notably enumerated related freedoms, providing greater clarity about the scope of religious liberty and establishing explicit connections between freedom of religion and non-discrimination principles.

3.1.2. United Nations Framework and Treaty Bodies

The United Nations treaty body system has developed extensive interpretative guidance on freedom of religion through its monitoring mechanisms. The Human Rights Committee, established under the ICCPR, has played a particularly significant role in clarifying state obligations regarding freedom of religion (Human Rights Committee, 1993/1994). Through its examination of state reports and individual communications, the Committee has addressed challenging issues including the relationship between freedom of religion and conscientious objection, the scope of permissible limitations, and the protection of religious minorities (United Nations, 1981; CCPR Centre, 2020).

The Committee on Economic, Social and Cultural Rights has contributed to understanding freedom of religion's relationship with socio-economic rights. Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) establishes that education should promote understanding, tolerance, and friendship among all racial, ethnic, or religious groups,

while recognizing parents' rights to ensure their children's religious and moral education in conformity with their own convictions (ICESCR, 1966). This intersection of educational rights and freedom of religion has proven particularly significant in addressing conflicts over religious education in public schools and the rights of religious minorities to establish educational institutions.

The Convention on the Rights of the Child (CRC) introduced important considerations regarding children's freedom of religion. Article 14 recognizes the child's right to freedom of thought, conscience, and religion while acknowledging parental guidance rights, creating a framework for balancing children's autonomy with parental authority (CRC, 1989). Article 29 emphasizes that education should develop respect for the child's parents, cultural identity, language, and values, as well as for civilizations different from the child's own, establishing a framework that respects both individual freedom of religion and cultural diversity.

3.1.3. General Comment No. 22: Interpretative Authority and Implementation

General Comment No. 22, issued by the Human Rights Committee in 1993, represents the most authoritative interpretation of Article 18 of the ICCPR. The Comment emphasizes the profound and far-reaching nature of freedom of thought, conscience, and religion, noting that these freedoms protect theistic, non-theistic, and atheistic beliefs, as well as the right not to profess any religion or belief (Human Rights Committee, 1993). This broad interpretation ensures protection extends beyond traditional religious expressions to encompass diverse forms of conscience and belief.

The Comment establishes crucial distinctions between the *forum internum* and *forum externum* of freedom of religion (Human Rights Committee, 1993; Petkoff, 2012). The freedom to have or adopt a religion or belief (*forum internum*) is characterized as absolute and non-derogable, permitting no limitations whatsoever (Human Rights Committee, 1993; du Plessis & Nel, 2021). In contrast, the freedom to manifest religion or belief (*forum externum*) may be subject to limitations, but only those prescribed by law and necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others (Human Rights Committee, 1993). The Committee emphasizes that limitations must be directly related and proportionate to the specific need on which they are predicated and must not be imposed for discriminatory purposes or applied in a discriminatory manner (Human Rights Committee, 1993; Petkoff, 2012).

Regarding conscientious objection, the Comment notes that while the Covenant does not explicitly refer to a right of conscientious objection, such a right can be derived from Article 18, since the obligation to use lethal force may seriously conflict with freedom of conscience and the right to manifest one's religion or belief. This interpretation has influenced numerous national legal systems and regional human rights mechanisms in their approach to conscientious objection.

3.1.4. Emerging Trends in International Jurisprudence

Contemporary international jurisprudence reveals several significant trends in the protection of freedom of religion. The increasing recognition of corporate or collective religious rights alongside individual rights represents a notable development (Evans, 2025). While traditional human rights frameworks focused primarily on individual liberty, there is growing acknowledgment that religious communities possess certain collective rights essential for the full realization of individual freedom of religion. This evolution reflects the communal nature of many religious practices and the importance of religious institutions in facilitating individual worship.

The intersection of freedom of religion with gender equality and LGBTIQ+ rights has emerged as a particularly contentious area. International bodies increasingly emphasize that freedom of religion cannot justify discrimination against women or sexual minorities, while simultaneously recognizing the need to respect religious communities' doctrinal autonomy. The Human Rights Committee has stated that restrictions on freedom of religion cannot be justified by reference to traditions alone and that states must ensure religious practices do not violate women's rights to equality and non-discrimination (Human Rights Committee, 1993).

The protection of religious minorities has received heightened attention, particularly in contexts of religious extremism and sectarian violence. The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities mandates states to protect the existence and identity of religious minorities and to encourage conditions for the promotion of that identity (UN, 1992). This framework emphasizes not merely tolerance but active protection and promotion of religious diversity.

Having examined the global framework for freedom of religion, including the normative provisions of the ICCPR, General Comment No. 22, and relevant UN treaty bodies, it is now

essential to consider how these principles are interpreted and applied within regional human rights systems. Each regional regime reflects its own historical, cultural, and legal particularities, which shape both the scope of freedom of religion and the methods for balancing it with other fundamental rights.

3.2. Regional Protection Mechanisms: Comparative Perspectives

Regional human rights systems articulate distinct understandings of freedom of religion that reflect their particular legal cultures, institutional structures, and social environments. These frameworks do not merely transpose universal norms but reinterpret and operationalize them according to regionally specific concerns, including the relationship between religion and the state, the role of tradition, the weight of collective identity, and the nature of pluralism. Examining these regional approaches allows for a clearer appreciation of the conceptual diversity that underlies the protection of religious liberty across different human rights regimes.

3.2.1. European Human Rights System: Normative Framework and Jurisprudential Trends

The European human rights framework, built upon the European Convention on Human Rights (1950), provides the most comprehensive and refined jurisprudence on freedom of religion among regional systems. Article 9 articulates a two-tiered structure that protects both the internal forum (*forum internum*) and the external manifestation of belief (*forum externum*), a distinction that has deeply shaped the Court's doctrinal development. The European Court of Human Rights (ECtHR) has elaborated this distinction through a substantial body of case law touching nearly every aspect of religious life in democratic societies.

A central doctrinal pillar of the European system is the margin of appreciation. This doctrine grants states a measure of discretion in regulating religious matters, acknowledging that religious diversity, historical traditions, and models of state–religion relations vary considerably across Europe (ECtHR, *Palomo Sánchez and Others v. Spain*, 2011). The Court's flexible application of this doctrine has allowed it to validate divergent national policies on religious symbols in schools, state neutrality, religious education, and the public role of religion. The Court's decisions in *Leyla Şahin v. Turkey* (2005) and *Dahlab v. Switzerland* (2001) illustrate how the margin of appreciation

accommodates restrictive approaches to religious dress when linked to concerns about gender equality, secularism, or institutional neutrality.

The evolution of the Court's understanding of religious autonomy represents another significant development. Although early cases confined protection primarily to individual rights, the Court later affirmed that religious communities may themselves be considered victims when state actions impede their ability to govern internal affairs, select leaders, or transmit doctrine. *Fernández Martínez v. Spain* (2014) stands as a key example, recognizing that interference with a religious institution's internal decision-making can undermine the pluralism essential to equal societies.

European jurisprudence has also expanded the scope of protected religious manifestations. The Court initially resisted recognizing conscientious objection under Article 9, but a shift occurred with *Bayatyan v. Armenia* (2009), where conscientious objection was deemed protected when grounded in deep and consistent convictions. Similarly, the Court has addressed proselytism, religious dress, dietary requirements, Sabbath observance, and ritual practices. Cases such as *Eweida and Others v. United Kingdom* (2013) demonstrate how the Court weighs individual religious expression against employers' organizational interests, often requiring a careful contextual balancing.

At the same time, the European model places considerable emphasis on democratic pluralism and equality. This is evident in cases involving hate speech against religious groups (*Gündüz v. Turkey*, 2003; *I.A. v. Turkey*, 2005), where the Court has upheld restrictions to preserve social cohesion. In doing so, the Court underscores that freedom of religion exists in a network of interdependent rights and obligations within diverse democratic societies.

3.2.2. African Human Rights System: Cultural Contextualization and Implementation Dynamics

The African Charter on Human and Peoples' Rights offers a normative approach distinct from Western liberal traditions. Article 8 affirms freedom of conscience and religion but situates it within a broader communitarian philosophy that emphasizes collective responsibilities, social harmony, and the preservation of traditional values (ACHPR, 1981). Unlike the European

Convention, the Charter does not formally distinguish between internal belief and external manifestation, which creates interpretive flexibility but also introduces ambiguity.

A defining feature of the African approach is its explicit recognition of indigenous and traditional spiritual practices. The African Commission has affirmed that ancestral veneration, initiation ceremonies, and traditional ritual practices fall within the protective scope of Article 8 (African Commission on Human and Peoples' Rights, 2009). This inclusive understanding contrasts with legal systems that privilege Abrahamic traditions or enumerated religions. It reflects an anthropological reality in which religion, community life, and cultural identity are deeply intertwined.

The African Court on Human and Peoples' Rights has reinforced this orientation by recognizing the religious and spiritual dimensions of communal relationships to land, territory, and ancestral heritage (African Court on Human and Peoples' Rights, 2017). In several cases concerning indigenous groups and customary practices, the Court has highlighted the need to protect traditional spirituality from state encroachment and discriminatory policies.

Much of the Commission's work on freedom of religion arises in contexts involving discrimination, violence, or marginalization of minority religious groups. The Commission has reiterated that states have positive obligations to prevent interreligious violence, protect vulnerable communities, and ensure equal access to public institutions regardless of religious affiliation (Gashaw, 2020). These obligations reflect ongoing challenges across the continent, including sectarian conflict, religious extremism, and state partiality.

However, one of the structural challenges of the African system is implementation capacity. The Charter's "claw-back clauses," which permit limitations subject to "law and order," grant states a wider discretionary space than international human rights norms typically allow (Adjei, 2019). Combined with resource limitations, political instability, and the largely non-binding nature of the Commission's recommendations, these factors hinder the system's capacity to offer consistent and effective protection. As a result, the normative aspiration of protecting religious liberty often exceeds the practical ability to enforce those protections.

3.2.3. Other Regional Approaches: Arab Charter, Islamic Legal Frameworks, and ASEAN Contexts

The Arab Charter on Human Rights (2004) and Islamic legal instruments present frameworks where freedom of religion is interpreted through lenses distinct from secular international law. Article 30 of the Arab Charter guarantees freedom of thought, conscience, and religion, but its scope is often mediated by domestic legal provisions rooted in Islamic law. The tension between international human rights standards and Islamic jurisprudence becomes especially apparent in areas such as conversion, apostasy, interfaith marriage, and the status of non-Muslim minorities.

The Cairo Declaration on Human Rights in Islam (OIC, 1990) offers a complementary but distinct normative orientation. It affirms core rights, including freedom of conscience and religion, but stipulates that all rights must align with the principles of Islamic law. This structure reflects a worldview in which state authority, religious authority, and moral order are interconnected. As a result, the interpretation of freedom of religion often depends on domestic jurisprudential traditions, with significant variations among member states.

In the Southeast Asian context, the ASEAN Human Rights Declaration provides another model for understanding religious liberty. Article 22 guarantees freedom of thought, conscience, and religion but embeds this right within a broader normative framework emphasizing social harmony, mutual respect, and communal stability (AHRD, 2012). The ASEAN model tends to interpret rights relationally, reflecting regional philosophical traditions that prioritize interdependence and consensus. This contrasts with the more individual-rights-oriented European approach and the more communitarian African framework.

These non-Western systems illustrate that global conceptions of freedom of religion are not uniform. The legal force of tradition, the intertwining of religious and political authority, and the emphasis on communal cohesion shape how rights are defined and limited. These regional frameworks thus demonstrate conceptual pluralism in defining the balance between individual freedom and collective values.

3.2.4. Transitional Reflection

The examination of regional approaches reveals that while freedom of religion is universally recognized, its interpretation and implementation vary substantially across regions. These variations stem not merely from legal texts but from deeper understandings of the relationship between the individual, the community, and the state. The European system emphasizes judicial balancing and structured proportionality; the African system incorporates communal values and traditional spiritual practices; and the Arab, Islamic, and ASEAN frameworks integrate religious law or cultural norms into their understanding of religious liberty.

Each system reflects normative priorities shaped by historical experience, political structures, and cultural identity. This diversity underscores the need for a comparative jurisprudential analysis to identify how courts operationalize abstract principles in concrete cases. The next section therefore examines how regional courts interpret, balance, and apply freedom of religion in practice, revealing convergences, divergences, and emerging global patterns.

3.3. Comparative Jurisprudential Analysis

The jurisprudential approaches to freedom of religion across different regional systems reveal distinct methodologies for interpreting and applying religious liberty protections. These variations in judicial reasoning illuminate fundamental differences in how societies conceptualize the relationship between freedom of religion and other human rights.

3.3.1. Definitional Approaches and Interpretative Methodologies

The definition of religion varies significantly across jurisdictions, profoundly affecting the scope of protection. The European Court of Human Rights has adopted a broad interpretation, protecting traditional religions, new or small religious movements, and certain philosophical beliefs. The Court explicitly refrains from assessing the legitimacy of religious beliefs, focusing instead on whether claimed beliefs are genuinely held (ECtHR, *Case Eweida and Others v. United Kingdom*, 2013).

The African system incorporates traditional African spiritual practices within its understanding of religion, recognizing ancestral worship and indigenous spiritual traditions alongside established

world religions. This inclusive approach reflects the continent's religious diversity and the importance of traditional beliefs in many African societies. The recognition of collective spiritual practices as protected religious expressions represents a significant departure from individualistic Western approaches (African Commission on Human and Peoples' Rights, 2009; African Court on Human and Peoples' Rights, 2017).

Islamic legal frameworks similarly include communal religious practices as part of their normative scope, while ASEAN countries emphasize social harmony alongside individual freedoms, reflecting regional cultural traditions. These definitional variations affect substantive protections. Broader definitions encompass new religious movements and non-theistic belief systems, while narrower approaches may exclude certain spiritual practices from protection. Recognition of indigenous, traditional, or collective practices demonstrates how definitional flexibility can expand protection for marginalized religious traditions.

3.3.2. Limitation, Proportionality, and Adjudicative Balancing Across Regions

The frameworks for limiting freedom of religion reveal fundamental differences in how regional systems balance competing interests. The European Court of Human Rights applies a structured proportionality test, examining whether limitations are prescribed by law, pursue a legitimate aim, and are necessary in a democratic society (Henrard, 2016). The standard of “necessary in a democratic society” requires that limitations respond to a pressing social need and are proportionate to the legitimate aim pursued (ECtHR, Case *Otto-Preminger Institut v. Austria*, 1994). European jurisprudence demonstrates sophisticated balancing, weighing the severity of limitations against the importance of competing interests. The Court’s handling of religious symbols and dress codes illustrates this approach, balancing individual religious expression against principles of secularism, gender equality, and public order (Hunter-Henin, 2012).

The application of the margin of appreciation further allows outcomes to vary depending on national circumstances and social, cultural, or historical contexts. For instance, in *Leyla Şahin v. Turkey* (2005) and *Dahlab v. Switzerland* (2001), the Court accommodated restrictive approaches to religious dress when linked to concerns about institutional neutrality, secularism, or gender equality. Conscientious objection, initially resisted under Article 9, was later recognized in *Bayatyan v. Armenia* (2009) when grounded in deep and consistent convictions. Similarly, in

Eweida and Others v. United Kingdom (2013), the Court balanced individual religious expression against employers' organizational interests, illustrating how proportionality assessments and contextual balancing interact within the European framework. Early cases focused primarily on individual rights, but later jurisprudence, such as *Fernández Martínez v. Spain* (2014), recognized that religious communities themselves may be considered victims when state actions impede internal governance, leadership selection, or doctrinal transmission. This evolution demonstrates that European adjudication carefully weighs individual freedoms against collective pluralism and state interests.

In contrast, African and Islamic systems apply different limitation frameworks that reflect their historical, cultural, and social contexts. The African Charter's claw-back clauses, which permit limitations "subject to law and order" (Adjei, 2019), provide states broader discretion than international standards typically allow. African jurisprudence emphasizes communal harmony and traditional values, sometimes prioritizing social cohesion over individual freedoms. The African Commission and the African Court on Human and Peoples' Rights have repeatedly affirmed that collective spiritual practices, traditional rituals, and indigenous religious expressions fall within the protective scope of Article 8, while recognizing the need to balance these rights against societal order (African Commission on Human and Peoples' Rights, 2009; African Court on Human and Peoples' Rights, 2017). This approach reflects a broader understanding of religion that incorporates ancestral worship, initiation ceremonies, and community-based spiritual practices, diverging from the European focus on individual beliefs.

Islamic legal frameworks introduce limitations derived from religious law, where certain practices may be restricted based on doctrinal considerations rather than secular reasoning. The Arab Charter on Human Rights (2004) and the Cairo Declaration on Human Rights in Islam (OIC, 1990) exemplify normative structures in which religious authority, state authority, and moral order are intertwined, influencing how freedom of religion is defined, limited, and adjudicated. Issues such as conversion, apostasy, interfaith marriage, and the status of non-Muslim minorities are often evaluated through domestic interpretations of Sharia, resulting in contextualized limitations and distinctive balancing approaches.

Similarly, the ASEAN Human Rights Declaration situates freedom of religion within broader communal and relational frameworks (AHRD, 2012). Article 22 guarantees freedom of thought, conscience, and religion but emphasizes social harmony, mutual respect, and communal stability. In practice, ASEAN adjudication reflects the region's philosophical traditions, prioritizing consensus and collective interests alongside individual freedoms, contrasting with the structured proportionality and individual-focused analysis of European courts and the communitarian emphasis in African jurisprudence.

Across these regional systems, adjudicative balancing techniques reveal how courts reconcile competing rights with contextualized societal values. In Europe, proportionality tests and margin of appreciation allow nuanced, case-by-case evaluation, weighing individual freedoms against secularism, gender equality, and public order. African courts, while recognizing collective and traditional rights, must navigate broad state discretion under claw-back clauses and resource limitations. Islamic and ASEAN frameworks integrate moral, cultural, and religious norms into judicial reasoning, emphasizing collective welfare and social cohesion. Comparative analysis demonstrates that adjudicative techniques are not purely procedural; they are shaped by historical experience, institutional structures, and cultural priorities. Understanding these approaches highlights the diversity of judicial methodologies and illustrates how abstract principles are operationalized in concrete regional contexts.

3.3.3. Institutional Mechanisms and Implementation Effectiveness

The effectiveness of freedom of religion depends heavily on the institutional mechanisms available for implementation and enforcement. The European system benefits from well-established institutional structures, including a permanent court with compulsory jurisdiction and relatively effective enforcement mechanisms. European Court decisions generally enjoy high compliance rates, although implementing freedom of religion judgments can sometimes generate controversy in certain member states (Keller & Stone Sweet, 2008; Greer & Wildhaber, 2012). Strong enforcement mechanisms allow courts to develop bold jurisprudence, confident that their rulings will be applied in practice.

In contrast, African, Islamic, and ASEAN systems face significant practical challenges in protecting freedom of religion. Limited resources, political constraints, and legal pluralism can

hamper effective implementation across these regions. In Africa, as in many other regional contexts, the African Commission's recommendations lack legally binding force, and state compliance depends heavily on political will. These structural limitations can lead courts to exercise judicial restraint, avoiding decisions unlikely to be enforced. Similarly, in Islamic and ASEAN frameworks, the interaction between formal legal structures and religious or cultural authority shapes both the scope of protection and the practical application of judicial decisions. Despite these challenges, each system strives to balance normative aspirations with contextual constraints, reflecting the influence of historical, institutional, and cultural factors on the operationalization of religious freedom.

These institutional differences have substantial implications for substantive protection. Regions with robust enforcement structures, such as Europe, can maintain a more assertive and consistent jurisprudence, while regions with weaker enforcement often experience variability in protection and judicial restraint. Understanding these variations highlights that legal guarantees alone are insufficient; effective protection of freedom of religion also depends on the practical capacity of institutions and the broader political and social context.

3.3.4. Emerging Patterns and Distinctive Features across Regional Systems

Comparative analysis reveals several emerging patterns across regional systems, illustrating the diversity of approaches to protecting freedom of religion while balancing competing rights and societal interests. One of the most salient trends is the recognition of collective religious rights alongside individual rights, though the scope and nature of this recognition vary. European systems emphasize institutional autonomy, recognizing that religious communities require protection not only for individual believers but also for their organizational structures, governance, and internal decision-making (Annicchino, 2018; Henrard, 2021). African and Islamic systems integrate communal or traditional practices within protection frameworks, reflecting the importance of social cohesion, customary law, and long-standing religious traditions in shaping collective religious expression. ASEAN countries similarly prioritize community harmony alongside individual freedoms, demonstrating that in many regions freedom of religion encompasses more than personal belief; it protects the integrity, functioning, and internal governance of religious communities and institutions.

Closely linked to the recognition of collective rights is the challenge of balancing freedom of religion against equality norms, particularly regarding gender and sexual orientation. European courts apply the margin of appreciation, allowing national authorities discretion to weigh secularism and pluralism against individual religious expression. This flexible approach enables nuanced adjudication, accommodating diverse historical, cultural, and social contexts across member states. In African and Islamic systems, judicial reasoning often prioritizes traditional religious and social values, emphasizing communal stability or adherence to religious law over individual claims. ASEAN frameworks similarly integrate cultural and moral norms alongside human rights considerations, reflecting the centrality of societal cohesion and relational understandings of rights. These variations reveal that societal values are deeply embedded in judicial reasoning and shape the hierarchy of rights in practice.

The treatment of religious minorities further illustrates systemic differences across regions. European jurisprudence places strong emphasis on non-discrimination, protection from religious hatred, and access to public institutions, establishing legal safeguards that support minority religious communities. African and Islamic systems, by contrast, encounter practical challenges in protecting minorities, particularly in contexts of social tension, sectarian conflict, or religious extremism, where enforcement mechanisms and institutional capacity may be limited (Henrard, 2021). ASEAN systems navigate similar tensions, balancing respect for minority practices with the overarching goal of social harmony. These differences underscore that formal legal protections do not automatically translate into effective guarantees; their realization depends on institutional capacity, societal acceptance, and cultural norms.

The role of secularism represents another axis of divergence. European systems generally embrace secularism as an organizing principle, framing public spaces as neutral arenas where religious and non-religious citizens coexist under equal treatment. African, Islamic, and ASEAN systems frequently reject strict secularism, integrating religious considerations into law, governance, and public policy (Annicchino, 2018; Evans, 2009). These orientations influence both the scope of protection afforded to individual and collective religious practices and the manner in which courts weigh competing rights. The degree of secularism in a system often interacts with other patterns (collective rights, equality, minority protections) to shape distinctive regional hierarchies of freedom of religion.

Taken together, the comparative analysis reveals that freedom of religion is a dynamic and context-sensitive right. Recognition of collective and individual rights, the balancing of equality norms, the protection of minorities, and the integration of secular or religious principles demonstrate the complex ways in which legal frameworks, institutional capacities, and cultural-historical contexts shape its practical implementation. While convergent trends suggest emerging global norms in the protection of freedom of religion, persistent divergences underscore the influence of regional traditions, societal values, and historical experiences.

These patterns provide the foundation for examining the Inter-American human rights system, where distinctive hierarchical approaches to freedom of religion emerge from the Americas' unique legal, cultural, and political contexts. The following chapter analyzes this system in depth, considering how it interprets, balances, and enforces freedom of religion within its specific regional framework.

CHAPTER 4: THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AND FREEDOM OF RELIGION

4.1. Historical Development and Institutional Evolution

4.1.1. Origins and Foundational Instruments

The Inter-American human rights system emerged from a multifaceted interplay of regional aspirations and historical realities that distinguished it from other regional frameworks. Unlike the European system, which developed in response to the horrors of World War II, the Inter-American framework evolved gradually through decades of political struggle between democratic ideals and military dictatorships, between revolutionary movements and conservative forces (Schoultz, 1981; Castañeda, 2018). This distinctive genesis shaped not merely the system's institutional architecture but its fundamental approach to rights protection.

The recognition of human rights in the Americas occurred almost simultaneously with developments in the universal sphere in the mid-20th century. Remarkably, the first international instrument defining human rights was the American Declaration of the Rights and Duties of Man, approved in June 1948, months before the Universal Declaration of Human Rights in December 1948. Although born without legal binding force and lacking a body responsible for overseeing compliance, this instrument became the basis upon which the Inter-American Human Rights System was built. The Declaration's introductory section established that the protection of human rights should guide evolving American law, asserting that basic rights arise not from nationality but from the attributes of the human person itself.

Under the Organization of American States (OAS) umbrella, which included human rights recognition and protection among its governing principles, the Inter-American system developed through more than half a century of progress and difficulties. The creation of the Inter-American Commission on Human Rights in 1959 marked a crucial institutional development, establishing a body responsible for promoting and protecting human rights while serving as the OAS's advisory organ. The Commission would later be incorporated into the American Convention on Human Rights as an organ of the Inter-American system.

4.1.2. Institutional Architecture and Procedural Framework

The adoption of the American Convention on Human Rights on November 22, 1969, which entered into force on July 18, 1978, established the region's first binding human rights instrument. This Convention not only included a catalog of individual rights but also established the bodies responsible for protecting such rights: the Commission and the Inter-American Court of Human Rights, while defining state obligations. The instrument made individuals holders of rights and established obligations for states, recognizing the right to reservations, amendments, protocols, and denunciations by states.

The institutional framework's intricacy becomes apparent when examining membership patterns. According to the OAS, thirty-four states are part of the organization, yet only twenty-three have ratified the American Convention, and merely twenty have accepted the Court's contentious jurisdiction. This means that only twenty-three states commit to recognizing and protecting the rights set out in the Convention, and the Court can only consider alleged violations by the twenty states that voluntarily accepted its jurisdiction. The United States' absence from this group means the Court cannot rule on human rights violations attributable to U.S. authorities, revealing a significant limitation in the system's reach.

The Inter-American Court, as an autonomous judicial body, has forged its authority through the exercise of its dual jurisdiction (contentious and advisory) complemented by the power to order provisional measures. This jurisdictional architecture, operational since 1979, has been fundamental to the system's evolution, enabling the Court not only to resolve specific cases but also to develop the Inter-American *corpus juris* through over a hundred judgments and thirty advisory opinions, while also intervening preventively in situations of extreme gravity and urgency. Its judgments have been characterized as innovative, progressive, and courageous, broadly interpreting the Convention's articles to provide better protection. The Court views human rights treaties as living instruments whose interpretation must evolve with times and current living conditions, consistently applying a *pro homine* (2021) approach that has expanded the catalog of recognized rights (IACtHR, 2021).

4.1.3. Normative Innovation and Distinctive Jurisprudential Features

The Inter-American system has developed distinctive jurisprudential features that set it apart from other regional systems. Unlike the European Court of Human Rights, which generally respects states' margin of appreciation on sensitive issues, the Inter-American Court adopts what can be characterized as judicial activism, often going beyond specific issues to establish broad rules shaping regional human rights standards. This approach manifests in two distinct ways: first, through decisions that transcend case specifics to create general principles; second, through the promotion of "control of conventionality," urging states to align domestic laws with international obligations established by the Court (Carter, 2013; Contesse, 2016).

The Court has further cemented its influence through the development of the 'control of conventionality' doctrine. This doctrine represents one of the most distinctive and ambitious features of the Inter-American system, asserting that all domestic authorities (judicial, legislative, and executive) have a duty to ensure that their actions and decisions conform not only to the American Convention but also to the Court's interpretation of it (Carter, 2013; Contesse, 2016). The profound implications of this doctrine, and the judicial activism it enables, will be examined in detail in Chapter 5 through an analysis of how national courts and governments have been compelled to implement controversial rulings on issues ranging from freedom of expression to sexual equality.

This expansive approach has led some observers to characterize the Court as attempting to become a "super-legislator," empowered to demand rules of general nature from all countries (Staton, 2005; Nelson & Uribe-McGuire, 2017). The Court frequently cites European Court authorities, indicating inter-judicial communication that underscores its role in the international human rights framework (Carter, 2013). Its impact extends beyond the Americas, being cited alongside other regional bodies, demonstrating global relevance (Perlin, 2013).

4.1.4. Relationship with National Constitutional Orders

The relationship between the Inter-American system and national constitutional orders represents one of the most important aspects of regional human rights protection. Both political and administrative authorities, as well as judicial bodies, are obligated to implement control of

conventionality, creating a multi-layered system of rights protection that challenges traditional notions of sovereignty and constitutional supremacy.

In countries like Colombia, constitutional reforms have explicitly incorporated Inter-American standards. Colombia's 1991 constitutional reform, which marked a departure from the country's traditional confessional model, was influenced by Protestant participation in drafting the new constitution, emphasizing secularism and equality among religious confessions (Prieto, 2008). The reform declared that no church or religious confession would be official or state-supported, yet the state would not be atheistic, agnostic, or indifferent to citizens' religious feelings.

Mexico presents a different pattern, where the 1991 constitutional reform addressed the dichotomy between prohibitive norms of religious practice and a highly religious society. The resulting Law on Religious Associations and Public Worship (Congress of the United Mexican States, 1917) emerged from a context of absolute restrictions starting with the 1917 Constitution, reminiscent of legal transformations in Eastern Europe after the Berlin Wall's fall. Critics argue the law still imposes unacceptable restrictions for a truly democratic country respecting human rights (Medina González, 2007).

Chile's approach through Law 19638 (1999) and Peru's Law 29635 (2010) represent more recent attempts to harmonize national frameworks with Inter-American standards. Chile's law focuses on legal recognition of "religious entities," excluding the Catholic Church, which maintains its status through prior arrangements (Government of Chile, 1999; Congress of the Republic of Peru, 2010). Peru's law, while guaranteeing freedom of religion as defined by international treaties, exemplifies Latin American "gatopardismo", enacting changes that create the appearance of progress while maintaining the status quo (Mosquera Monelos, 2005; Santos Loyola, 2017).

4.2. Socio-religious Context and Legal Culture

4.2.1. Colonial Legacies and Religious-Political Nexus

The Inter-American region's approach to freedom of religion cannot be understood without examining the profound colonial legacies that continue to shape contemporary legal and social frameworks. Latin America represents a mosaic of countries with common traits rooted in shared

colonial experiences yet marked by significant differences in how these legacies evolved. Language and religion stand out as primary unifying factors: the entire continent from the southern United States to Patagonia, with exceptions of the Guianas and parts of the Caribbean, speaks Spanish or Portuguese, creating a unique phenomenon of linguistic unity that signals cultural identity (Berg, 2011; Barrantes-Montero, 2017; Lobera, 2021).

The religious substrate marks another common identifying trait that profoundly influences legal culture. Latin America traditionally maintained a consistent Catholic majority, with Catholicism serving as the official religion of almost all states for extended periods. While this is no longer universally true and religious homogeneity is in crisis with growing diversity, the Catholic base continues to mark societies, including in legal documents (Thorsen, 2023). In all countries, the Catholic Church maintains a predominant presence in fact and often in law, creating a composite backdrop against which freedom of religion must be negotiated.

The independent era witnessed varied intensities of conflict linked to religion, politics, and social issues across the region. At the end of the 19th century, strong confrontations emerged between liberal ideology (often anticlerical or anti-Catholic), and conservative forces allied with the Church. This confrontation proved intense in countries like Mexico and Colombia, while remaining primarily political in others like Argentina and Uruguay (Mabat, 2019). In some countries, liberals triumphed and cornered the Catholic Church, as in Mexico and Uruguay (Mallimaci et al., 2015), while in others, conservatives-maintained Church privileges for extended periods, as in Colombia and Peru.

4.2.2. Contemporary Religious Demographics and Pluralization Trends

The contemporary religious landscape reveals dramatic transformations that challenge traditional frameworks. Brazil's censuses from 2000 and 2010 reflect marked shifts: Catholic identification dropped from 74% to 65%, while evangelical population grew from 15% to 22% (U.S. Department of State, 2019). Mexico's 2020 census revealed 77.7% Catholic identification, down from 82.7% in 2010, while evangelicals rose from 7.5% to 11.2%. Chile demonstrates even more pronounced secularization, with non-religious affiliation increasing from 18% in 2010 to 35% in 2020, making it the most agnostic country on the continent (U.S. Department of State, 2019; Latinobarómetro, 2020).

These demographic shifts reflect broader processes of religious diversification driven by multiple factors (Pew Research Center, 2025). Rather than simple agnosticism increasing, the decline in Catholic identification and growth of non-religious or evangelical affiliations reflects disidentification with monopolistic religious beliefs. Scandals within the Catholic Church, including corruption and pedophilia cases, alongside growing disconnect between younger generations and traditional hierarchical institutions, help explain why many turn away from Catholicism toward evangelical Christianity or no religious affiliation.

The political landscape has been profoundly affected by this diversification. Evangelical Christians, characterized by solid follower bases, have become significant political platforms and electoral assets. In Brazil, conservative evangelical sectors proved instrumental in Jair Bolsonaro's presidential election, gaining influential government positions. Venezuela witnessed evangelical leader Javier Bertucci establishing the political party "Hope for Change," securing four National Assembly seats for 2021-2026 (Mora-Ciangherotti, 2025). This growing political clout demonstrates how religious pluralization reshapes not only spiritual landscapes but political power structures.

These demographic transformations bear directly on the research questions guiding this investigation. The decline of Catholic hegemony and rise of religious pluralism create the social conditions within which freedom of religion conflicts increasingly arise, while simultaneously weakening the political influence that historically protected Catholic institutional prerogatives. Understanding these shifts proves essential for interpreting the Court's jurisprudential evolution: decisions subordinating freedom of religion to equality norms occur not in a vacuum but within societies actively renegotiating religion's public role.

4.2.3. Secularization Processes and State-Religion Relations

Secularization in Latin America represents a composite, contested process distinct from European models. As Mallimaci (2017) and Casanova (2010) observe, secularization involves ceaseless transformation where religious influence dwindles as technological progress and capitalist modernity advance. Yet this process takes particular forms in Latin America, where personal conscience and religious voluntarism serve as foundations for individual liberty (Wood Jr., 1996,

p. 475), while faith-based institutions must either engage with or assimilate into ideological frameworks determined by individuals and governments.

The evolution of secularization processes reveals distinctive patterns across the region. Ivan Vallier's (1970) influential analysis suggested that if the Catholic Church wanted to maintain influence over Latin American culture, society, and politics, it should abstain from political involvement. However, this perspective confronted practical obstacles posed by liberation theology and leftist movements within Catholicism. Religion witnessed an impactful transformation brought by three critical factors: violence characteristics, democracy reinstatement, and civil society emergence (Levine, 2009).

Violence can catalyze or reinforce secularization by challenging religious authority and promoting secular governance structures. Democracy's restoration creates propitious settings for freedom of religion to flourish, as democratic structures usually uphold human rights principles, providing guarantees for free expression, assembly, and association that allow faith communities to prosper (Levine, 2009). Civil society emergence significantly impacts religion's future, with non-governmental organizations and community groups promoting social harmony while safeguarding individual rights (Levine, 2009).

The relationship between secularization and freedom of religion proves particularly mixed when examining how different countries navigate these tensions. Uruguay and Mexico represent aggressive secularism seeking to confine religion to private spheres, while countries like Peru and Paraguay maintain closer church-state relationships. These variations reflect different resolutions to historical conflicts between liberal and conservative forces, shaping contemporary approaches to freedom of religion.

The secularization patterns examined here illuminate why the Inter-American Court's hierarchical ordering takes its particular form. In societies transitioning from religious homogeneity to pluralism, courts face pressure to establish neutral frameworks that neither privilege traditional majorities nor disadvantage emerging minorities. The Court's subordination of freedom of religion to equality norms represents one response to this pressure, a response whose justification and limitations can only be assessed against the socio-religious context within which it operates.

4.2.4. Sociological Dimensions of Religious Identity in Latin America

Religious identity in Latin America extends beyond institutional affiliation to encompass recondite sociological dimensions that influence legal and political frameworks. Bourdieu (1971) observed that religious demands typically diverge along social lines: the privileged seek to legitimize the status quo, while the underprivileged yearn for existential meaning and alleviation from their plight. This dichotomy underscores religion's dual role as both a tool for maintaining established orders and a beacon of hope for those in adversity.

The emergence of new religious movements and the transformation of traditional ones reflect broader societal changes. Syncretism, blending different religious traditions, proves particularly influential, often seen in public devotions honoring figures like the Virgin Mary and various saints, extending beyond Catholic Church confines. Cults such as Santa Muerte, once hidden, are now openly practiced, offering solace amid regional violence. Religions like Santería and shamanism, previously practiced privately, have gained broader acceptance (Alcalá, 2018; Frigerio, 2018).

These religious transformations intersect with social justice movements in nuanced ways. Liberation theology's emergence in the 1960s emphasized the Church's commitment to social justice, advocating for the poor and oppressed people's liberation (Gutiérrez, 1971; Berryman, 1987). This movement posited that the Church should actively address systemic injustices and human rights abuses, often putting advocates in direct conflict with authoritarian regimes. Figures like Archbishop Óscar Romero of El Salvador became emblematic of this struggle, often paying the ultimate price for their advocacy (Brockman, 1989). Romero was assassinated in 1980 while celebrating Mass after publicly condemning state violence and calling on soldiers to disobey orders that violated human rights, an act that made him a direct target of the regime's repression.

Contemporary religious pluralism creates new dynamics in how religious identity shapes social and political participation. Evangelical and Pentecostal movements' rise introduces different approaches to social engagement, with some groups aligning with conservative political movements focusing on issues like abortion opposition and same-sex marriage resistance, while others engage in social justice work addressing poverty and inequality. This diversity within religious movements complicates simple narratives about religion's role in society.

4.3 Normative Framework for Freedom of Religion

4.3.1. American Convention on Human Rights: Article 12 Analysis

Article 12 of the American Convention on Human Rights establishes the comprehensive framework for freedom of conscience and religion within the Inter-American system. The provision encompasses both freedom of religion and conscience, though the Inter-American Commission and Court have not established clear distinctions between these concepts nor provided a definition of religion (Arlettaz, 2011). This definitional ambiguity creates both flexibility and uncertainty in the system's approach to freedom of religion cases.

Article 12 of the American Convention protects both the internal dimension of freedom of religion (forum internum), which encompasses the right to hold, maintain, or change one's beliefs, and the external dimension (forum externum), which entails the freedom to express, practice, and manifest those beliefs publicly. This dual protection is essential not only for safeguarding individuals' private convictions but also for preserving their broader way of life, including cultural, social, and ethical practices intimately linked to their faith. The Inter-American Court has emphasized this comprehensive scope as a cornerstone of freedom of religion, recognizing that both the inner conviction and its outward expression are integral to human dignity and personal autonomy (IACHR, 2001, *Olmedo Bustos v. Chile*)

The provision's scope extends to freedom to profess and disseminate religion, both individually and collectively, in public and private, implicitly covering worship, teaching, practices, and ritual performance. The last section of Article 12 includes freedom of religious education, understood as parents' and guardians' right to ensure their children or students receive moral and religious education according to their own convictions. This aspect proved one of the most controversial in drafting the American Convention (Burgogue-Larsen, 2018) and marks the main difference with Article 9 of the European Convention.

4.3.2. American Declaration on the Rights and Duties of Man

The American Declaration, despite lacking binding force initially, established foundational principles that continue to influence the Inter-American system's approach to freedom of religion. The Declaration states that "Every person has the right freely to profess a religious faith, and to

manifest and practice it both in public and in private." This formulation, while seemingly straightforward, raises interpretive questions about what actions or expressions fall within the protected scope of this right (Arlettaz, 2011)

The Inter-American Court has recognized that for OAS Member States, the American Declaration constitutes a source of international obligations, particularly in relation to the Organization's Charter. While the Convention provides the primary source of obligations for States parties, no provision can be interpreted to exclude or limit the Declaration's effect, as indicated in Article 29(d) of the American Convention. Thus, states are not absolved of Declaration-derived obligations merely through OAS membership (IACtHR, Advisory Opinion OC-10/89, 1989).

4.3.3. Supplementary Instruments and Interpretative Documents

The Inter-American system has developed supplementary instruments addressing freedom of religion within broader contexts. The Protocol of San Salvador (1988), recognizing Economic, Social, and Cultural Rights, and the Protocol of Asunción (1990) on Death Penalty Abolition, complement the Convention's framework (OAS, 1988; OAS, 1990). These instruments, along with thematic documents adopted over time, provide greater protection to vulnerable groups whose freedom of religion intersects with other rights.

The 2016 American Declaration on the Rights of Indigenous Peoples represents a particularly significant development. The Declaration recognizes collective rights of indigenous peoples to profess and practice their spiritual beliefs (Article 6), cultural identity and integrity rights, including restitution of religious and spiritual property (Article 13), and the mandate to promote education respecting indigenous worldviews (Article 15). Article 16, entirely dedicated to indigenous spirituality, recognizes peoples' right to freely exercise their own spirituality and beliefs, reformulating Article 12 of the American Convention in culturally sensitive ways.

4.3.4. Commission Reports and Advisory Opinions

The Inter-American Commission has articulated the foundational concepts of freedom of religion through its reports since the 1970s, establishing a doctrinal framework for the region. Its early interventions defined the state's negative obligation to refrain from direct persecution; a principle solidified in cases against Argentina and Paraguay for their targeting of Jehovah's Witnesses. These

reports established that the state's duty to ensure the existence and legal operation of religious communities is a fundamental minimum standard, protecting the collective dimension of freedom of religion from state annihilation.

The Commission's doctrine evolved to address more nuanced state violations, moving from prohibition to obligation. In its landmark 1983 report on Guatemala, the Commission defined the principle of state neutrality, prohibiting the state from instrumentally aligning with or against specific religious groups for political purposes. This established a positive duty to maintain an impartial public sphere, ensuring a level playing field among confessions. Concurrently, the Commission's engagement with Cuba highlighted the incompatibility of ideological conformity tests with freedom of conscience, defining a limit on state power: religious practice cannot be conditioned on political orthodoxy.

Through this progression, the system's understanding of state obligations matured from a simple duty to respect (non-interference) towards a more robust framework that also includes the duty to protect individuals from religiously-motivated discrimination by third parties and, in seminal cases involving indigenous peoples, the duty to fulfill the conditions necessary for spiritual practices tied to territory and culture. This evolution from a narrow conception of liberty to a tripartite schema of obligations (respect, protect, fulfill) provided the crucial doctrinal bridge that allowed the Court to later adjudicate complex collisions between freedom of religion and other human rights, particularly equality and non-discrimination.

Complementing the Commission's work, the advisory opinion has served as the Court's primary tool for normative innovation. This mechanism allows the Court to authoritatively define the scope and hierarchy of rights abstractly, beyond the confines of a specific case. This function was exemplified in OC-10/89, which defined the American Declaration's legal value by characterizing it as a source of binding international obligations. The apex of this normative shaping is Advisory Opinion OC-24/17, which fundamentally redefined the conventionality parameters by establishing that gender identity and sexual orientation are protected categories whose requirements can supersede traditional religious justifications in the public sphere, thereby explicitly reconfiguring the hierarchy of rights in favor of a pluralistic and egalitarian democratic order.

4.3.5. Evolving Standards in Regional Instruments

The normative framework of the Inter-American system continues to evolve not only through jurisprudence but also through new instruments that refine and codify emerging standards. A pivotal development in this ongoing process is the 2013 Inter-American Convention Against All Forms of Discrimination and Intolerance (A-69). Although not yet in force, its detailed provisions increasingly influence the Court's reasoning, providing a contemporary lens through which to interpret state obligations.

The Convention's significance lies in its expansive and subjective definition of intolerance as "any action or expression constituting disrespect, rejection, or contempt for the dignity, characteristics, convictions, or opinions of people for being different or contrary," which manifests through "marginalization and exclusion" (Article 1.5). This conceptualization moves beyond formal equality to target the social and psychological harms of exclusion, directly reflecting the tensions illuminated in Advisory Opinion OC-24/17 between absolute claims of religious autonomy and the imperative of substantive equality.

This evolution creates a direct and unresolved collision at the operational level. The Convention's prohibition of "any discriminatory norm, act, or practice" based on personal characteristics, when read in conjunction with the Court's elevation of sexual orientation and gender identity as protected categories, poses a fundamental challenge to traditional religious institutional autonomy. It starkly raises the question of whether religious organizations can legally maintain doctrines that exclude individuals from ministries, sacraments, or employment based on sexual orientation without incurring state sanctions for discrimination or intolerance. This tension remains the central, unresolved frontier in the Inter-American system's construction of a hierarchy of rights, positioning the freedom of religion of institutions and the equality rights of individuals on a direct collision course, with the Court's recent trajectory suggesting a clear prioritization of the latter.

4.4. Domestic Implementation Patterns

4.4.1. Comparative Constitutional and Legislative Analysis

The implementation of freedom of religion across Inter-American system member states reveals diverse approaches shaped by historical, cultural, and political factors. Four countries have pioneered specific legislation: Mexico with its Law on Religious Associations and Public Worship (1992), Colombia with Law 133 on Freedom of Religion (1994), Chile with Law 19638 on Churches and Religious Organizations (1999), and Peru with Law 29635 on Freedom of Religion (2010). These laws share common objectives responding to the historical lack of adequate legal recognition for religious minorities, yet exhibit unique features tailored to national contexts.

4.4.1.1. Mexico: Historical Evolution and Contemporary Framework

Mexico's approach differs significantly from other Latin American countries due to its history of absolute restrictions on freedom of religion, starting with the 1917 Constitution. The Law on Religious Associations and Public Worship emerged from what is aptly described as a "complex *modus vivendi*" or "*modus non moriendi*", this is an intricate arrangement allowing coexistence of different religious groups despite a restrictive legal framework. The 1991 constitutional reform sought to address the dichotomy between prohibitive norms and a highly religious society, yet critics argue the law still imposes unacceptable restrictions for a democratic country (Medina González, 2007).

Mexican law states that religious beliefs do not exempt anyone from complying with the country's laws, and no one can claim religious reasons to evade responsibilities demanded by law (Article 1). This provision reflects ongoing tensions between freedom of religion and state authority, particularly regarding conscientious objection, which receives no constitutional mention. The law's restrictions on religious associations' political participation and property ownership demonstrate continuity with historical anticlericalism despite democratic reforms.

4.4.1.2. Colombia: Constitutional Transformation and Judicial Implementation

Colombia's Law 133 of 1994 emerged directly from the 1991 constitutional reform, marking a departure from the traditional confessional model. Protestant participation in drafting the new constitution emphasized secularism and equality among religious confessions (Prieto, 2008). The

law declares that no church or religious confession will be official or state-supported, yet the state is not atheistic, agnostic, or indifferent to citizens' religious feelings (Article 2).

The law includes principles of cooperation (Article 2), non-discrimination (Article 3), and detailed rights derived from freedom of religion in both individual and collective aspects (Articles 6 and 7). It establishes a framework for legal recognition of churches and religious denominations, excluding the Catholic Church, governed by concordat laws. This exclusion has led to misconceptions that these laws are "for non-Catholics," when they actually apply equally to everyone, ensuring freedom of religion rights for all individuals and communities.

Colombia's provision for agreements between state and religious communities, either as international treaties or domestic public law, reflects the country's concordat tradition. Convention No. 1, signed with ten evangelical churches in 1997, exemplifies the law's flexibility in accommodating diverse religious groups. Constitutional Court judgments T-409/92, C-511/94, T-363/95, and SU-108/16 have developed extensive jurisprudence on conscientious objection, recognizing it as part of freedom of conscience guaranteed by Article 18 of the Constitution (Law 133, 1994; Convention No. 1, 1997; Constitutional Court of Colombia, T-409/92, C-511/94, T-363/95, SU-108/16).

4.4.1.3. Chile: Secularization Processes and Legal Development

Chile's Law 19638 follows Colombia's structural model but with differences reflecting the country's particular context. The law outlines general principles of freedom of religion and non-discrimination, followed by rights derived from freedom of religion in individual and collective aspects. Its core focuses on legal recognition of "religious entities," encompassing churches, denominations, and communities (Article 5).

Like Colombia, Chile's law excludes the Catholic Church from this framework, recognizing its legal status through prior arrangements. However, unlike Colombia, Chilean law does not provide for agreements between state and religious communities, reflecting the country's lack of concordat tradition. A distinctive feature is Chapter IV's provisions regarding "patrimony and exemptions," addressing religious entities' asset management and tax exemptions, topics not as prominently featured in Colombian law (Salinas Araneda, 2004).

Chile's secularization process, with 35% of the population identifying as non-religious by 2020, creates unique implementation demands. The growth of non-religious populations influences policies affecting religious groups' visibility and rights, potentially leading to tensions between secularism and freedom of religion.

4.4.1.4. Peru: Religious Recognition and Legislative Approaches

Peru's Law 29635, while not divided into chapters, shares content with Colombian and Chilean counterparts. It guarantees freedom of religion as defined by international treaties (Article I) and enumerates individual and collective rights (Articles 3 and 6). A distinctive feature is special protection for conscientious objection, absent in Colombian and Chilean laws. The law emphasizes religious entities' educational role (Article 7), referring to special legislation Peru has enacted in this area.

The law organizes a registration system for religious entities (Articles 13 and 14), ensuring recognition and operation within the legal framework. While allowing cooperation agreements between state and religious communities, these have not been fully implemented (Article 15). Specific reference to norms of the Agreement between the Holy See and Peru highlights the country's adherence to concordat obligations.

Peru's law exemplifies Latin American "gatopardismo", enacting changes creating progress appearance while maintaining status quo. Despite extensive negotiations and minority church demands, initial implementation was hindered by overly restrictive regulations. Only recently has Supreme Decree No. 6-2016-jus eased the law's application (Santos Loyola, 2017).

4.4.2. Implementation Challenges and Failed Legislative Initiatives

Several countries have faced significant challenges in establishing comprehensive freedom of religion frameworks. Argentina, despite attempts to pass laws guaranteeing various aspects and recognition of churches as legal entities, has not fully approved such norms (Lo Prete, 2013). The 2015 Civil and Commercial Code recognizes churches, communities, confessions, and religious entities as private legal entities under Article 148, but this recognition remains partial, not addressing all freedom of religion aspects comprehensively.

Honduras provides a notable failure example with the 2010 Framework Law of the Evangelical Church, which sought to create a legal superstructure encompassing all evangelical associations. The law imposed stringent controls, including authority over church matters such as bishop appointments and ecclesiastical property management. Heavy criticism for its extreme regalism and disregard for religious pluralism led to resistance from evangelical churches and eventual declaration as unconstitutional by the Supreme Court.

Brazil's situation reflects ongoing tensions, with conscientious objection conditioned on accepting alternative service. The Constitution states that no one shall be deprived of rights on grounds of religious beliefs or philosophical convictions, except if using them to exempt from legal obligations imposed on everyone and refusing alternative service (Article 5). This conditional approach to conscientious objection demonstrates the composite balance between individual freedom of religion and collective civic obligations.

4.4.3. Patterns of Compliance and Resistance

Compliance patterns with Inter-American standards vary significantly across member states. Countries with strong constitutional court systems, like Colombia, have developed extensive jurisprudence aligning domestic interpretation with Inter-American standards. The Colombian Constitutional Court's activism in protecting freedom of religion, including robust conscientious objection recognition, demonstrates positive compliance patterns.

Resistance manifests in various forms. Venezuela directly prohibits conscientious objection in its constitution (1999, Article 61), stating it cannot be invoked to evade law compliance or prevent others from exercising rights. Cuba's Penal Code (1987, Article 206) punishes anyone who, abusing freedom of worship guaranteed by the Constitution, opposes religious belief to education objectives, work duty, or defending the country with arms.

Nicaragua's recent persecution of Catholic clergy demonstrates extreme resistance patterns. The 2022 bill investigating religious leaders for alleged coup attempts, followed by 2023 sentencing of a bishop to 26 years imprisonment and priests' exile, represents what the Nicaraguan Center for Human Rights calls "institutionalized destruction and persecution" of the Catholic Church (DW,

2023). These measures have resulted in ongoing violations of freedom of religion, as the government has specifically targeted Catholic clergy in response to episodes of social unrest.

Patterns also emerge in how states balance freedom of religion with other rights, particularly regarding LGBTIQ+ rights and gender equality. Panama's 2023 Supreme Court decision rejecting marriage equality, citing religious arguments among reasons, demonstrates resistance to Inter-American Court interpretations in Advisory Opinion 24-17. The Court concluded that norms providing marriage between man and woman are "objectively and reasonably justified in general interest of giving precedence to unions with potential to establish families" (Panama Supreme Court, 2023).

The Inter-American Commission's response emphasizes that "neither ideological or religious arguments, nor lack of social consensus on certain groups' rights traditionally excluded or vulnerable, such as LGBTIQ+ people, can be considered valid argument to deny or restrict their human rights" (IACHR, 2023). This ongoing tension between national interpretations influenced by religious traditions and Inter-American standards represents a fundamental implementation challenge across the region.

Educational contexts reveal additional compliance perplexities. Argentina and Brazil's 2017 Supreme Court decisions on religious education illustrate divergent approaches. Brazil pronounced confessional religious education constitutional by majority, while Argentina affirmed religious education's constitutionality but deemed teaching during school hours unconstitutional even with parental choice options. These decisions reflect ongoing tensions between secularist groups seeking to eliminate religious education and religious communities defending their educational role (Supreme Federal Court of Brazil, 2017; Supreme Court of Argentina, 2017).

The compliance patterns documented here connect directly to the third research question regarding societal implications of freedom of religion's hierarchical position. States' varied responses to Inter-American standards, from enthusiastic adoption to open defiance, reflect not merely legal disagreements but deeper conflicts between the Court's secular equality framework and societies where religious values retain substantial influence over law and public morality. These patterns of

resistance suggest that hierarchical subordination of freedom of religion, whatever its normative justification, faces practical limitations rooted in the region's enduring religiosity.

The implementation of freedom of religion within the Inter-American system thus reveals a multiplex mosaic of approaches, from progressive compliance to active resistance, shaped by each country's unique historical, cultural, and political contexts. The system's effectiveness ultimately depends not only on normative frameworks but on how these interact with deeply rooted social and religious traditions that continue to evolve across the Americas.

The heterogeneity of domestic regulatory frameworks, combined with uneven implementation and persistent resistance to aligning national laws with Inter-American standards, reveals a region marked by significant normative dissonance. This dissonance underscores the absence of a unified model of freedom of religion in Latin America, where constitutional guarantees often coexist with entrenched practices of privilege, marginalization, or selective enforcement. In this context, the Inter-American Court becomes the central institution capable of harmonizing fragmented approaches and articulating a coherent standard. The resulting jurisprudence not only fills gaps left by domestic systems but also actively reshapes the balance between freedom of religion, equality, and democratic pluralism. This places the Court at the heart of the region's struggle to reconcile deeply rooted cultural, religious, and political traditions with the demands of a modern human rights framework.

CHAPTER 5: JURISPRUDENTIAL ANALYSIS OF FREEDOM OF RELIGION IN THE INTER-AMERICAN COURT

5.1. Jurisdictional Parameters and Adjudicative Authority

5.1.1. Contentious Jurisdiction: Scope and Limitations

The exercise of contentious jurisdiction by the Inter-American Court presents significant practical limitations that have profoundly influenced the development of freedom of religion jurisprudence in the Americas. The limited acceptance of the Court's contentious jurisdiction by OAS member states creates an immediate asymmetric protection of freedom of religion across the hemisphere, fundamentally shaping which cases can be adjudicated.

This jurisdictional constraint is compounded by a multi-stage procedural pathway. Individual petitioners must first exhaust domestic remedies before petitioning the Inter-American Commission on Human Rights. The Commission serves as a gatekeeper through its functions as investigator, mediator, and filter, which has resulted in remarkably few direct freedom of religion cases reaching the Court's docket, steering the development of standards on this right into other jurisprudential channels. This limitation proves particularly significant when considering that the United States, with its extensive freedom of religion jurisprudence and diverse religious landscape, remains outside the Court's contentious reach. The absence of major regional powers from the jurisdictional framework prevents the development of truly comprehensive regional standards and limits cross-fertilization of freedom of religion concepts that might strengthen protection throughout the Americas.

The procedural pathway to contentious jurisdiction adds another layer of complexity. Once a case reaches the Commission, it conducts admissibility reviews, attempts friendly settlement, issues recommendations, and only then, at its discretion (Burgorgue-Larsen & Úbeda de Torres, 2011), may refer the case to the Court. Since beginning operations in 1979, the Court has issued "over a hundred judgments" and "thirty advisory opinions," yet explicit engagement with Article 12 protecting freedom of conscience and religion remains minimal. This procedural architecture

illustrates how institutional design shapes the Court's docket and the practical development of freedom of religion jurisprudence in the Americas.

The Commission's discretionary role in case selection significantly shapes the freedom of religion agenda. While the Commission has addressed religious persecution extensively through country reports and recommendations, such as cases involving Jehovah's Witnesses in Argentina following Decree 1867 (OAS, 1978) and similar persecution in Paraguay (IACHR, 1980), these interventions rarely translate into contentious proceedings. The Commission's 1978 Resolution 2/79 regarding Argentina and the 1979-1980 Annual Report on Paraguay demonstrate robust engagement with freedom of religion at the Commission level that doesn't reach Court adjudication (IACHR, 1980, Chapter IV – Paraguay). This filtering effect may reflect strategic calculations about which cases can establish favorable precedents, resource constraints, or an assessment of state compliance likelihood.

The Court's methodological approach to conflicts between competing legal interests is evident in cases beyond freedom of religion. In *Barrios Altos v. Peru* (IACtHR, 2001), the Court declared that amnesty laws preventing investigation of serious human rights violations are incompatible with the Convention. The Court stated that 'all amnesty provisions...are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations' (IACHR, 2001). Notably, the Court employed language declaring such laws to 'lack legal effects' rather than merely finding them in violation of the Convention, a linguistic distinction whose theoretical significance is examined in Section 6.1.1 within the broader analysis of *jus cogens* and hierarchical ordering.

The structural requirement that only states or the Commission, not individuals, can bring cases before the Court creates additional barriers for freedom of religion claims (Burgogue-Larsen & Úbeda de Torres, 2011). Religious communities experiencing violations must navigate multiple institutional layers, each with their own procedures, timelines, and discretionary decisions. The Commission must determine not only whether a violation occurred but whether the case merits the significant resources required for Court proceedings (OHCHR, 2003). This institutional architecture may explain why freedom of religion violations often remain addressed through Commission reports and recommendations rather than binding Court judgments.

Furthermore, the Court's contentious jurisdiction is limited to interpreting the American Convention and other regional human rights instruments to which states are parties. This means freedom of religion varies depending on which instruments states have ratified. While Article 12 of the Convention provides basic protection, additional instruments like the Protocol of San Salvador or specific conventions on discrimination may strengthen or limit freedom of religion claims depending on state ratification patterns. This patchwork of obligations creates uneven protection across the region, with some states bound by comprehensive frameworks while others maintain minimal commitments.

5.1.2. Advisory Functions and Interpretative Authority

The Court's advisory jurisdiction under Article 64 of the American Convention represents a powerful yet controversial mechanism for shaping freedom of religion standards across the Americas. Unlike the limitations of contentious jurisdiction, the advisory function allows the Court to issue interpretations that are binding on all member states, irrespective of whether they have accepted contentious jurisdiction or were parties to specific proceedings. This expansive interpretative authority has proven both influential and, at times, problematic for freedom of religion issues (Chaibi, 2023).

The advisory process begins when OAS member states or organs request an interpretation of the Convention or other regional human rights treaties. As established in the Court's procedures, "the Court issues a broad call for observations from, among others, universities, human rights clinics, non-governmental organizations, professional associations, interested individuals, state bodies, international organizations, and States" (Court Regulations, Article 73). This inclusive approach transforms advisory proceedings into quasi-legislative forums, where fundamental questions regarding religion, morality, and social organization receive definitive answers without the factual context and adversarial testing that characterize contentious cases (Ramírez, 2023).

Advisory Opinion 24-17 (2017) exemplifies the scope of this interpretative authority. Costa Rica's request for clarification on gender identity documentation evolved into pronouncements on same-sex marriage, with the Court declaring that states must recognize such unions and explicitly denominate them 'marriage.' The Court stated that 'philosophical or religious convictions cannot be used as a parameter of conventionality because the Court could not use them as an interpretative

guide when determining the rights of human beings' (IACHR, A/O-24/17, 2017). This statement regarding the role of religious perspectives in conventionality analysis was issued without specific factual context, direct representation from affected religious communities, or the procedural safeguards characteristic of contentious proceedings. The implications of this interpretative approach for freedom of religion's position within the Inter-American framework are examined in Section 6.1.2 as part of the analysis of how advisory opinions shape subsequent jurisprudential outcomes.

The abstract nature of advisory opinions generates concerns for freedom of religion. By establishing broad principles without considering the practical implementation challenges or the diverse religious and cultural contexts across the region, the Court effectively dictates norms that may conflict with widely shared moral and religious practices. As Judge Vio Grossi warned in his dissent, this approach risks creating a perception that individuals holding certain religious beliefs are opposed to human rights, potentially delegitimizing their participation in public discourse (Vio Grossi, 2017).

The advisory interpretations carry significant practical consequences despite their abstract form. Through the control of conventionality doctrine, national courts are obliged to apply these interpretations, effectively transforming theoretical pronouncements into operational mandates. Religious institutions are directly affected, including decisions regarding whom they can employ, which services they must provide, and how they define social institutions such as marriage (Contesse, 2016). These outcomes occur without the factual development, adversarial testing, or direct party representation that usually inform judicial decisions of this magnitude. In practice, the Court legislates through interpretation, establishing region-wide standards on contentious social issues via a procedure intended for legal clarification rather than for resolving fundamental conflicts between competing rights (Lockwood Jr., 1984).

Moreover, the advisory function enables the Court to extend its influence beyond formal jurisdictional limits. States that have not accepted contentious jurisdiction are nonetheless engaged in the advisory process and are influenced through both direct requests for observations and the persuasive authority of the Court's interpretations. International organizations, NGOs, and advocacy groups frequently invoke advisory opinions to pressure states into compliance with these

standards, further expanding the Court's reach. This indirect authority is particularly consequential for freedom of religion, as advisory opinions on sexuality, reproduction, family structure, and other socially sensitive issues often conflict with religious doctrines prevalent throughout the region.

In summary, the advisory jurisdiction allows the Court to shape the normative landscape of freedom of religion across the Americas decisively. While it provides an avenue to set uniform standards and address critical human rights questions, its abstract, decontextualized nature and exclusion of religious perspectives create practical, political, and normative tensions. The Court's interpretative authority, therefore, represents both a mechanism for harmonization and a source of controversy, illustrating the complex interaction between universal human rights norms and deeply rooted cultural, religious, and moral traditions across the hemisphere.

5.1.3. Relationship with Domestic Constitutional Courts

The control of conventionality doctrine introduced in Chapter 4 carries particular implications for freedom of religion adjudication. By requiring all domestic authorities to conform their decisions to the Court's interpretations, the doctrine transforms freedom of religion conflicts from matters of national constitutional law into questions of international compliance, effectively subordinating domestic religious accommodations to the Court's increasingly restrictive approach. This dynamic establishes a relationship in which the Inter-American Court functions as a type of super-legislator, empowered to demand rules of general nature from all countries.

Control of conventionality operates at multiple levels. First, it requires domestic courts to directly apply the American Convention as interpreted by the Inter-American Court, even when this conflicts with domestic constitutional provisions. Second, courts must follow Inter-American jurisprudence not only in cases in which they have been a party but, in any decision, taken by it. Third, legislatures must adapt laws to comply with Court interpretations, and administrative authorities must implement policies consistent with Inter-American standards. This comprehensive subordination of domestic legal systems to international interpretation creates particular tensions when Court decisions conflict with constitutional provisions protecting religious autonomy or reflecting religious values.

Resistance from domestic constitutional courts reveals the doctrine's controversial nature. Argentina's Law 255-319 declared the Inter-American Court's interpretation in *Artavia Murillo v. Costa Rica* (IACtHR, 2012), which invalidated Costa Rica's ban on in vitro fertilization based on Catholic doctrine regarding embryonic personhood, as incorrect, though acknowledging the decision was not binding since Argentina had not been a party to the proceedings. This legislative response illustrates how states attempt to preserve sovereignty while formally accepting international obligations. Panama's Supreme Court went further by directly rejecting the Inter-American Court's marriage equality mandate, declaring that the right to equal marriage is an aspiration that, although legitimate for the groups involved, does not have the category of a human right or a fundamental right since it lacks conventional and constitutional recognition (Panama Supreme Court, 2023).

The relationship proves especially problematic for countries with concordats or constitutional provisions granting special status to religious institutions. Many Latin American constitutions resulted from negotiations between secular and religious forces, embedding compromises about religion's public role. When the Inter-American Court mandates changes affecting these constitutional settlements, such as redefining marriage or limiting religious institutional autonomy, it disrupts carefully balanced domestic arrangements without democratic input or consideration of local contexts. The Court effectively demands that domestic constitutional courts abandon their role as guardians of national constitutional order in favor of implementing international interpretations that may contradict fundamental constitutional principles.

This subordination extends beyond specific decisions to interpretative methodologies. Domestic courts must adopt the Inter-American Court's evolutionary interpretation approach, viewing the Convention as a living instrument whose meaning changes with contemporary conditions. This requires abandoning originalist or traditionalist interpretative methods that might preserve space for religious values. Courts must also apply the *pro homine* principle in ways that favor expanding equality rights over preserving religious prerogatives, regardless of domestic constitutional balances. Control of conventionality thus operates not merely as a supremacy clause but as a comprehensive transformation of domestic judicial philosophy.

The doctrine's implementation varies significantly across states, showing both its ambitious scope and practical limitations. Some domestic courts like Costa Rica, Mexico, Chile, Honduras, Colombia, and Uruguay, enthusiastically embrace Inter-American standards (e.g., *Gelman v. Uruguay*, (IACtHR, 2011); *Atala Riffo v. Chile* (IACtHR, 2012)), using them to advance progressive agendas that might lack domestic political support. Others engage in defensive compliance, formally acknowledging Inter-American authority while interpreting mandates narrowly or finding procedural grounds to limit their application. Still others, like Panama's Supreme Court, openly resist when Inter-American interpretations conflict with deeply held constitutional or religious principles.

In addition to Panama, several Latin American states have exhibited limited cooperation or resistance to the implementation of Inter-American Court of Human Rights standards, undermining the uniformity and effectiveness of regional human rights protection. El Salvador has faced significant challenges in complying with inter-American human rights norms amid a broader political and institutional crackdown on civil society and judicial independence, which has raised concerns about respect for international obligations (Ramírez & Rousset, 2023; Reuters, 2025). Peru has recently enacted controversial amnesty legislation for military and police accused of serious human rights abuses, a move criticized for promoting impunity and disregarding international justice standards, including those relevant to prior Court jurisprudence on amnesty laws (Reuters, 2025; The Guardian, 2025).

Venezuela has taken a more extreme step by withdrawing from the American Convention on Human Rights under the Maduro government, effectively distancing itself from the Inter-American Court's jurisdiction and diminishing its engagement with the regional human rights system (Amnesty International, 2013; ASIL, 2013). Guatemala and other states have struggled with slow or partial implementation of Court rulings due to political resistance and institutional weaknesses, resulting in extensive compliance monitoring cases without full domestic enforcement (Inter-American Court of Human Rights, 2023; Sur, 2014).

Taken together, these patterns point to a broader phenomenon in which a lack of political will and structural resistance to international human rights obligations hinder the consistent application of Inter-American standards across the region, generating legal uncertainty for religious communities

operating across multiple jurisdictions and ultimately undermining the uniformity the doctrine is meant to ensure.

5.1.4. Enforcement Mechanisms and Compliance Challenges

The Inter-American Court's enforcement mechanisms reveal fundamental structural weaknesses that particularly affect freedom of religion cases. While Court judgments are formally binding on states that have accepted its jurisdiction, the enforcement system relies entirely on political will and reputational concerns rather than coercive power. The Court "supervises compliance with its judgments, involving periodic requests for information from the State, observations from relevant parties, and the possibility of convening supervisory hearings" (IACtHR, n.d., Court Regulations, art. 69), but this supervision lacks meaningful sanctions for non-compliance (Huneus, 2017).

The compliance challenge intensifies when Court decisions require structural reforms touching upon socially or morally sensitive issues, including those with religious dimensions. This can be observed in certain cases (e.g., *Olmedo Bustos v. Chile*) in which the Court has ordered constitutional or legislative changes following findings of Convention violations, illustrating the variable effectiveness of the Inter-American enforcement model (IACtHR, 2001). However, this success involved removing a restriction rather than requiring positive action that conflicts with religious convictions. When remedies demand that states or religious institutions act contrary to deeply held beliefs, compliance becomes far more problematic.

Other judgments reveal even more acute compliance difficulties, particularly where remedies implicate complex institutional arrangements involving both state authorities and non-state actors (IACtHR, 2022). In such contexts, implementation depends not only on formal legal reform, but also on the coordination and cooperation of multiple domestic institutions whose internal procedures and norms may not easily align with the Court's directives. Achieving compliance in these cases often requires ongoing monitoring, iterative adjustments, and sustained engagement across administrative, legislative, and supervisory bodies. Where remedies entail multi-layered implementation efforts, practical obstacles frequently emerge that test the limits of the Inter-American enforcement framework, highlighting the variable effectiveness of international oversight mechanisms.

Enforcement becomes even more challenging when Court decisions require region-wide changes to fundamental social institutions. Advisory Opinion 24-17's mandate that all states must recognize and call same-sex unions "marriage" faces widespread resistance. The Inter-American Commission responded by reiterating that "neither ideological or religious arguments...can be considered as a valid argument to deny or restrict their human rights" (IACHR, 2023), but such statements lack enforcement power when states invoke sovereignty and democratic legitimacy.

The Court's enforcement weakness stems partly from its institutional design. Unlike domestic courts with marshals, contempt powers, or ability to invalidate government actions, the Inter-American Court depends on political bodies for implementation. The OAS General Assembly can pressure non-compliant states but lacks meaningful sanctions beyond diplomatic criticism (Huneus, 2017). Individual states can bring inter-state cases against violators, but this rarely occurs given diplomatic costs. The Commission can include non-compliance in country reports and conduct site visits, but these naming-and-shaming tactics have limited effect on states convinced that Court decisions illegitimately interfere with domestic religious and moral values (IACHR, 2025).

Financial remedies present fewer enforcement issues than structural reforms affecting religious practices. States generally comply with orders to pay compensation to individual victims, perhaps because these involve discrete transfers rather than systemic changes. But when remedies require modifying laws, policies, or practices touching religious sensitivities, such as recognizing same-sex marriage, permitting abortion, or restricting religious education, compliance rates drop dramatically. States may formally acknowledge Court decisions while finding creative ways to avoid meaningful implementation, such as creating alternative legal frameworks that technically comply while preserving religious influence.

5.1.5. The Tripartite Framework of State Obligations

The Inter-American Court has increasingly adopted a tripartite framework for approaching state obligations in the field of freedom of religion, encompassing duties to respect, protect, and fulfill. This framework, while not always explicitly articulated in freedom of religion cases, emerges from the Court's broader human rights jurisprudence and finds particular application in cases involving vulnerable groups and indigenous communities.

The obligation to respect requires states to refrain from interfering with religious practices, whether through direct prohibitions or measures that indirectly burden or discourage religious expression. This duty encompasses preventing the state from suppressing expression merely because it may offend or challenge prevailing religious sensibilities (IACtHR, 2001). The Court emphasized that the free circulation of ideas and images constitutes a cornerstone of a free and plural public sphere, highlighting that protecting freedom of religion does not authorize the state to impose a preferred moral or religious outlook through censorship. Accordingly, respect obligation demands a legal environment in which diverse convictions can coexist without the state privileging one worldview over others or restricting expression to shield religious doctrines from scrutiny or dissent.

Building on the principle of non-interference, the obligation to protect extends the state's responsibility beyond its own actions to encompass the conduct of third parties. It also entails that states take proactive measures to prevent interference with religious exercise, including shielding individuals and communities from discrimination or obstruction by private actors (IACtHR, 2022). The practical application of this obligation becomes interesting when non-state institutions participate in public functions or provide services of general interest, requiring states to monitor compliance, coordinate with multiple actors, and ensure that private norms and practices do not undermine protected freedoms.

The obligation to fulfill, though less developed in the Court's freedom of religion jurisprudence, requires states to take positive measures to ensure the conditions necessary for meaningful religious exercise (OHCHR, 2024). This may include facilitating access to religious institutions, ensuring nondiscriminatory treatment in public services, and promoting an environment in which individuals can freely practice their beliefs. While the specific application of this obligation can vary depending on cultural and social contexts, its core purpose is to move beyond mere non-interference, compelling states to actively support the realization of freedom of religions (University of Minnesota Human Rights Library, 2025).

This tripartite framework provides the analytical structure through which the Court approaches state obligations in freedom of religion cases. The framework's practical application reveals significant variation depending on whether freedom of religion is the right being protected or the

interest being limited, an asymmetry whose implications for understanding the Court's hierarchical preferences are examined in Section 6.4.1. The following section examines landmark cases that exemplify the practical tensions and applications of these tripartite obligations.

5.2. Critical Analysis of Landmark Jurisprudence

5.2.1. Olmedo Bustos et al. v. Chile: Freedom of Expression and Religious Sensitivities

The Olmedo Bustos case (IACHR, 2001) represents a watershed moment in the Inter-American Court's approach to conflicts between religious sensitivities and other fundamental rights. The case arose from Chile's censorship of Martin Scorsese's film "The Last Temptation of Christ," which had been banned during the Pinochet dictatorship and remained prohibited despite subsequent democratization. The controversy intensified when "the Cinematographic Rating Council later reformed these censorship decisions and permitted the film's viewing," only to have "a group of lawyers and individuals who felt offended by the film's message file a protection appeal with the Santiago Court of Appeals" (McCormick, 2016; Navarro Floria, 2011).

The domestic proceedings revealed deep tensions within Chilean society about religion's role in public life. The Santiago Court of Appeals initially recognized that censorship violated freedom of expression protected by international treaties, understanding that democracy requires tolerance for diverse viewpoints. However, the Chilean Supreme Court reversed this decision on June 17, 1997, reasoning that protecting the religious feelings of the Catholic majority justified restricting artistic expression. This reversal reflected a traditional understanding prevalent in Latin America that state authority could legitimately protect dominant religious sensitivities from offensive expression. The Supreme Court's logic suggested that religious feelings, particularly those of the majority faith, deserved special protection that could override individual expression rights.

The Inter-American Commission's decision to pursue the case, filing suit on January 15, 1999, based on complaint No. 11,803 received September 3, 1997, signaled recognition that the censorship raised fundamental questions about democracy, pluralism, and religion's proper role in public life (IACtHR, *The Last Temptation of Christ v. Chile*, 2001). The Commission argued that using state power to enforce religious orthodoxy through censorship violated not only freedom of expression but also the freedom of religion of those who wished to view the film and form their

own opinions about its religious content. This framing reconceptualized the case from a simple conflict between expression and religious feelings to a question about whose freedom of religion deserves protection, those offended by the film or those seeking access to diverse religious perspectives.

The Court's analysis in its February 5th, 2001, judgment established principles that would fundamentally reshape the way religious sensitivities are balanced against other rights within the Inter-American system. While recognizing that Article 12 guarantees freedom of conscience and religion, encompassing both the private commitment to one's beliefs and the public expression of those convictions (IACHR, 2001), the Court drew a crucial distinction between safeguarding individuals' rights to practice their faith and permitting the use of state authority to impose particular religious doctrines on society. The judgment emphasized that a functioning democracy depends on tolerance for diverse perspectives, including viewpoints that may challenge, contradict, or even offend prevailing religious orthodoxies, thereby ensuring that no single set of beliefs can dominate the public sphere.

The Court's remedy: requiring Chile to amend its constitution to eliminate prior censorship and establish a film rating system based on age appropriateness rather than religious content, went beyond resolving the immediate dispute to mandate structural changes in how Chile balances religious and expressive values. This remedy succeeded because it required removing a restriction rather than imposing positive obligations on religious communities. Chile complied by establishing "a rating council to classify films based on their content by age limits," transforming from a system of religious censorship to one of content guidance that respects both parental rights and artistic freedom.

The Olmedo Bustos decision addressed the question of whether protecting religious sensibilities constitutes a legitimate aim sufficient to justify prior censorship. The Court answered negatively, finding that the complete prohibition of a film based on religious objections failed the proportionality test: the measure was neither suitable, necessary, nor proportionate in the strict sense, given that less restrictive alternatives such as age classifications were available. The Court's remedy required Chile to reform its constitutional framework, eliminating prior censorship and establishing a film rating system based on age appropriateness rather than religious content. Chile

complied by establishing 'a rating council to classify films based on their content by age limits,' transforming from a system of religious censorship to one of content guidance. The theoretical significance of the Court's methodological approach in this foundational case, particularly regarding the relationship between freedom of expression and religious sensibilities, is examined in Section 6.1.1 as part of the broader analysis of hierarchical patterns.

The Court's analytical framework in *Olmedo Bustos* addressed the conflict primarily through Article 13's freedom of expression provisions, with religious sensibilities analyzed as a potential limitation on expression rather than as a competing right under Article 12. The Court's proportionality analysis identified age classifications as a less restrictive alternative but did not examine other potential accommodations such as warning labels or distribution limitations. This methodological choice regarding how to frame conflicts between expression and religious interests established analytical patterns visible in subsequent jurisprudence, patterns whose implications are examined in Section 6.2.1 within the discussion of how the Court constructs hierarchical relationships through case framing.

5.2.2. Sandra Cecilia Pavez v. Chile: Non-discrimination and Religious Autonomy

The Sandra Cecilia Pavez case (IACHR, 2021) presented the Inter-American Court with its most direct confrontation between religious institutional autonomy and evolving non-discrimination norms. The case's facts were undisputed: Sandra Pavez, "who had taught religion for over 20 years, had her suitability certificate revoked by the Vicariate for Education upon the discovery of her sexual orientation" with authorities stating she exhibited immoral attitudes and a disagreement with the values of the church (Henriquez, 2022). This revocation occurred under Chilean Decree 924, which granted religious authorities' exclusive power to certify teachers for religious education in public schools, effectively giving churches control over public employment in this sector.

The domestic proceedings revealed the complication of balancing religious autonomy with public employment rights. The Homosexual Liberation Movement (MOVILH) sought protection from the San Miguel Court of Appeals, arguing that allowing religious institutions to make public employment decisions based on sexual orientation constituted illegal discrimination. The court denied this request on November 27, 2007, reasoning that Decree 924 "empowers religious institutions to grant and revoke authorization according to their principles, precluding state or

individual interference." The Chilean Supreme Court's dismissal of the appeal on April 17, 2008, reinforced this position, essentially holding that religious institutional autonomy in determining who can teach religious doctrine overrides individual non-discrimination rights.

The case attracted unprecedented religious institutional participation when it reached the Inter-American system. "Representatives from various religious groups, including the Catholic, Orthodox, Anglican, Evangelical, Muslim, and Jewish Churches, supported by the Episcopal Conference of Chile, submitted an 'Amicus Curiae' to the IACHR, aiming to rule against Pavez" (Amicus Curiae, 2021). This broad coalition reflected awareness across religious traditions that the case's outcome would fundamentally affect their ability to maintain institutional integrity and doctrinal coherence. The religious organizations argued that forcing them to certify teachers whose lives publicly contradicted their teachings would violate their own freedom of religion, essentially compelling them to endorse through certification conduct they consider sinful.

The Inter-American Commission's decision to advance the case, with petition received October 28, 2008, signaled recognition that the conflict raised fundamental questions about the limits of religious institutional autonomy in democratic societies. The Commission framed the issue not merely as employment discrimination but as a structural question about whether religious institutions can exercise their traditional prerogatives when performing public functions. This framing shifted focus from Pavez's individual rights to systemic questions about religion's role in public education and the compatibility of religious institutional autonomy with evolving equality norms.

The Court's 2021 judgment categorically rejected religious autonomy arguments when discrimination affects public employment. "The Inter-American Court of Human Rights concluded that the actions of the religious authorities and the State of Chile violated Sandra Pavez's human rights, including the right to equality and non-discrimination" (IACHR, 2021). The Court reasoned that while religious institutions have the right to determine their internal doctrine, this autonomy cannot extend to discriminatory practices in public functions, even functions directly related to religious education. Sexual orientation and gender identity, the Court emphasized, are protected categories under the Convention that cannot be grounds for differential treatment regardless of religious justifications. The Court applied strict scrutiny to the discrimination claim, establishing

that sexual orientation and gender identity constitute suspect classifications requiring the most exacting judicial review, effectively predetermining the outcome in favor of equality over religious autonomy.

The Court's reasoning in *Pavez v Chile* (IACtHR, 2022) addressed the specific question of religious institutional autonomy in contexts involving public functions (Henríquez, 2022). The Court distinguished between internal doctrinal matters, where religious institutions retain autonomy, and employment decisions affecting individuals performing public educational functions under state-recognized certification systems. The Court held that Chile's framework under Decree 924, which delegated certification authority to religious institutions for teachers in public schools, did not exempt the state from its Convention obligations regarding non-discrimination.

The Court applied strict scrutiny to the discrimination claim, establishing that sexual orientation constitutes a suspect classification requiring heightened justification for any differential treatment. The judgment found that Pavez's twenty-two years of effective teaching demonstrated that sexual orientation bore no relation to pedagogical competence, making the certificate revocation arbitrary rather than doctrinally necessary. The Court ordered Chile to adopt remedial measures including mandatory training for education officials on non-discrimination and sexual diversity, modifications to regulations governing certificates for religious education teachers, and clear protocols distinguishing doctrinal teaching requirements from discriminatory employment practices (IACHR, 2022).

The framework established in *Pavez* regarding the boundaries of religious institutional autonomy when institutions perform quasi-public functions raises questions about application to other contexts. These broader implications, including potential effects on religious institutions operating hospitals, universities, and social services, are examined in Section 6.4.3 as part of the analysis of implementation challenges.

5.2.3. Evolution of Jurisprudential Approaches

The Inter-American system's engagement with freedom of religion has developed through distinct chronological phases that merit documentation before theoretical analysis.

During the Commission's foundational period, engagement with freedom of religion focused primarily on religious persecution. Country reports documented violations against Jehovah's Witnesses in Argentina following Decree 1867 (OAS, 1978) and similar persecution in Paraguay (IACHR, 1980). The Commission's Resolution 2/79 regarding Argentina and the 1979-1980 Annual Report on Paraguay (IACHR, 1980, Chapter IV) demonstrate robust engagement with freedom of religion at the Commission level, though these interventions rarely translated into contentious Court proceedings.

The Court's contentious jurisdiction produced its first major engagement with a religiously sensitive issue in *Olmedo Bustos v. Chile* (IACtHR, 2001), analyzed in Section 5.2.1, which addressed the conflict through the framework of freedom of expression rather than freedom of religion itself. The Court's analytical choice to frame religious sensibilities as a potential limitation on expression rather than as a competing Article 12 right established methodological patterns for subsequent cases.

Subsequent landmark cases addressed conflicts where religious or moral arguments were invoked against equality and reproductive rights claims. *Atala Riffo v. Chile* (IACtHR, 2012), analyzed in Section 5.4.2, rejected religious and moral justifications for custody denial based on sexual orientation. *Artavia Murillo v. Costa Rica* (IACtHR, 2012), analyzed in Section 5.4.4, invalidated restrictions on in vitro fertilization that had been influenced by religious conceptions of embryonic life.

Advisory Opinion OC-24/17 (2017) addressed gender identity and same-sex marriage, establishing that 'philosophical or religious convictions cannot be used as a parameter of conventionality' (IACHR, A/O-24/17, 2017). This advisory opinion's framework subsequently informed the Court's analysis in contentious cases. Most recently, *Pavez v. Chile* (IACtHR, 2022), analyzed in Section 5.2.2, addressed religious institutional autonomy in public employment contexts, finding that institutional autonomy cannot justify discrimination in quasi-public functions.

This chronological sequence documents the cases through which the Court has engaged freedom of religion issues. The theoretical significance of this trajectory, including questions about whether

the sequence reveals systematic patterns of hierarchical ordering and whether the Court reflects or shapes evolving social values, is examined in Section 6.1.2.

5.2.4. Emerging Doctrinal Trends and Interpretative Methodologies

The Inter-American Court employs several interpretative methodologies that recur across freedom of religion cases and merit description before theoretical analysis.

First, evolutionary interpretation treats the American Convention as 'a living instrument whose interpretation must evolve with the times and current living conditions' (IACHR, 2006, *Yakye Axa*, para. 125). Under this doctrine, the Court interprets Convention provisions in light of contemporary conditions rather than original understandings. The Court has applied evolutionary interpretation to recognize protections for categories not explicitly mentioned in the Convention's 1969 text, including sexual orientation and gender identity (Bjorge, 2017; Hiyani, 2019). Some scholars note that the application of evolutionary interpretation has not produced comparable expansion of freedom of religion protections in response to new challenges (Tolone Azzariti, 2020), though indigenous spirituality has received enhanced protection through cultural survival frameworks.

Second, the *pro homine* principle requires interpretation most favorable to human rights protection (Negishi, 2017). When multiple interpretations of a Convention provision are possible, the Court selects the interpretation that maximizes rights protection. The application of this principle in cases involving competing rights claims, where maximizing protection for one right may limit another, presents methodological complexities.

Third, the Court has developed categorical approaches to certain discrimination claims. Advisory Opinion 24-17 stated that 'sexual orientation and gender identity, as well as gender expression, are categories protected by the Convention' and that 'any norm, act or discriminatory practice based on a person's sexual orientation, gender identity or gender expression is prohibited by the Convention' (IACHR, A/O-24/17, 2017). The categorical language employed, particularly 'any' and 'prohibited,' establishes a framework that subsequent cases have applied.

Fourth, the Court has articulated positions regarding the role of religious reasoning in conventionality analysis. The statement in A/O-24/17 that 'philosophical or religious convictions

cannot be used as a parameter of conventionality' addresses the question of what sources of reasoning are appropriate for determining Convention compliance (IACHR, A/O-24/17, 2017; Jakuszewicz, 2024; Henrad, 2021).

The interaction among these methodologies and their combined effect on freedom of religion's position within the Inter-American system constitutes questions requiring theoretical analysis. Whether these methodologies operate neutrally or systematically produce particular outcomes, and what implications follow for understanding hierarchical ordering, are examined in Section 6.2.4 as part of the theoretical explanation for observed jurisprudential patterns.

5.3. Judicial Construction of Freedom of religion

The jurisprudential architecture developed by the Inter-American Court of Human Rights regarding freedom of religion represents a sophisticated exercise in normative interpretation that navigates between universal principles and regional particularities. The Court's approach to constructing the scope and limits of freedom of religion reflects both the distinctive characteristics of the Latin American context and the broader challenges inherent in balancing competing rights within pluralistic societies.

5.3.1. Definitional Scope and Protected Dimensions

The Inter-American Court has progressively articulated an expansive understanding of freedom of religion that encompasses multiple dimensions of human experience. Drawing on established human rights principles, the Court emphasizes that freedom of thought, conscience, and religion constitutes a foundational element of pluralistic constitutional orders (Murdoch, 2012), extending beyond internal belief to include outward manifestation, practice, and institutional autonomy. Its interpretative framework recognizes that freedom of religion operates simultaneously at individual and collective levels, safeguarding both personal conviction and the communal structures through which religious life is expressed.

Within the Inter-American system, the definitional boundaries of freedom of religion have been shaped through a dialectical process that responds to the region's unique religious landscape (CSW USA, 2025; Murdoch, 2012). The historical predominance of Catholicism, combined with the rise of Protestant and Evangelical movements in the late twentieth and early twenty-first centuries, has

created an intricate matrix within which freedom of religion claims must be adjudicated (Bastian, 2010). The Court has recognized that this religious diversification demands a nuanced approach that neither privileges traditional religious expressions nor marginalizes emerging spiritual movements.

The protected dimensions of freedom of religion, as constructed by the Court, extend to encompass the forum internum, which is the absolute sphere of inner belief and conscience, and the forum externum, which is the qualified right to manifest religion through worship, practice, observance, and teaching. This bifurcated structure reflects the Court's recognition that while belief itself remains inviolable, its external manifestation necessarily encounters the legitimate interests of democratic society and the rights of others. The Court has particularly emphasized that religious autonomy includes the right of religious communities to organize themselves according to their own doctrinal requirements, though this autonomy finds its limits when it collides with fundamental rights, particularly non-discrimination principles.

5.3.2. Limitation Doctrine and Proportionality Analysis

The Inter-American Court's approach to limitations on freedom of religion reflects a nuanced balancing between safeguarding religious expression and protecting competing fundamental rights. According to the Court's limitation doctrine, any restriction on the exercise of freedom of religion must be legally prescribed, pursue a legitimate aim recognized by the American Convention, and satisfy rigorous standards of necessity and proportionality (IACHR, 2024; American Convention on Human Rights, 1969/1978; Arlettaz, 2011). This framework ensures that interference with religious practice is grounded in law, directed toward legitimate objectives such as the protection of public order, the rights of others, or public health, and represents the least intrusive means available. By embedding these principles, the Court emphasizes that limitations on freedom of religion should remain exceptional and carefully circumscribed, thereby preserving the essential core of the right while allowing the state to reconcile competing interests through a principled and methodologically sound approach.

The Court's reasoning in *Olmedo Bustos* applied the limitation doctrine to evaluate prior censorship justified on grounds of protecting religious sensibilities. As we mentioned before, the Court rejected Chile's argument that protecting religious feelings constituted a legitimate aim

sufficient to justify prior censorship, establishing that 'the prohibition of the exhibition of the cinematographic film 'The Last Temptation of Christ' constituted prior censorship in violation of Article 13 of the Convention' (IACHR, 2001). The Court's proportionality analysis examined each element systematically: the complete prohibition was found neither suitable for achieving the purported aim without disproportionate cost to expression, nor necessary given the availability of less restrictive alternatives such as age classifications, nor proportionate in the strict sense given the total suppression of artistic expression involved. This application of proportionality methodology to a conflict between expression and religious sensibilities established analytical patterns that recur in subsequent cases, patterns whose theoretical significance for understanding hierarchical ordering is examined in Section 6.1.3.

Moreover, the Court's proportionality analysis in this case established that the complete prohibition of a film based on religious objections failed every element of the proportionality test: it was neither suitable (as it protected some citizens' religious feelings at the expense of others' fundamental rights), necessary (less restrictive measures such as age classifications were available), nor proportionate in the strict sense (the total suppression of artistic expression outweighed any benefit to religious sensitivities). This methodological rigor signals the Court's commitment to preventing freedom of religion from becoming a tool for majoritarian oppression of minority viewpoints.

This approach demonstrates that proportionality analysis is not a rigid formula but a nuanced tool, integrating normative theory with the realities of judicial decision-making and the complex interplay of competing rights (Arlettaz, 2011). Consequently, the proportionality analysis must remain sensitive to the particular circumstances while maintaining consistency in its fundamental principles.

5.3.3. Differential Application of Scrutiny Standards

The Court's application of scrutiny standards varies significantly depending on the nature of the religious claim and its intersection with other rights, which produces patterns that strongly influence adjudicative outcomes. When freedom of religion claims conflict with equality rights involving suspect classifications, the Court applies strict scrutiny, requiring the state to demonstrate a compelling interest and narrow tailoring. This heightened review, evident in cases

such as *Pavez Pavez v. Chile* (IACtHR, 2022) and *Atala Riffo v. Chile* (IACtHR, 2012), reflects the Court's consistent position that discrimination based on sexual orientation triggers the most exacting judicial review and leaves minimal space for religious objections. The burden placed on states and institutions in these circumstances is substantial, making it difficult for freedom of religion claims to prevail.

The methodological significance of *Pavez v. Chile* (IACHR, 2022) extends beyond the immediate case and illustrates the Court's approach to balancing religious autonomy with equality protections. When religious institutions invoke doctrinal autonomy, the Court generally evaluates limitations under a reasonableness framework that resembles rational basis review, asking only that restrictions be justified in a manner consistent with basic standards of legitimacy. Conversely, when individuals assert non-discrimination rights on grounds such as sexual orientation, the Court immediately shifts to strict scrutiny. This asymmetry creates a structured pattern in which strict scrutiny places heavy justificatory demands on states and institutions, while reasonableness review gives broader latitude in cases concerning institutional autonomy. Intermediate scrutiny receives limited attention, despite its potential to provide a more balanced assessment of competing constitutional values.

When state restrictions on religious practices are justified on grounds such as public order or health concerns, the Court commonly applies a form of intermediate scrutiny that relies on proportionality analysis. This method allows for greater flexibility in accommodating both religious exercise and legitimate state interests and has been visible in advisory opinions concerning conscientious objection to military service. By contrast, in cases involving indigenous spiritual practices, the Court's approach combines elements of strict scrutiny with contextual evaluation. In *Sarayaku v. Ecuador* (IACtHR, 2012), the Court required compelling justification for state interference when indigenous spirituality was closely connected to cultural identity and territorial integrity. This reflects the Court's recognition that these claims carry particular normative weight within the Inter-American system.

The patterns in scrutiny application documented across cases in this section show variation correlated with case categories: strict scrutiny for discrimination claims based on sexual orientation as in *Pavez Pavez v. Chile* (IACtHR, 2022) and *Atala Riffo v. Chile* (IACtHR, 2012);

contextual proportionality for restrictions on religious practice justified by public order or health; and enhanced protection combined with territorial analysis for indigenous spiritual practices as in *Sarayaku v. Ecuador* (IACtHR, 2012). These documented patterns of differential scrutiny application provide the empirical foundation for the theoretical analysis in Section 6.1.3, which examines whether proportionality methodology operates as a neutral balancing tool or functions as a mechanism for hierarchical ordering.

5.3.4. Margin of Appreciation and Subsidiarity Principles

The margin of appreciation doctrine finds only a limited analogue within the Inter-American system. While the European Court of Human Rights regularly grants national authorities substantial deference in structuring their religious arrangements, the Inter-American Court more often imposes uniform standards when freedom of religion conflicts with equality norms. The European doctrine operates as a mechanism for nuanced evaluation of state measures in light of local circumstances and cultural contexts, as seen in *ECHR, Case Palomo Sánchez and Others v. Spain* (ECHR, 2011). Within the Inter-American system, comparable flexibility emerges through the Court's acknowledgment that member states possess distinct cultural, historical, and political backgrounds that shape their legal traditions.

The subsidiarity principle functions as a complementary mechanism. It recognizes that national authorities have expertise regarding their specific social and cultural conditions but reaffirms the Court's supervisory role in ensuring compliance with the American Convention (Carozza, 2003; Føllesdal, 2016). Besson (2016) observes that the diversity among Inter-American states influences how freedom of religion is understood and implemented. Some states regard freedom of religion as a fundamental right with strong institutional protection, while others face persistent tensions between religious liberty and competing societal interests.

The Court's use of margin and subsidiarity reflects an effort to balance universal human rights standards with regional particularities. The degree of deference afforded to states varies according to the right at issue and the level of consensus within the region, (IACtHR, 2012). Where claims involve deeply rooted religious or moral convictions, e.g. in *Atala*, and other cases, the Court sometimes accepts a degree of state discretion, so long as essential guarantees remain intact. At the same time, the Court sets firm limits when freedom of religion intersects with non-derogable

rights or affects vulnerable populations, where it shows significantly less deference to national arguments based on tradition or moral doctrine.

Sandra Pavez Pavez v. Chile (IACHR, 2022) illustrates the Court's application of margin of appreciation principles in cases involving religious institutional autonomy. The case required the Court to address the tension between religious institutions' autonomy to select religious education teachers and the state's obligation to prevent discrimination based on sexual orientation. The Court concluded that Chile violated Pavez's rights by permitting the Catholic Church's revocation of her certificate of suitability based solely on her sexual orientation (IACHR, 2022). In its reasoning, the Court distinguished between legitimate doctrinal autonomy, which it acknowledged religious institutions retain for internal matters, and employment decisions in public education contexts, which it held subject to Convention non-discrimination requirements.

The Court's approach in *Pavez* can be compared with European Court jurisprudence, which has often afforded wider latitude to religious institutions in employment disputes involving religious education. This comparative dimension, including the question of whether the Inter-American Court's approach reflects a distinctive regional conception of the relationship between religious institutional autonomy and equality rights, is examined in Section 6.2.3 within the comparative assessment of hierarchical patterns across regional systems.

5.3.5. Evidentiary Standards and Burden of Proof

The Inter-American Court has developed nuanced evidentiary frameworks for adjudicating freedom of religion claims that recognize the distinct challenges involved in demonstrating violations of conscience and belief. Because such violations often involve subjective or intangible harms, the Court relies on flexible standards capable of reflecting the nature of religious experience (Besson, 2016). This approach ensures that forms of injury not easily documented through traditional evidence can nonetheless be meaningfully assessed.

To establish a violation, petitioners must first demonstrate *prima facie* interference with protected conduct or belief. Once this threshold is met, the burden shifts to the state to justify the restriction in accordance with Convention standards. This burden-shifting mechanism acknowledges the informational asymmetries typical of freedom of religion disputes, where states usually possess

superior access to evidence regarding the implementation and justification of contested measures (IACtHR, 2019).

The Court's differentiated evidentiary standards extend to cases involving vulnerable groups more broadly. In *González et al. (Cotton Field) v. Mexico* (IACtHR, 2009), the Court emphasized the state's heightened obligations to investigate gender-based violence with due diligence. It observed that failure to investigate perpetuates impunity and undermines the full exercise of human rights (IACtHR, 2009). These principles influence freedom of religion disputes where gender and religion intersect. In *Pavez vs Chile* (IACtHR, 2022), the Court applied heightened scrutiny to discrimination against LGBTIQ+ individuals by religious institutions, drawing upon its broader jurisprudence on vulnerability and state responsibility.

The Court has also demonstrated particular sensitivity to the evidentiary challenges facing religious minorities and indigenous communities whose spiritual practices may not align with the institutional frameworks typical of major world religions (Chaibi, 2022). In these cases, the Court accepts alternative forms of proof such as anthropological reports, oral testimonies, and community declarations. This evidentiary flexibility acknowledges that indigenous spirituality often has a communal and holistic structure. In *Yakye Axa Indigenous Community v. Paraguay* (IACtHR, 2005), the Court accepted evidence demonstrating that displacement from ancestral lands produced spiritual harm. It observed that the culture of indigenous communities is inseparable from their relationship with their traditional territories and thus recognized the spiritual consequences of territorial deprivation.

In addition, the Court has addressed how religious discrimination may be embedded in facially neutral measures that produce disproportionately adverse effects on religious communities (IACtHR, 2022). Its evidentiary framework therefore examines both direct and indirect discrimination, as well as patterns of enforcement and contextual factors that may reveal discriminatory intent or effect (McCrudden, 2021; Marshall, 2020). This complete assessment benefits religious minorities who often confront systemic discrimination manifested through accumulated disadvantages rather than isolated incidents. By recognizing the relevance of indirect discrimination and contextual evidence, the Court broadens the scope of protection available to these communities.

5.3.6. Remedial Approaches and Implementation Requirements

The Inter-American Court's remedial jurisprudence in freedom of religion cases reflects a comprehensive approach that extends beyond individual redress to address systemic violations and prevent recurrence. These violations often arise from entrenched structural factors, which means that effective responses require transformative interventions rather than simple monetary compensation (IACtHR, 2020; IACHR, 2023).

The Court has developed a typology of remedial measures that includes restitution, rehabilitation, satisfaction, and guarantees of non-repetition. In freedom of religion cases, restitution may involve removing legal or administrative barriers to religious practice, while rehabilitation focuses on the psychological and social harm suffered by victims of religious persecution (IACHR, 2023). Measures of satisfaction have included public acknowledgment of violations, official apologies, and commemorative acts recognizing the dignity of affected religious communities. Guarantees of non-repetition constitute the most ambitious component of the Court's approach, requiring states to adopt legislative reforms, institutional adjustments, and educational initiatives aimed at addressing the root causes of freedom of religion violations (Shelton, 2006; IACHR, 2023).

Implementing these measures poses significant challenges within the Inter-American system. As mentioned earlier, of the thirty-four OAS member states, only twenty-three have ratified the American Convention on Human Rights, and twenty have accepted the Court's contentious jurisdiction. This limited adherence reduces the Court's capacity to ensure full implementation of its orders. To mitigate this, the Court has established monitoring mechanisms such as periodic reporting requirements, compliance hearings, and on-site visits, increasingly involving civil society and affected communities in oversight (Contesse, 2016; Huneus, 2011).

The effectiveness of remedial measures ultimately depends on their ability to transform the conditions that enable violations. Sustainable protection of freedom of religion requires legal reform accompanied by broader cultural change that embraces diversity as a constitutive element of social and political life (Chaibi, 2022). This is particularly challenging in contexts shaped by historical religious hegemonies and emerging pluralism, where traditional understandings of freedom of religion may clash with modern interpretations.

The Court's jurisprudence also addresses the temporal dimension of freedom of religion violations, recognizing that persecution often produces intergenerational harm requiring long-term interventions. In cases involving indigenous spiritual practices, the Court has ordered measures supporting cultural revitalization and the transmission of religious knowledge across generations (IACtHR, 2020; IACHR, 2023). These approaches affirm that freedom of religion encompasses both present practice and the preservation and development of traditions for future generations.

Remedial measures also intersect with broader transitional justice processes, adding complexity in the Inter-American context (Huneus, 2011; Cavallaro & Brewer, 2008). Many violations occurred during periods of authoritarian rule or internal conflict, implicating questions of historical memory, reconciliation, and social reconstruction. The Court has sought to align its orders with these broader processes while maintaining attention to the specific dimensions of freedom of religion violations.

The Pavez case (IACHR, 2022) illustrates this remedial approach in contexts of religious discrimination. Beyond monetary compensation, the Court ordered Chile to adopt measures preventing future discrimination in religious education. These included mandatory training for education officials on non-discrimination and sexual diversity, modifications to regulations governing certificates for religious education teachers, and clear protocols distinguishing doctrinal teaching requirements from discriminatory employment practices.

Additionally, the Court required Chile to ensure that religious institutions retain autonomy in determining doctrinal content while offering alternative mechanisms for individuals like Pavez to teach in non-confessional roles. This arrangement reconciles institutional autonomy with individual employment rights by creating a dual-track system. Monitoring compliance has revealed tensions, as religious institutions resist oversight while LGBTIQ+ advocates call for stronger protection.

The Court's evolving remedial jurisprudence reflects an understanding that protecting freedom of religion in diverse societies demands ongoing adaptation and innovation. As religious landscapes change and new forms of expression emerge, remedial frameworks must remain flexible to address novel challenges while maintaining principled consistency. This positions the Inter-American

Court as an active participant in shaping the evolving conception of freedom of religion within the regional human rights system.

5.4. Adjudicative Balancing in Rights Conflicts

The adjudicative methodology employed by the Inter-American Court when confronting collisions between freedom of religion and other fundamental rights reveals the profound intricacies inherent in contemporary human rights adjudication. The Court's jurisprudential evolution demonstrates an increasingly sophisticated approach to rights balancing that transcends mechanical application of hierarchical formulas, engaging instead with the contextual realities of Latin American societies marked by religious diversity, cultural pluralism, and historical inequalities.

5.4.1. Indigenous Rights and Cultural-Religious Practices

The intersection between freedom of religion and indigenous rights presents important challenges within the Inter-American system. Indigenous spiritual practices are inseparable elements of cultural identity and collective survival. Colonization (Via et al., 2011) led to the subjugation, exploitation, and rights violations of Indigenous peoples. Consequently, tensions persist between dominant religious frameworks and indigenous cosmovision. The Court recognizes that a central aspect of human rights discourse in Latin America is the struggle of Indigenous peoples to preserve their spiritual practices (IACHR, 2023; IACtHR, 2020).

The adjudicative approach developed by the Court acknowledges that indigenous spirituality cannot be fully understood through Western categories of religion, which separate the sacred from other aspects of collective life (Chaibi, 2022; Carozza, 2003). Indigenous spiritual practices encompass territorial relationships, ancestral knowledge systems, medicinal traditions, and governance structures. These elements resist compartmentalization into discrete rights categories. This understanding compels the Court to develop interpretative frameworks that accommodate the interconnected nature of indigenous rights claims, while remaining coherent with Convention standards.

In *Yatama v. Nicaragua*, the Court found that forcing indigenous political movements to organize as conventional political parties violated their political rights. The Court emphasized that "it is indispensable that the State generate optimum conditions and mechanisms for (political) rights to

be exercised effectively, respecting the principle of equality and non-discrimination" (IACtHR, 2005). This case reinforces the pattern in which indigenous collective rights, both spiritual and political, receive enhanced protection compared to mainstream religious or political claims, suggesting a hierarchical ordering grounded in historical vulnerability and collective identity.

The Court's treatment of indigenous spiritual practices employs analytical frameworks distinct from those applied to mainstream religious claims. In *Sarayaku v. Ecuador* (IACtHR, 2012) and *Yakye Axa v. Paraguay* (IACtHR, 2005), the Court characterized indigenous spirituality as inseparable from cultural identity and territorial connection. This characterization frames indigenous spiritual claims through the lens of collective rights and cultural survival rather than analyzing them solely under Article 12's individual freedom of religion provisions.

The analytical distinction produces different methodological outcomes. Indigenous spiritual claims tied to territory receive analysis under property rights (Article 21) combined with cultural rights, triggering the consultation and consent requirements established in *Sarayaku*. Mainstream religious institutional claims receive analysis under freedom of religion (Article 12) subject to the limitation doctrine and proportionality analysis applicable to that provision.

This differential framing, analyzing indigenous spirituality through cultural survival and collective rights frameworks while analyzing mainstream religious claims through individual liberty frameworks, has significant implications (Chaibi, 2022, 2023; Mallimaci, 2017). The theoretical question of whether this differential framing reflects neutral application of distinct legal categories or reveals underlying hierarchical preferences regarding different spiritual traditions is examined in Section 6.3.2 within the analysis of variables influencing judicial prioritization.

The Court's jurisprudence in cases such as *Sawhoyamaxa Indigenous Community v. Paraguay* (IACHR, 2006) and *Xákmok Kásek Indigenous Community v. Paraguay* (IACHR, 2010) demonstrates the concrete application of these principles. In *Sawhoyamaxa*, the Court found that the state's failure to secure ancestral lands violated not only property rights but also the community's ability to preserve their spiritual and cultural identity. The Court stated that the members of indigenous peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred to innocent third parties, are entitled to restitution thereof or

to obtain other lands of equal extension and quality (IACtHR, 2006). The Court's remedial orders went beyond monetary compensation, requiring the state to create development funds that would enable the community to implement projects preserving their religious and cultural practices.

While cases like *Yakye Axa and Sawhoyamaya* established the principle of the spiritual-territorial link, the Court's most profound and technically detailed articulation of this linkage, and its implications for hierarchical prioritization over other interests like economic development, is found in the landmark case of *Sarayaku v. Ecuador* (IACtHR, 2012). This case represents the apex of the Court's jurisprudence on indigenous spirituality, transforming a principle into a set of concrete, enforceable state obligations.

The *Kichwa Indigenous People of Sarayaku v. Ecuador* case (IACtHR, 2012), arose when the Ecuadorian state granted an oil concession covering 65% of Sarayaku territory without consulting the community, subsequently allowing the placement of 1,433 kilograms of explosives in sacred sites that held profound spiritual significance for the community's religious practices and cosmovision. The Court recognized that for the Sarayaku people, their territory possesses not merely economic value but profound spiritual significance, with specific sites serving as sacred spaces essential to their religious and cultural identity.

The Court emphasized that the close relationship between indigenous peoples and their traditional territories, including natural resources, encompasses spiritual and cultural elements that must be protected under Article 21 of the Convention (IACtHR, *Kichwa Indigenous People of Sarayaku v. Ecuador*, 2012). The state's authorization of oil exploration without consultation violated not only property rights but fundamentally disrupted the community's spiritual relationship with their ancestral lands, particularly the destruction of Sarayaku's sacred sites including the Bobonaza river area, considered the home of spiritual beings essential to their cosmovision.

This case establishes that state obligations regarding indigenous freedom of religion extend beyond mere tolerance to require active protection of the territorial foundations of indigenous spirituality. The Court's analysis demonstrates the application of the tripartite framework in indigenous contexts. The obligation to respect requires non-interference with sacred sites. The obligation to protect demands preventing third parties, such as oil companies, from disrupting spiritual practices.

The obligation to fulfill necessitates ensuring meaningful consultation and free, prior, and informed consent before any activities affecting territories with spiritual significance.

The Sarayaku decision reinforces the pattern observed in Sawhoyamaxa and Xákmok Kásek whereby indigenous spiritual claims receive enhanced protection when tied to territorial rights. The Court ordered not only the removal of explosives and restoration of the territory but also public acknowledgment of responsibility and guarantees of non-repetition, recognizing that the spiritual harm inflicted required comprehensive remedial measures. This preferential treatment contrasts sharply with the Court's approach to mainstream religious claims, suggesting an implicit hierarchy where indigenous spirituality, grounded in collective rights and territorial connection, occupies a superior position to individual freedom of religion claims from mainstream religious traditions.

Critically, the Court has rejected arguments that indigenous spiritual practices should yield to economic development or private property rights acquired in good faith. In these cases, the Court established a presumption favoring indigenous spiritual and territorial claims, shifting the burden to states to demonstrate compelling justifications for any interference (IACtHR, *Río Negro Massacres v. Guatemala*, 2012). This approach recognizes that for indigenous peoples, severance from sacred lands constitutes not merely property deprivation but spiritual death, an irreparable harm that monetary compensation cannot remedy.

The Court's balancing methodology in cases involving indigenous spiritual practices demonstrates particular sensitivity to power asymmetries and historical injustices (Cavallaro & Brewer, 2008). When indigenous freedom of religion claims conflict with state development projects or private economic interests, the Court emphasizes the special vulnerability of indigenous communities and the harm that can result from interference with sacred sites. This approach reflects recognition that formal equality in rights adjudication can perpetuate substantive inequalities when applied to historically marginalized communities.

Furthermore, the Court has addressed situations where indigenous customary law, informed by spiritual beliefs, conflicts with individual rights recognized under the Convention (Huneus, 2011). These cases require delicate balancing between collective religious-cultural autonomy and individual protection, particularly regarding gender equality and children's rights (Shelton, 2006).

The Court has developed nuanced approaches that seek to respect indigenous self-determination while maintaining minimum standards of human dignity, though this balance remains contested and evolving.

The remedial dimensions of indigenous spiritual rights violations present unique disputes that the Court continues to navigate. Recognition that spiritual harm to indigenous communities often involves intergenerational trauma has led the Court to develop innovative remedial frameworks that extend beyond individual compensation. These include measures for cultural revitalization, protection of sacred territories, and recognition of indigenous spiritual authorities within national legal frameworks, though implementation remains uneven across member states.

5.4.2. Equality Jurisprudence and Non-discrimination Principles

The intersection of freedom of religion and equality rights constitutes one of the most contested domains of contemporary human rights adjudication in the Inter-American system. Freedom of religion often overlaps with other fundamental rights, including freedom of expression, non-discrimination, and minority protections, generating intersectional conflicts that reveal the complexities of balancing competing interests in diverse societies (Levine, 2009). The Court's approach to these conflicts demonstrates evolving understandings of both religious liberty and equality that mirror broader societal transformations.

The Court's jurisprudence acknowledges that claims of freedom of religion can simultaneously demand protection against discrimination and, paradoxically, be invoked to justify discriminatory practices, particularly when doctrines condemn same-sex conduct or LGBTIQ+ individuals (IACtHR, 2012; IACtHR, 2022). These tensions arise most frequently in contexts involving religious institutions' employment practices, access to religious services, and participation in religious education.

To address these conflicts, the Court has articulated a sophisticated methodology that distinguishes between the protected sphere of religious belief and doctrine and the regulated sphere of conduct affecting third parties' fundamental rights. Religious communities retain autonomy in defining their doctrinal positions and internal governance; however, this autonomy is constrained when practices intersect with public functions or impact individuals' access to basic rights and services.

The *Atala Riffo and Daughters v. Chile* case (IACHR, 2012), exemplifies the Court's approach to adjudicating freedom of religion-equality conflicts. Chile argued that protecting the "traditional family" and prioritizing children's best interests justified removing custody from a lesbian mother, but the Court rejected this, asserting that abstract concepts of traditional family grounded in religious convictions cannot override concrete equality rights (IACHR, 2012). The Court meticulously analyzed how religious-moral arguments had infiltrated judicial reasoning, demonstrating that prejudice had substituted for evidence in determining the children's best interests. The ruling established that states cannot invoke widely shared religious values to justify discriminatory outcomes in judicial proceedings.

These cases collectively illustrate the Court's consistent effort to prevent religiously motivated discrimination across various domains of life. While *Atala Riffo* focused on judicial and familial contexts, the *Pavez v. Chile* case extends these principles to employment within religious institutions. Together, they show that the Court scrutinizes both abstract moral arguments and the cumulative impact of their application on individuals' rights, reflecting a broader commitment to balancing freedom of religion with equality and non-discrimination (IACHR, 2012; IACHR, 2022).

The temporal dimension of the *Pavez* case (IACtHR, 2022), whose facts were examined in Section 5.2.2, highlights evolving standards in the treatment of religious exemptions from anti-discrimination laws. The twenty-two year gap between *Pavez's* initial employment and her certificate revocation demonstrated that sexual orientation bore no relation to pedagogical competence, introducing a reliance interest component to equality jurisprudence. The Court emphasized that retroactive application of moral standards constituted arbitrary discrimination. This temporal analysis recognizes that individuals who have built careers within religious institutional contexts cannot be summarily dismissed based on personal characteristics unrelated to job performance.

Furthermore, the Court distinguished between different categories of religious educational roles, suggesting a sliding scale of permissible religious autonomy. While recognizing greater institutional freedom in selecting clergy or theological professors, the Court found that religious education teachers in public schools occupy a hybrid position requiring heightened state scrutiny

of employment decisions. This nuanced classification represents an evolution from binary public-private distinctions toward intermediate categories with varying levels of protection against discrimination.

The Court clarified that, while individuals may hold religious beliefs opposing homosexuality, state institutions must remain neutral and cannot convert these beliefs into discriminatory legal outcomes. The Court asserted that 'the alleged priority of the 'best interests of the child' cannot serve as an excuse for discrimination based on the mother's sexual orientation' (IACHR, 2012). The Court's reasoning required that abstract moral or religious arguments be substantiated with concrete evidence when invoked to justify differential treatment based on protected characteristics; in the absence of such evidence, the arguments were found insufficient to overcome the presumption against discrimination based on sexual orientation.

The proportionality analysis employed in equality-religion conflicts demonstrates the Court's effort to avoid rigid hierarchies between competing rights. Instead, the Court evaluates context, the severity of restrictions on each right, availability of alternatives, and broader implications for democratic pluralism. This contextual approach allows for differentiated outcomes depending on whether a case involves core versus peripheral religious practices, direct versus indirect discrimination, and public versus private spheres of action.

The Court's evolving jurisprudence reflects growing recognition of multiple and intersecting forms of discrimination that complicate traditional freedom of religion analysis. Women belonging to religious minorities, LGBTIQ+ individuals from indigenous communities, and other multiply marginalized groups present claims that cannot be adequately addressed through single-axis frameworks. The Court has begun developing intersectional approaches that recognize how freedom of religion can both protect and constrain equality, depending on power dynamics and social positioning.

5.4.3. Conscientious Objection: Military Service and Healthcare Contexts

The doctrine of conscientious objection within the Inter-American system illustrates the compound balance between individual religious convictions and collective social obligations. Initially, conscientious objection was not recognized as part of the right to freedom of religion under Article

9. The European Court of Human Rights (ECtHR) later recognized it, accepting opposition to military service when there is an insurmountable conflict with authentic and deep convictions (ECtHR, Case Bayatyan v. Armenia, 2009). This evolution has influenced the Inter-American Court's approach to conscientious objection claims, though regional particularities shape its application.

In the context of military service, the Court has gradually recognized that compulsory military service can create profound conflicts with religious, ethical, and philosophical convictions. We can find an example in *Cristián Daniel Sahli Vera and others v. Chile* (IACHR, 2005; IACHR, 2020). The Court's analysis considers whether states provide alternative civilian service options that respect conscientious objectors while maintaining legitimate security interests. The proportionality of sanctions for refusal of military service, particularly criminal penalties, receives careful scrutiny, with the Court increasingly viewing imprisonment of genuine conscientious objectors as disproportionate interference with freedom of conscience.

Healthcare contexts present more challenges for conscientious objection doctrine, particularly regarding reproductive health services and end-of-life care. With the development of democracies in America, a series of legal provisions and public policies linked to medical care, sexuality and reproduction have caused tension between religion and human rights sectors in recent years. The Court faces the challenge of balancing healthcare providers' religious convictions with patients' rights to access lawful medical services, including contraception, abortion where legal, and assisted dying where permitted.

The Court's evolving position on conscientious objection in healthcare presents tensions between abstract principles and practical implementation. While the Court has not yet issued a definitive ruling comparable to the European Court's decisions in cases like *Grimmark v. Sweden*, its advisory opinions and admissibility decisions suggest a restrictive approach to institutional conscientious objection (ECtHR, *Grimmark v. Sweden*, 2020, App. No. 43726/1). The Commission's report in the case of *"Baby Boy" v. United States* (IACHR, 1981), though not binding, indicated skepticism toward broad conscience exemptions that could effectively nullify access to legal medical procedures. The Inter-American framework appears to distinguish between

individual conscience claims, which receive some protection, and institutional refusals, which face heightened scrutiny when they threaten to create access barriers to healthcare services.

The Court's approach to healthcare conscientious objection shows also tensions between individual and institutional claims e.g. *Atala Riffo v. Chile* (IACtHR, 2012). While individual healthcare providers may invoke personal religious convictions, institutional claims by religious hospitals and healthcare systems raise different considerations about public health access and state obligations to ensure service availability. The Court has emphasized that conscientious objection cannot render lawful services practically inaccessible, requiring states to maintain adequate provider networks and referral systems.

The temporal dimension of conscientious objection presents additional complications, as religious and ethical convictions evolve alongside medical technologies and social values (IACHR, 2022). The Court must navigate situations where traditional religious objections encounter new medical procedures, emerging biotechnologies, and evolving understandings of medical ethics (Center for Reproductive Rights, 2013). This dynamic context requires flexible frameworks that can accommodate genuine religious convictions while preventing conscientious objection from becoming a tool for systemic discrimination or service denial.

The *Pavez v. Chile* case (IACtHR, 2022) extends the conscientious objection analysis beyond traditional military and healthcare contexts to educational settings, revealing new dimensions in institutional religious claims. The Catholic Church's argument that retaining a lesbian teacher would violate its institutional conscience and force it to endorse conduct contrary to doctrine represents an expansion of conscientious objection from individual to collective institutional claims. The Court rejected this broad institutional conscience defense in public education contexts, holding that while religious institutions may determine their internal doctrine, they cannot invoke institutional conscience to discriminate in quasi-public functions funded or regulated by the state (IACHR, 2022). The theoretical implications of this distinction between individual and institutional conscience claims, and the taxonomy of protection levels based on degree of public function, are examined in Section 6.3.2.

5.4.4. Bioethical Controversies and Family Law Transformations

The intersection of freedom of religion with bioethical advances and family law transformations represents a frontier of rights adjudication within the Inter-American system. As mentioned before, alliances arise between Catholics and Protestants in defense of "natural law" and "life from conception" arguments, particularly regarding initiatives for the distribution of condoms and the morning after pill (Mallimaci, 2017). These coalitions challenge the Court to navigate deeply contested moral territories where religious convictions, scientific advancement, and individual autonomy collide.

Assisted reproductive technologies present trials for the Court's balancing methodology. Religious objections to in vitro fertilization, embryo research, and genetic screening invoke fundamental beliefs about the nature of human life and divine sovereignty over creation. The Court must weigh these religious concerns against individuals' reproductive autonomy, scientific freedom, and access to medical technologies. The Court's jurisprudence reveals careful attention to distinguishing between legitimate state regulation informed by ethical considerations and impermissible imposition of particular religious doctrines through law.

The *Artavia Murillo et al. v. Costa Rica* case (IACtHR, 2012) represents the Court's most comprehensive engagement with the intersection of religious doctrine and bioethical regulation. The Court invalidated Costa Rica's ban on in vitro fertilization (IVF), which had been influenced by Catholic doctrine regarding the beginning of life. The Court's analysis was notably bold in challenging religiously-informed concepts of personhood, stating that "the embryo cannot be understood to be a person for the purposes of Article 4.1 of the American Convention" (IACtHR, 2012). The Court explicitly rejected scientific and philosophical arguments rooted in religious worldviews about conception, establishing that states cannot impose particular religious views about the beginning of life through blanket prohibitions on medical procedures.

The Court's proportionality analysis found that the absolute protection of embryonic life underlying Costa Rica's IVF ban completely sacrificed the reproductive autonomy rights of infertile couples without adequate justification. The Court examined scientific evidence alongside religious and philosophical arguments about when life begins, ultimately concluding that 'the embryo cannot be understood to be a person for the purposes of Article 4.1 of the American

Convention' (IACtHR, 2012). The Court required that restrictions on reproductive autonomy demonstrate proportionate relationship to legitimate aims through evidence rather than through appeal to religious or philosophical positions alone. The implications of this evidentiary methodology for adjudicating conflicts between religious convictions and reproductive rights are examined in Section 6.3.3 within the analysis of freedom of religion's evolving status.

End-of-life issues generate equally layered adjudicative challenges, as religious perspectives on suffering, sanctity of life, and divine will encounter claims for personal autonomy and death with dignity. The Court navigates between religious arguments that frame euthanasia and assisted suicide as fundamental violations of divine law and human dignity, and countervailing claims that individual self-determination extends to decisions about one's own death. The Court's approach demonstrates sensitivity to both religious concerns about protecting vulnerable populations and recognition that plural societies must accommodate diverse perspectives on ultimate questions (IACHR, Villagrán-Morales et al v. Guatemala, 2008).

Family law transformations, particularly regarding same-sex marriage and adoption, reveal deep tensions between traditional religious understandings of family and evolving social recognition of diverse family forms. Some Evangelical groups have aligned with conservative political movements, focusing on issues such as opposition to abortion and same-sex marriage (McGee & Kampwirth, 2015). The Court faces the challenge of adjudicating between freedom of religion claims that seek to preserve traditional family definitions and equality claims that demand recognition and protection for diverse family structures.

The Pavez case ruling intersects family law transformations by addressing how religious institutions' employment practices affect diverse family structures. The Court noted that Pavez's dismissal not only affected her individual rights but also sent a discriminatory message to students from diverse families, including those with LGBTIQ+ parents (IACHR, 2022). This expressive harm analysis connects employment discrimination to broader family law concerns, recognizing that religious institutional practices in educational settings shape social acceptance of family diversity.

The Court's reasoning addressed the pedagogical impact of religious discrimination in educational contexts, noting that such discrimination affects not only individual employees but also students from diverse families (IACHR, 2022). The Court required Chile to ensure that religious education respects diversity, with remedial measures extending beyond individual compensation to institutional reform. The theoretical implications of this approach for understanding the relationship between religious participation in democratic deliberation and religious imposition through state power are examined in Section 6.3.4.

5.4.5. Emerging Conflicts and Evolving Standards

The contemporary landscape of rights conflicts within the Inter-American system reveals emerging tensions that challenge established adjudicative frameworks. New technologies, social movements, and global challenges generate novel rights claims that intersect with freedom of religion in ways that require documentation before theoretical analysis.

Climate change and environmental protection generate new forms of rights conflicts that implicate freedom of religion. Indigenous spiritual relationships with threatened territories encounter resource extraction justified by economic development, as highlighted in the Lhaka Honhat case in Argentina (IACtHR, 2017). Religious communities invoke stewardship obligations that conflict with property rights and economic freedoms. The Court must develop frameworks for adjudicating between religious-environmental claims and competing economic and social rights, recognizing that environmental degradation can constitute irreparable harm to spiritual practices tied to specific ecosystems, as noted in Advisory Opinion OC-32/25 on Climate Emergency (IACtHR, 2025).

The COVID-19 pandemic illustrated how public health emergencies create acute conflicts between freedom of religion and collective welfare, as mentioned in the Report on COVID-19 and human rights in the Americas (IACHR, 2020). Restrictions on religious gatherings, ritual practices, and pilgrimage raised fundamental questions about the essential nature of communal worship and the proportionality of public health measures. The Court's approach revealed both the resilience and limits of existing balancing frameworks when confronting unprecedented circumstances that affect core religious practices.

In cases involving abortion restrictions, same-sex marriage bans, and transgender rights, the Court has examined legislative history, public statements by lawmakers, and the alignment between challenged laws and specific religious doctrines. This inquiry addresses whether facially neutral legislation reflects religious motivations. The theoretical implications of this methodological development for understanding indirect religious establishment through democratic processes are examined in Section 6.2.4.

Advisory Opinion OC-24/17 on gender identity and same-sex marriage addressed religious objections to marriage equality, establishing that 'religious convictions cannot condition what the Inter-American Convention establishes regarding the protection of human rights' (IACHR, 2017). The procedural characteristics of this advisory opinion were examined in Section 5.1.2.

In subsequent contentious proceedings, the Court has referenced OC-24/17's interpretative framework. In *Pavez v. Chile*, the Court cited the advisory opinion in analyzing religious autonomy claims (IACHR, 2022). The relationship between advisory opinion frameworks and subsequent contentious case analysis raises questions about how interpretative standards established in abstract proceedings influence outcomes in cases with specific factual contexts.

The question of whether and how advisory opinions function to shape the analytical landscape for subsequent contentious cases, including whether this dynamic affects the range of arguments available to parties invoking religious liberty, is examined in Section 6.1.2 within the analysis of freedom of religion's evolving position and in Section 6.2.4 within the theoretical explanation for observed jurisprudential patterns.

Digital technologies present unprecedented challenges for balancing freedom of religion with other rights. Online religious expression encounters hate speech regulations, algorithmic content moderation, and transnational jurisdictional difficulties (IACHR, 2013). The Court faces questions about whether religious groups can claim exemptions from anti-discrimination laws in digital spaces, how to balance religious proselytism with protection from online harassment, and whether technological platforms have obligations to accommodate religious practices in their service design.

Pavez's case signals emerging conflicts around algorithmic discrimination and digital surveillance in religious institutional contexts. During the proceedings, evidence emerged that the Vicariate had monitored Pavez's social media presence and personal communications to gather information about her sexual orientation, raising novel questions about privacy rights in the digital age (IACHR, 2022). While the Court did not extensively analyze these digital dimensions, the case foreshadows future conflicts where religious institutions use technological tools to enforce moral codes.

The transnational dimensions of the case, with the Vatican's Congregation for Catholic Education policies influencing local employment decisions, highlight challenges of attributing responsibility when religious discrimination stems from international religious hierarchies. The Court found that Chile remained responsible despite the Catholic Church's transnational structure (IACHR, 2022). The theoretical implications of this attribution analysis for cases involving global religious institutions and tech-mediated religious discrimination are examined in Section 6.5.4.

Migration and religious diversity introduce additional convolutions as the Inter-American region experiences increasing religious pluralization, as mentioned in the Report on Inter-American Standards Concerning Freedom of Religion or Belief (IACHR, 2024). The Court confronts cases involving religious minorities seeking accommodation in predominantly Catholic societies, diaspora communities maintaining transnational religious practices, and converts facing family and community rejection. These cases require sensitivity to power dynamics, cultural context, and the particular vulnerabilities of religious minorities in societies with strong majoritarian religious traditions.

The evolving understanding of corporate religious rights presents novel challenges as businesses increasingly invoke freedom of religion to seek exemptions from generally applicable regulations. The Court must determine whether commercial entities can exercise freedom of religion, how to balance religious business owners' convictions with employees' and customers' rights, and whether religious exemptions in commercial contexts undermine regulatory frameworks designed to protect public welfare.

The patterns documented in this section regarding emerging conflicts, including climate-religion intersections, pandemic restrictions, digital technologies, transnational religious institutions, migration, and corporate religious claims, provide the empirical foundation for the theoretical analysis in Chapter 6 regarding future trajectories and the Court's evolving methodology.

5.4.6. Summary of Documented Patterns

The jurisprudential analysis conducted in this chapter has documented patterns across several dimensions that provide the empirical foundation for the theoretical analysis in Chapter 6.

Regarding scrutiny levels, the cases examined show strict scrutiny applied to discrimination claims based on sexual orientation in *Atala Riffo v. Chile* (IACtHR, 2012) and *Pavez v. Chile* (IACtHR, 2022); contextual proportionality applied to restrictions on religious practice in *Olmedo Bustos v. Chile* (IACtHR, 2001); and enhanced protection combined with territorial analysis for indigenous spiritual practices in *Sarayaku v. Ecuador* (IACtHR, 2012), *Yakye Axa Indigenous Community v. Paraguay* (IACtHR, 2005), and *Sawhoyamaxa Indigenous Community v. Paraguay* (IACHR, 2006).

Regarding analytical framing, the cases show conflicts between expression and religious sensibilities framed primarily through Article 13 in *Olmedo Bustos*; conflicts involving LGBTIQ+ rights framed through categorical anti-discrimination analysis following OC-24/17; and indigenous spiritual claims framed through collective rights and cultural survival rather than individual religious liberty.

Regarding burden allocation, the cases show the burden placed on states and institutions to justify differential treatment when discrimination claims involve suspect classifications; and the burden placed on religious claimants to demonstrate that institutional practices serve purposes beyond discrimination when challenged on equality grounds.

Regarding remedial approaches, the cases show structural remedies requiring legal reform in *Olmedo Bustos*; training and protocol requirements in *Pavez*; and territorial restoration combined with consultation guarantees in *Sarayaku*.

These documented patterns raise theoretical questions addressed in Chapter 6: whether the patterns reveal systematic hierarchical ordering, what factors determine observed prioritizations, where

freedom of religion is positioned within any such hierarchy, and what implications follow for state obligations and affected populations.

CHAPTER 6: THEORETICAL AND PRACTICAL IMPLICATIONS

The jurisprudential patterns emerging from the Inter-American Court's treatment of freedom of religion, as comprehensively analyzed through landmark cases from *Olmedo Bustos et al. v. Chile* (2001) through *Sandra Pavez v. Chile* (2022), reveal a fundamental tension at the heart of contemporary human rights adjudication: the persistent gap between formal commitments to rights indivisibility and the practical necessity of hierarchical ordering when rights inevitably collide. This chapter synthesizes the empirical findings of the doctrinal analysis to expose the deeper theoretical and practical implications of how the Court prioritizes freedom of religion relative to competing fundamental rights, demonstrating that hierarchical patterns transcend freedom of religion conflicts to characterize the entire Inter-American approach to rights adjudication.

The Court's consistent methodological approach across diverse cases, applying differential scrutiny standards, burden-shifting frameworks, and proportionality analysis that systematically favor certain rights over others, establishes unmistakable hierarchical relationships that contradict formal declarations of indivisibility. When freedom of expression confronts religious sensibilities, expression consistently prevails as democracy's cornerstone. When equality rights protecting vulnerable groups conflict with religious institutional autonomy, anti-discrimination principles systematically trump doctrinal prerogatives. When indigenous collective rights tied to cultural survival clash with mainstream religious claims, indigenous spirituality receives enhanced protection unavailable to conventional freedom of religion assertions. These patterns, evident across freedom of religion jurisprudence and extending throughout the Court's broader docket, demonstrate that despite rhetorical commitments to treating all rights as equal and interdependent, the Court operates within an implicit but discernible normative hierarchy that profoundly shapes whose rights receive priority and which communities bear the costs when fundamental entitlements conflict.

This hierarchical reality demands theoretical examination that transcends descriptive cataloging to illuminate the normative logics, philosophical foundations, and practical consequences of rights prioritization in the Inter-American context. The analysis proceeds through four interconnected dimensions: first, mapping the empirical patterns of hierarchical ordering across the Court's

jurisprudence while identifying the determinative factors that shape these arrangements; second, assessing freedom of religion's specific positioning within this normative hierarchy and the variables influencing its fluctuating status; third, examining the practical implications for state obligations and implementation frameworks that translate abstract hierarchies into concrete duties; and fourth, analyzing differential impacts on vulnerable populations while projecting future trajectories as emerging challenges test existing frameworks.

Through this multilayered investigation, the chapter reveals how the Inter-American system navigates the irreducible tension between universalist aspirations and particularist realities, between formal equality and substantive justice, between individual autonomy and collective identity, ultimately constructing a regional human rights framework that reflects Latin America's distinctive historical experiences, cultural values, and ongoing struggles for democratic consolidation and social transformation.

6.1. Jurisprudential Evidence of Hierarchical Ordering

6.1.1. The Hierarchy in Practice: Case Law Analysis

The doctrine of *jus cogens* (Dupuy, 1995; Shelton, 2002) establishes an apex tier of peremptory norms within international law, reflecting rights flowing from the most fundamental aspects of human dignity (Maritain, 1947). The Inter-American Court's treatment of such norms, exemplified in *Barrios Altos v. Peru* (IACtHR, 2001) as documented in Section 5.1.1, reveals a qualitative distinction in judicial methodology. The Court's declaration that certain laws 'lack legal effects' rather than merely violate the Convention employs language of nullity rather than incompatibility, suggesting categorical invalidity rather than defeasible violation.

The Court reinforced this apex positioning in subsequent cases addressing state-sponsored violence and impunity. In *La Cantuta v. Peru* (IACtHR, 2006), the Court reaffirmed that crimes against humanity cannot be subject to amnesty laws, statutes of limitations, or other measures that impede investigation and punishment, extending the *Barrios Altos* framework to enforced disappearances committed by state security forces. Similarly, in *Almonacid Arellano v. Chile* (IACtHR, 2006), the Court established that the prohibition of crimes against humanity constitutes

a jus cogens norm that binds states regardless of domestic legal provisions, holding that Chile's amnesty decree lacked legal effects from its inception. These cases collectively establish that jus cogens violations occupy a hierarchical position where no domestic law, constitutional provision, or democratic mandate can provide justification, a categorical protection unavailable to rights at lower tiers of the hierarchy.

This linguistic distinction carries theoretical significance. Rights receiving the 'lack legal effects' treatment are positioned above proportionality analysis entirely; no balancing is permitted because no competing interest can overcome their protection. This highest tier encompasses prohibitions against torture, slavery, and genocide.

The category of non-derogable rights under Article 27 of the American Convention creates what Buergethal (1994) terms a 'core of untouchable rights' that maintain protection even during states of emergency. The Court's jurisprudence, particularly in Advisory Opinion AO-8/87 and AO-9/87, establishes these rights as occupying what Grossman (2001) characterizes as enhanced constitutional status.

Another tier comprises what might be termed 'quasi-fundamental rights' that, while technically derogable, receive heightened protection through strict scrutiny analysis. Freedom of expression exemplifies this category. The progression through *Claude Reyes v. Chile* (IACtHR, 2006), which established that access to public information constitutes an essential component of freedom of expression in democratic societies, and *Kimel v. Argentina* (IACtHR, 2008), which held that criminal defamation laws disproportionately restricting journalistic criticism of public officials violated Article 13, demonstrates how the Court consistently places freedom of expression in this elevated but not absolute tier. In both cases, the Court required exceptional justification for restrictions while acknowledging that expression remains subject to proportionality analysis rather than categorical prohibition.

As Bertoni (2009) and Contesse (2016) have demonstrated, this jurisprudential pattern amounts to a presumption against restrictions on expression, positioning it above rights subject to ordinary balancing but below the absolute protection afforded to jus cogens norms. The Court applies what amounts to a presumption against restrictions. This approach reflects the Court's commitment to

democratic values and its understanding of certain rights as foundational to democratic governance (Carozza, 2003).

The contrast between *jus cogens* treatment and ordinary proportionality analysis reveals a tiered structure: absolute protection at the apex for peremptory norms; strong but defeasible protection for rights like freedom of expression as documented in the Olmedo Bustos analysis in Section 5.2.1; and contextually variable protection for rights whose weight depends on circumstances of application. Freedom of religion's position within this tiered structure, the central question of this chapter, depends on which tier applies in different manifestations of the right.

6.1.2. Evolution of Freedom of religion's Position: From Deference to Conditional Protection

The chronological trajectory documented in Section 5.2.3 reveals a transformation in freedom of religion's hierarchical position that demands theoretical interpretation. This section analyzes what the documented evolution signifies for understanding hierarchical ordering rather than re-examining the cases themselves.

Three analytically distinct phases emerge from the documented jurisprudence. In the first phase, represented by the Olmedo Bustos framework analyzed in Section 5.2.1, the Court addressed religious interests as legitimate considerations within proportionality analysis. Religious sensibilities were treated as a recognizable interest capable of grounding state action, albeit insufficient in that case to justify prior censorship given the availability of less restrictive alternatives. This phase can be characterized as 'acknowledged but subordinate' status: freedom of religion interests are recognized as legitimate but consistently outweighed when they conflict with expression in the public sphere.

The second phase, represented by the Atala Riffo and Artavia Murillo frameworks analyzed in Sections 5.4.2 and 5.4.4, shifted the analytical structure. Religious and moral arguments were no longer merely outweighed through proportionality analysis but were characterized as categorically insufficient bases for differential treatment involving protected classifications. The Court stated in Atala Riffo that 'abstract concepts of traditional family' rooted in religious convictions could not override equality rights (IACHR, 2012). This phase can be characterized as movement from

'subordinate interest' to 'suspect justification': religious reasoning is not merely outweighed but treated with heightened skepticism when invoked to justify differential treatment.

The third phase, represented by the Pavez framework analyzed in Section 5.2.2 and the Advisory Opinion OC-24/17 framework documented in Section 5.2.4, extended the suspect justification approach to religious institutional autonomy itself. The holding that institutional religious autonomy cannot justify discrimination in quasi-public contexts positions such autonomy as subject to override rather than balance. The statement that 'religious convictions cannot be used as a parameter of conventionality' (IACHR, A/O-24/17, 2017) suggests exclusion from the interpretative framework rather than mere subordination within it. This phase can be characterized as 'conditional protection': freedom of religion retains protection in its internal dimensions but faces systematic limitation when it intersects with equality claims in public or quasi-public contexts.

This three-phase evolution, from acknowledged subordination through suspect justification to conditional protection, demonstrates that hierarchical positioning is not static but responsive to evolving interpretative frameworks. The factors driving this evolution, including regional democratization, religious diversification, and social movement influence, are examined in Section 6.3.3. The theoretical implications for understanding the relationship between indivisibility rhetoric and hierarchical practice are examined in Section 6.2.4.

6.1.3. Differential Application of Proportionality Across Rights Categories

Section 5.3.3 documented differential application of scrutiny standards across case categories, with strict scrutiny for sexual orientation discrimination claims, contextual proportionality for religious practice restrictions, and enhanced territorial analysis for indigenous spiritual claims. This section analyzes the theoretical significance of that differential application.

Robert Alexy's theory of constitutional rights as optimization requirements posits that rights are principles requiring realization to the greatest extent possible given legal and factual constraints (Alexy, 2002). Under this framework, competing rights are balanced through a 'weight formula' that considers the degree of interference with each right and the importance of the competing principle (Alexy, 2003). The methodology appears neutral: each right's weight is determined through case-specific analysis rather than predetermined ranking.

Klein (2008) elaborates on this proportionality framework, examining how the Court operationalizes these abstract theoretical concepts within concrete legal scenarios. The Court assesses whether measures limiting religious liberty maintain an appropriate relationship between their scope and the legitimate objective pursued, employing proportional analysis to navigate cases where rights overlap or potentially conflict. This methodology demonstrates how legal institutions translate academic frameworks into operational decision-making: judicial reasoning reflects not only concern for rights as optimization requirements but also sensitivity to contextual and societal factors. The dynamic interaction between Alexy's theoretical structure and the Court's practical application suggests that proportionality provides a principled mechanism for rights adjudication.

Yet the patterns documented in Section 5.3.3 and summarized in Section 5.4.6 suggest that the choice of scrutiny level precedes and shapes the proportionality analysis rather than emerging from it. When the Court applies strict scrutiny to discrimination claims based on sexual orientation, it effectively declares that equality in this domain occupies a position requiring compelling justification for any limitation. When it applies reasonableness review to religious institutional autonomy claims, it positions such autonomy at a level where general justifications suffice. The scrutiny level determination constitutes an implicit hierarchical judgment that the subsequent proportionality analysis then operationalizes.

This analysis suggests what might be termed 'proportionality as hierarchy in disguise. The documented practice suggests that scrutiny level selection plays a structurally determinative role in outcomes. The choice of review standard precedes proportionality analysis and conditions the range of acceptable justifications, thereby shaping the relative position of competing rights. The methodology appears neutral, but the prior determination of scrutiny level embeds substantive hierarchical commitments within procedural frameworks. The very structure of proportionality analysis, with its graduated levels of deference, transforms ostensibly neutral judicial technique into an instrument of hierarchical ordering. The Court can maintain formal adherence to indivisibility while creating functional prioritization through scrutiny level selection.

The question then becomes: what determines scrutiny level selection? The patterns documented in Chapter 5 correlate scrutiny levels with the identity of claimants and the nature of rights invoked: enhanced scrutiny for claims by vulnerable groups, reduced scrutiny for claims by powerful

institutions. This correlation suggests that hierarchical positioning reflects prior judgments about vulnerability and power rather than emerging neutrally from proportionality analysis.

Several variables appear determinative. Claimant identity operates as a primary factor: indigenous communities invoking spiritual-territorial connections receive enhanced protection as historically marginalized groups, while religious institutions claiming doctrinal autonomy face heightened skepticism as powerful actors. The public-private distinction influences outcomes: private religious practice receives strong deference, whereas religious conduct in quasi-public functions encounters stricter review. The nature of the competing right matters: when religious claims conflict with equality rights of vulnerable populations, the Court consistently favors equality; when religious minorities face state persecution, protection runs toward the religious claimant. These variables interact dynamically rather than mechanically, with the Court weighing contextual factors including historical injustice, power asymmetries, and democratic necessity. A comprehensive analysis of how these variables operate across case categories, including temporal factors, state action type, and international influences, is developed in Section 6.3.2.

6.1.4. Impact on Vulnerable Populations: Jurisprudential Evidence

The case analyses in Chapter 5 demonstrate that hierarchical positioning translates into concrete, measurable consequences for affected populations. For indigenous communities, the Court's recognition of spiritual-territorial connections documented in Section 5.4.1 has enabled successful challenges to extractive projects affecting sacred sites. The consultation and consent framework established in *Sarayaku* provides procedural protections unavailable through traditional freedom of religion doctrine. However, as Section 5.4.1 documents, this protection requires framing indigenous spirituality through collective rights and cultural survival rather than individual religious liberty, potentially constraining claims that do not fit this analytical framework.

For LGBTIQ+ individuals, the trajectory from *Atala Riffo* through *Pavez* documented in Sections 5.4.2 and 5.2.2 established that religious and moral arguments cannot justify differential treatment based on sexual orientation. The strict scrutiny framework places a substantial burden on those invoking religious justifications for such treatment. Yet the temporal dimension documented in Section 5.2.2 reveals that judicial remedy cannot fully address harm: years elapsed between initial violations and final judgments during which rights were denied.

For women seeking reproductive services, Artavia Murillo documented in Section 5.4.4 established access rights that states cannot restrict based on religious conceptions of embryonic life alone. The Court's holding that 'the embryo cannot be understood to be a person for the purposes of Article 4.1 of the American Convention' (IACtHR, 2012) effectively positioned reproductive autonomy above religiously-informed conceptions of personhood within the normative ordering. This represents a significant doctrinal development: religious arguments about the beginning of life, regardless of their theological sophistication or democratic support, cannot alone justify restrictions on reproductive healthcare. The evidentiary methodology the Court employed, requiring empirical demonstration of proportionate relationship to legitimate aims rather than acceptance of religious or philosophical premises, structurally disadvantages religious claims in reproductive rights conflicts.

Yet implementation documented in Section 5.4.3 reveals ongoing contestation where conscientious objection creates practical access barriers. The gap between formal legal protection and effective access illustrates a recurring pattern: judicial declarations of rights superiority do not automatically translate into practical prioritization. When individual healthcare providers invoke conscience objections, and when these objections accumulate across provider networks, the formal priority becomes functionally reversed at the point of service delivery. States face the challenge of ensuring that the aggregate effect of individual conscience protections does not nullify the access rights Artavia Murillo established, a challenge the Court has addressed by requiring adequate referral systems and provider networks. This implementation gap reveals that hierarchical ordering operates differently at doctrinal and practical levels, with formal prioritization of reproductive rights coexisting with persistent religious influence over healthcare access.

For religious institutions and individuals invoking freedom of religion against equality claims, the documented trajectory shows increasing constraint. Institutional autonomy claims receive reduced judicial deference when institutions perform quasi-public functions, as Pavez demonstrates. Individual conscience claims face heightened skepticism when invoked to justify differential treatment of protected groups.

These differentiated consequences reveal a pattern: populations whose claims align with equality and anti-discrimination frameworks receive increasingly robust protection, while populations

whose interests are framed through religious institutional claims face diminishing judicial deference. This asymmetry is not random but reflects the hierarchical structure analyzed throughout this chapter. The pattern reveals a consistent judicial logic: populations asserting claims through equality and anti-discrimination frameworks benefit from the Court's evolutionary interpretation and categorical protections, while populations whose interests depend on religious institutional autonomy encounter the Court's increasing skepticism toward claims that historically functioned to preserve privilege or justify exclusion.

This differential treatment reflects underlying judgments about vulnerability, power, and the direction of social progress in democratic societies. Indigenous communities and LGBTIQ+ individuals, framed as historically marginalized groups requiring enhanced protection, receive the benefit of strict scrutiny and burden-shifting mechanisms. Religious institutions, framed as powerful actors whose autonomy claims may perpetuate discrimination, face heightened justificatory demands. Whether this asymmetry is normatively justified, whether the Court's characterizations of vulnerability and power accurately capture the complex realities of contemporary Latin American societies, and what variables appropriately influence hierarchical positioning, are questions examined in Section 6.3.

6.2. Hierarchical Patterns in Inter-American Human Rights Jurisprudence

6.2.1. Empirical Evidence of Prioritization in Adjudication

Building on the patterns documented in Chapter 5 and analyzed in Section 6.1, this section examines theoretical frameworks that explain observed prioritization.

The documented patterns, summarized in Section 5.4.6, demonstrate that the Court applies what John Rawls termed lexical ordering, though without explicitly acknowledging this theoretical framework. Rawls posits that justice requires satisfying prior principles before subsequent ones can be addressed, with basic liberties taking priority over other social goods (Rawls, 1971). In the Inter-American context, this manifests through consistent prioritization of rights deemed essential to democratic participation and human dignity over competing claims when conflicts arise.

The foundational cases documented in Chapter 5 establish templates that subsequent cases follow. The Olmedo Bustos framework analyzed in Section 5.2.1 characterized freedom of expression as a 'cornerstone of democratic society,' language that assigns structural priority rather than merely finding expression weightier in that particular balance. The Atala Riffo framework analyzed in Section 5.4.2 characterized equality based on sexual orientation as requiring strict scrutiny, language that assigns categorical protection rather than case-specific weight. These characterizations function as lexical ordering principles: once a right is characterized as foundational, it takes priority over rights characterized as important but not foundational.

The patterns extend beyond freedom of religion cases. The treatment of jus cogens in *Barrios Altos* documented in Section 5.1.1 establishes an apex tier. The treatment of political participation in *Yatama v. Nicaragua* (IACtHR, 2005) establishes democratic rights as foundational. The treatment of gender-based violence in *González et al. (Cotton Field) v. Mexico* (IACHR, 2009) establishes heightened state obligations when vulnerable groups are affected. Across these diverse contexts, the Court consistently prioritizes rights it characterizes as foundational to democratic functioning and human dignity.

The Court's burden of proof requirements further illuminate these prioritization patterns. As documented in Section 5.3.5, the Court employs burden-shifting mechanisms where petitioners establish prima facie interference and the state must then justify restrictions. The application of these mechanisms reveals hierarchical preferences: in cases involving racial discrimination or violence against women, the Court progressively lowers evidentiary thresholds and shifts presumptions to favor victims, recognizing structural inequalities that impede access to justice (*Medina González*, 2007). The *González et al. (Cotton Field)* case established that states must investigate gender-based violence with due diligence, creating heightened obligations when vulnerable groups are involved (IACHR, 2009). Conversely, in cases involving economic rights or religious institutional claims, the Court maintains traditional evidentiary standards, requiring concrete demonstration of harm before finding violations. This differential application of evidentiary burdens operationalizes hierarchical preferences through procedural mechanisms.

This consistency suggests that hierarchical ordering is not ad hoc but reflects underlying theoretical commitments. Yet Rawlsian lexical ordering alone cannot fully explain the observed patterns, because Rawls's framework does not clearly address conflicts between basic liberties themselves.

When freedom of religion conflicts with equality, both arguably qualify as basic liberties under Rawls's framework. The Court's consistent resolution of such conflicts in favor of equality suggests additional theoretical commitments beyond lexical ordering. These additional factors are examined in Sections 6.2.2 and 6.2.4.

6.2.2. Determinative Factors in Hierarchical Construction

The construction of hierarchical relationships among rights in the Inter-American system reflects multiple determinative factors deeply rooted in regional history, philosophy, and social structure. Latin America's history, including the impact of European colonization, the subjugation, exploitation, and rights violations (Via et al., 2011), creates enduring patterns that influence contemporary hierarchical arrangements. The Court's prioritization cannot be divorced from this historical consciousness, which explains why rights related to physical integrity, judicial protection, and political participation receive heightened protection. They directly respond to the region's experiences of authoritarian regimes and human rights abuses (Schoultz, 1981).

Cultural and religious factors constitute another determinative layer in hierarchical construction, particularly evident in the clashes between Catholic majorities and evangelical minorities in specific Latin American contexts (Bastian, 2011). Latin America's unique religious landscape, characterized by centuries of Catholic hegemony now transitioning toward religious pluralism, creates specific tensions that shape hierarchical arrangements. The rise of Protestant and Evangelical movements has influenced human rights discussions, particularly as some groups align with conservative political movements opposing LGBTIQ+ rights, while simultaneously LGBTIQ+ movements face co-optation challenges in democratizing contexts (McGee & Kampwirth, 2015).

Liberation theology, as explored in Chapter 4's socio-religious analysis, has significantly influenced the Court's hierarchical approach to rights. By emphasizing the 'preferential option for the poor,' this framework encourages prioritization of socioeconomic concerns and collective liberation over individual religious liberty when the two come into conflict. The Court's jurisprudence reflects this influence, demonstrating heightened protection for vulnerable populations and social justice objectives, often at the expense of institutional religious autonomy. Religious claims that align with broader egalitarian or redistributive goals tend to receive greater

judicial sympathy, whereas those perceived to reinforce existing inequalities are subject to stricter scrutiny.

Socioeconomic factors profoundly shape hierarchical construction. Social justice movements advocating for marginalized communities have played a key role in advancing human rights across the region (Franklin, 2008). When freedom of religion claims from powerful institutions conflict with equality rights of marginalized groups, the Court increasingly favors equality, reflecting broader societal demands for social transformation. This socioeconomic consciousness explains patterns like the Court's treatment of conscientious objection claims, where healthcare access for the poor outweighs individual providers' religious objections.

International influences and transnational judicial dialogue also shape hierarchical patterns, contributing to what has been described as a 'Latin American common law' in formation (Gómez-Betancur et al., 2021). The growing international consensus on issues like gender equality, LGBTIQ+ rights, and indigenous self-determination influences how the Court prioritizes these concerns relative to traditional religious claims. This transnational dimension suggests hierarchies are not fixed but evolve through interaction with global human rights discourse.

Institutional factors within the Inter-American system itself profoundly influence hierarchical patterns. The Commission's strategic litigation choices reflect the development array of human rights issues in the region, including collective rights of indigenous peoples and women (Keck and Sikkink, 1998). The profile of judges appointed to the Court, their professional backgrounds, ideological orientations, and national contexts, affects interpretative approaches and priority-setting. The political dynamics of the Organization of American States, where member states with varying commitments to human rights negotiate system resources and mandates, affect which issues receive sustained attention.

6.2.3. Comparative Assessment with Other Regional Systems

The comparative analysis of hierarchical patterns across regional human rights systems reveals both universal tendencies and context-specific variations that illuminate the constructed nature of rights prioritization. The European Court of Human Rights, operating within a context of established democracies and relative religious pluralism, demonstrates markedly different

hierarchical arrangements. The margin of appreciation doctrine, more developed in the European system, allows states considerable discretion in regulating religious matters, effectively creating hierarchical arrangements where state sovereignty and cultural particularity receive greater weight against universal rights claims (ECHR, Case Palomo Sánchez and Others v. Spain, 2011).

The European approach to religious symbols illustrates these differences starkly. In cases like *Lautsi v. Italy*, the European Court ultimately deferred to states' choices about religious symbols in public spaces, finding that crucifixes in classrooms fell within Italy's margin of appreciation (ECtHR, 2011). The Inter-American Court, confronting similar issues, shows less deference to state claims about religious heritage, prioritizing secular equality over historical religious privilege. This divergence reflects different relationships between church and state, with Europe's established church traditions contrasting with Latin America's formal secularism overlaying Catholic cultural hegemony.

The African human rights system presents another comparative perspective, revealing how regional philosophies shape hierarchical arrangements. The African Charter on Human and Peoples' Rights explicitly recognizes collective rights and duties, creating fundamentally different hierarchical possibilities. The African Commission and Court show greater willingness to subordinate individual rights to communal interests, particularly regarding traditional practices and customary law. When the African Court addresses freedom of religion, it often emphasizes communal harmony over individual autonomy, contrasting sharply with the Inter-American Court's increasing individualism.

The Islamic human rights framework, though not a regional court system, provides important comparative insights through the Cairo Declaration on Human Rights in Islam (1990). This declaration reflects the principles of Islamic law and emphasizes freedom of religion within the context of Islamic values. This approach contrasts fundamentally with the Inter-American system's secular orientation, where religious arguments must be translated into universal human rights language to gain legal traction. The Inter-American Court's rejection of religious justifications for discrimination would be incomprehensible within an Islamic framework where religious law provides the foundational normative order.

Asian approaches to human rights, while lacking a unified regional court, have developed through instruments like the ASEAN Human Rights Declaration, which includes provisions on freedom of thought, conscience, and religion in Article 22. This declaration emphasizes tolerance and respect among different religious communities within a region characterized by diverse cultures and religions. The Inter-American system shares some similarities in its recognition of economic, social, and cultural rights through the Protocol of San Salvador, acknowledging that human dignity requires more than civil and political freedoms alone. However, unlike some regional approaches that may defer to cultural particularities, the Inter-American Court increasingly rejects cultural relativist arguments when they justify discrimination, maintaining that neither cultural traditions nor religious beliefs can legitimate violations of fundamental rights

These comparative observations reveal that hierarchical patterns emerge from composite interactions between universal human rights norms and regional contexts. The Inter-American Court's specific arrangements (prioritizing democratic participation and equality over religious institutional autonomy) represent conscious choices shaped by regional history rather than inevitable applications of universal principles. Understanding these contextual factors becomes essential for evaluating the legitimacy and effectiveness of hierarchical arrangements in protecting human dignity within specific regional contexts.

6.2.4. Theoretical Explanations for Observed Patterns

The hierarchical patterns observed in Inter-American jurisprudence demand a sophisticated theoretical explanation that transcends descriptive categorization to reveal underlying normative logics and their implications for human rights theory. Robert Alexy's theory of constitutional rights as optimization requirements provides a foundational framework, positing that rights are principles requiring realization to the greatest extent possible given legal and factual constraints (Alexy, 2002). The Court's jurisprudence reveals implicit adoption of Alexy's "weight formula," where the specific weight of a principle depends on the case context and represents relative rather than absolute values (Alexy, 2003).

The distinction between rights as trumps offers complementary theoretical insights (Shelton, 2002). Certain rights function as trumps that override utilitarian calculations or collective goals, protecting individuals against majority preferences even when social welfare might be enhanced

by rights violations. The Inter-American Court's treatment of non-derogable rights suggests partial adoption of this framework, though the Court's practice reveals that even fundamental rights yield to other fundamental rights in extreme cases, indicating that pure trump models cannot fully explain observed patterns. The interpretative methodologies documented in Section 5.2.4 provide additional theoretical insight. The evolutionary interpretation doctrine, the pro homine principle, and the categorical anti-discrimination analysis documented there do not operate independently but interact to produce systematic outcomes.

Evolutionary interpretation, treating the Convention as a living instrument, enables the Court to expand protections for newly recognized categories while potentially contracting protections for traditional claims. The asymmetry documented in Section 6.1.2, where equality rights have expanded while religious institutional autonomy has contracted, reflects this dynamic: evolutionary interpretation moves in the direction of contemporary progressive consensus rather than toward enhanced protection for traditional religious claims.

The pro homine principle, requiring interpretation most favorable to human rights protection, resolves interpretative ambiguity in favor of rights claimants. Yet when rights conflict, maximizing protection for one claimant necessarily limits another. The documented pattern shows pro homine consistently favoring equality claimants over religious institutional claimants, suggesting prior determination of whose rights warrant maximization.

The categorical anti-discrimination analysis documented in OC-24/17, declaring 'any' discrimination based on sexual orientation 'prohibited,' forecloses the proportionality analysis that might otherwise permit religious accommodation. By categorizing such discrimination as absolutely prohibited rather than presumptively prohibited subject to justification, the framework eliminates the analytical space within which religious liberty claims might otherwise operate.

These methodologies interact synergistically. Evolutionary interpretation expands equality categories; pro homine maximizes protection for those categories; categorical analysis forecloses competing claims. The combination produces what Section 6.1.2 characterized as movement from 'subordinate interest' through 'suspect justification' to 'conditional protection' for freedom of religion. Whether this synergy reflects a coherent theoretical commitment to equality values or

reveals a problematic methodology that systematically disadvantages religious claimants remains contested. What the analysis demonstrates is that the observed hierarchical patterns are not accidental but emerge from identifiable methodological choices whose interaction produces systematic prioritization.

The Court's recent jurisprudential trajectory demonstrates increasing sophistication in identifying and addressing indirect religious establishment through ostensibly secular laws. As documented in Section 5.4.5, in cases involving abortion restrictions, same-sex marriage bans, and transgender rights, the Court has developed methodologies for uncovering religious motivations behind facially neutral legislation. This purpose inquiry, examining legislative history, public statements by lawmakers, and alignment between challenged laws and specific religious doctrines, represents a methodological innovation that operationalizes the hierarchical patterns identified throughout this analysis.

By scrutinizing whether democratic processes serve as vehicles for religious establishment, the Court extends its hierarchical framework beyond explicit religious claims to address structural religious influence in lawmaking. This methodology reflects the synergistic interaction of evolutionary interpretation and categorical anti-discrimination analysis: as equality norms expand evolutionarily, the Court develops tools to identify and invalidate their circumvention through formally neutral religious legislation

Critical legal perspectives provide essential theoretical tools for understanding how power dynamics and social hierarchies shape formal legal hierarchies. This legal perspective illuminates how the Court's treatment of indigenous spiritual practices reflects ongoing colonial dynamics that subordinate non-Western cosmologies to Western legal categories (Chaibi, 2022; Carozza, 2003). The privileged position historically accorded to Christian freedom of religion claims versus the marginalization of indigenous spirituality cannot be explained through neutral legal principles but requires understanding law's role in perpetuating racial hierarchies.

Feminist movements contribute with crucial insights into gendered dimensions of hierarchical patterns (Navarro Floria, 2014). Critics of formal equality reveal why the Court increasingly prioritizes substantive gender equality over freedom of religion claims that perpetuate patriarchal

structures. The Court's rejection of religious justifications for gender discrimination in cases like *Atala Riffo and Daughters v. Chile* (IACtHR, 2012) reflects feminist insights that formal neutrality cannot address structural subordination. The Court stated that abstract concepts of traditional family rooted in religious convictions cannot override concrete equality rights.

The Inter-American Court's hierarchical patterns can be interpreted as reflecting implicit judgments about which rights are most essential for human flourishing in the Latin American context. Rights enabling political participation, protecting physical security, and ensuring basic equality receive priority because they constitute foundational capabilities without which other rights become meaningless. In this sense, the Court's evolving hierarchies reflect changing democratic consensuses about rights priorities, with previously marginalized voices increasingly shaping legal interpretations.

The Court's shift from protecting religious institutional privilege to prioritizing equality for sexual minorities exemplifies this democratic reconstruction of hierarchies. Having established the theoretical frameworks explaining these hierarchical patterns, we now examine freedom of religion's specific position within this normative structure and the variables that determine its fluctuating status.

6.3. Freedom of Religion in Normative Hierarchy

6.3.1. Analytical Assessment of Hierarchical Positioning

The position of freedom of religion within the Inter-American system's normative hierarchy presents extraordinary facts that defies simple categorization while revealing fundamental tensions in human rights theory and practice. The empirical analysis demonstrates that freedom of religion occupies what can be conceptualized as a floating position within the hierarchy: neither fixed at the apex as some religious advocates claim nor relegated to subordinate status as strict secularists might prefer. Instead, freedom of religion's hierarchical position shifts depending on multiple variables: the specific dimension of freedom of religion at stake (belief versus practice), the identity of the claimant (minority versus majority, individual versus institution), the nature of competing rights, and the broader social context of adjudication.

Rawls's conception of liberty as protection from external interference, examined in Chapter 2, finds qualified application in Inter-American jurisprudence where religious liberty yields to equality imperatives in ways Rawls's framework does not clearly anticipate. This principle extends to freedom of conscience and belief, where individuals must be free from obstacles that prevent, limit, or determine their religious choices. However, Rawls's lexical ordering, which requires us to satisfy the first principle in the ordering before we can move to the second (Rawls, 1971), proves inadequate for capturing freedom of religion's centre positioning. The Court's jurisprudence reveals that freedom of religion simultaneously operates at multiple levels of the hierarchy depending on its specific manifestation.

The forum internum, receives near-absolute protection positioned at the hierarchy's apex alongside other non-derogable rights. The Court treats any attempt at coercion of belief as fundamentally incompatible with human dignity, reflecting the primacy of moral agency in modern moral order (Taylor, 2007). No state interest, however compelling, justifies interference with internal religious conviction. This absolute protection of belief aligns with Rawls's priority of liberty principle, where basic liberties can only be restricted for the sake of liberty itself (Rawls, 1971).

However, the forum externum occupies a distinctly different hierarchical position. Here, freedom of religion encounters competing principles of equal or greater abstract weight (Alexy, 2008). The Court's proportionality analysis reveals implicit hierarchical judgments about relative weights. When religious practice conflicts with others' fundamental rights, particularly equality rights of vulnerable groups, freedom of religion consistently yields. The *Pavez* case exemplifies this subordination, where the Court found that institutional religious autonomy cannot justify discrimination in quasi-public functions, even when religious doctrine is at stake (IACHR, 2022).

The collective dimension of freedom of religion, like institutional autonomy claims, occupies an even lower hierarchical position. Religious institutions' claims to self-governance, employment discretion, and doctrinal authority receive recognition but face significant limitations when they affect third parties' rights. The Court's analysis reveals an inverse relationship between institutional power and hierarchical protection: powerful religious institutions receive less deference than vulnerable religious minorities. This pattern reflects a law's role in destabilization rights that challenge concentrated power (Unger, 1987).

Comparative analysis with other rights clarifies freedom of religion's relative positioning. When freedom of religion conflicts with freedom of expression, as in the Olmedo Bustos framework documented in Section 5.2.1, the Court prioritizes expression as essential to democratic functioning. When freedom of religion conflicts with indigenous collective rights, as in the Sarayaku framework documented in Section 5.4.1, mainstream religious claims yield to indigenous spiritual practices framed through cultural survival and territorial connection. When freedom of religion conflicts with equality based on sexual orientation, as in the Atala Riffo and Pavez frameworks documented in Sections 5.4.2 and 5.2.2, religious justifications are found insufficient to overcome strict scrutiny.

This comparative pattern suggests that freedom of religion's hierarchical position is contextually determined rather than fixed. The variables determining position in any given conflict include the identity of claimants (vulnerable group versus powerful institution), the nature of the competing right (foundational democratic value versus traditional prerogative), and the analytical framework applied (strict scrutiny versus reasonableness review). These variables and their interaction are examined in Section 6.3.2. This comparison shows that the Court's prioritization of freedom of religion depends on context, including the nature of conflicting rights and the vulnerability of claimants. It prepares the ground for examining the specific variables that shape these judicial decisions.

6.3.2. Variables Influencing Judicial Prioritization

The variables influencing freedom of religion's hierarchical positioning operate through some interactions that resist simple causation while revealing patterns amenable to systematic analysis. The identity of rights claimants emerges as a primary variable, with the Court applying what amounts to a sliding scale of protection based on power differentials and vulnerability assessments. Indigenous spiritual practitioners receive enhanced protection not merely as freedom of religion claimants but as members of historically oppressed groups whose spirituality intertwines with cultural survival. As established in *Sawhoyamaya Indigenous Community v. Paraguay* (IACtHR, 2006).

The public-private distinction operates as another crucial variable, though its application proves more dense than liberal theory suggests. Private religious practice receives strong protection, with

the Court showing extreme reluctance to interfere with individual or family religious choices. The principle that each one of the people that make up a society should be guaranteed the freedom to achieve their own life plan applies forcefully to private religious practice (Rawls, 1997). However, the public-private boundary itself becomes contested terrain. Religious groups argue that communal worship and public testimony are essential to their faith, making privatization itself a form of religious restriction. The Court navigates this tension through contextual analysis rather than bright-line rules.

State action type significantly influences prioritization patterns. Direct state prohibition of religious practice triggers strict scrutiny requiring compelling justification (Herring, 2009; Taxman, 2020). The Court requires that any restriction be prescribed by law, pursue a legitimate aim recognized by the Convention, and demonstrate necessity and proportionality, a standard derived from international human rights norms. Indirect burdens imposed through facially neutral laws receive more nuanced consideration. The Court increasingly recognizes that formal neutrality can conceal discriminatory effects, such as when employment regulations disproportionately impact religious minorities with distinctive dress or scheduling needs, creating an obligation to accommodate religious practices whenever feasible (Bowal & Goloubev, 2011).

Temporal factors introduce dynamic elements into hierarchical calculations. The Court shows acute awareness that freedom of religion claims evolve and that practices once protected as religious tradition may lose protection as social understanding develops. The evolution regarding gender equality and sexual orientation demonstrates this temporal dimension starkly (Bourdieu, 1971). Religious justifications for discrimination that succeeded in earlier decades now fail against evolved equality norms. *Atala Riffo v. Chile* (IACtHR, 2012), analyzed in Section 5.4.2, established that abstract appeals to children's welfare cannot override concrete equality protections. This rejection of religious-moral reasoning disguised as child welfare concern confirmed the hierarchical subordination of traditional family concepts to anti-discrimination principles.

The nature of the religious claim itself affects hierarchical positioning. Claims rooted in core theological doctrine receive greater consideration than peripheral practices. The Court distinguishes between essential religious obligations and preferences, though this distinction itself

raises questions about judicial competence to determine religious centrality. When Sandra Pavez challenged her dismissal as a religion teacher, the Court had to navigate between respecting Catholic doctrine on sexual morality and protecting against employment discrimination, ultimately finding that doctrinal autonomy has limits in quasi-public functions (IACHR, 2022).

The degree of public function emerges as a determinative variable shaping hierarchical positioning of institutional conscience claims. The Pavez jurisprudence, documented in Section 5.4.3, reveals an implicit taxonomy based on the intersection between religious mission and state involvement. The Court's analysis distinguished three categories with correspondingly different levels of protection: core religious activities such as worship, doctrine, and clergy selection, where institutional conscience receives maximum deference; hybrid public-private functions like religious education in public schools, where protection is qualified by non-discrimination requirements; and purely public functions performed by religious institutions under state delegation, where institutional conscience claims cannot override equality obligations. This tripartite taxonomy operationalizes the broader hierarchical pattern: as institutional functions become more public, the Court's prioritization shifts from protecting institutional religious autonomy toward protecting individual equality rights. The taxonomy thus provides a predictive framework, this are institutions seeking to maintain conscience-based employment practices must demonstrate that the function at issue falls within core religious activities rather than public or hybrid categories.

International and regional contexts provide additional variables shaping prioritization. The Court operates within broader frameworks that influence hierarchical arrangements. The UN Human Rights Committee's General Comment No. 22 on freedom of religion shapes regional interpretation (Human Rights Committee, 1993). The Court frequently cites authorities from the European Court of Human Rights, indicating a form of inter-judicial communication that underscores its role in the international human right's legal framework (Carter, 2013; Panepinto, 2017). The emerging global consensus on certain issues, like protection against forced religious conversion (Bielefeldt, 2000), influences how the Court prioritizes freedom of religion claims.

The hierarchical patterns identified in this analysis reflect Latin America's ongoing struggle to reconcile religious heritage with democratic pluralism. As the Inter-American Court navigates

between protecting freedom of religion and preventing faith-based discrimination, it mirrors the region's broader transformation. While future challenges, such as technological, environmental, and social, will test these frameworks in unforeseen ways, the imperative remains clear: protecting both the profound significance of religious belief and the dignity of those historically oppressed in religion's name.

6.3.3 Evolution of Freedom of religion's Status

The evolutionary trajectory documented in Section 5.2.3 and theoretically characterized in Section 6.1.2 demands causal explanation. Why has freedom of religion's hierarchical position declined relative to equality rights over the past two decades? This section examines contributing factors.

First, the democratization processes of the 1980s and 1990s initiated reassessment of religious institutions' relationships with state power. The Catholic Church's complex role during military dictatorships, with liberation theology advocates sometimes opposing authoritarian regimes while institutional hierarchies maintained varying relationships with those regimes, affected judicial attitudes toward institutional religious claims (Panizza, 1995). The subsequent decades saw transitions from harmony to discord in the relationship between religion and politics (Cooper, 2015; Freston, 2008). Courts operating in post-transitional contexts demonstrate heightened sensitivity to institutional power claims and enhanced protection for individual rights against institutional prerogatives.

Second, religious diversification destabilized traditional arrangements. The rise of Protestant and Evangelical movements challenged Catholic privilege while introducing new tensions (Bastian, 2010, 2011; Carbonelli, 2016). Many Evangelical groups advocate conservative positions on gender and sexuality that conflict with evolving equality norms, positioning them as opponents of rights expansion even as they claim religious minority status. The Court faces the task of protecting religious minorities from discrimination while preventing religious majorities, whether Catholic or Protestant, from imposing values through law (Stoll, 1990, 2014; Freston, 2008).

Third, the twenty-first century has witnessed an acceleration in freedom of religion's hierarchical repositioning driven by increasing religious, cultural, and social diversity (Henry et al., 2021). Social movements demanding equality regardless of religious objection have shifted democratic

consensus (Vaggione, 2018; Mallimaci, 2017). The growth of non-religious populations and movements advocating LGBTIQ+ rights created constituencies whose claims the Court's jurisprudence both reflects and reinforces.

Fourth, liberation theology's influence on Latin American human rights discourse prioritizes collective liberation and preferential option for the poor (Franklin, 2008). Religious claims aligned with egalitarian objectives receive greater judicial sympathy than claims perceived to reinforce inequality. This theological tradition provides normative resources for distinguishing authentic religious commitment from institutional self-interest.

Fifth, international influences and transnational judicial dialogue shape hierarchical patterns (Gómez-Betancur et al., 2021; Keck and Sikkink, 1998). Growing international consensus on gender equality, LGBTIQ+ rights, and indigenous self-determination influences how the Court prioritizes these concerns relative to traditional religious claims.

These factors interact dynamically. Democratization created judicial sensitivity to institutional power; diversification fragmented religious political influence; social movements provided alternative normative frameworks; Latin American human rights culture has identified liberation theology and social justice movements as influential intellectual backgrounds shaping regional rights discourse. These traditions emphasize vulnerability, structural inequality, and collective emancipation, themes that resonate with the Court's prioritization of equality-based claims in recent jurisprudence; international consensus reinforced these developments. The result is the trajectory documented in Chapter 5: freedom of religion declining from near-privileged status to conditional protection as these factors combined to reshape the normative landscape.

This explanation does not evaluate whether the evolution is normatively justified, a question on which reasonable observers disagree. What it demonstrates is that the evolution is neither arbitrary nor inevitable but emerges from specific historical, social, and political conditions in the Inter-American region. The theoretical implications for human rights theory, including questions about whether hierarchical ordering through democratic deliberation is legitimate, are examined in Section 6.3.4.

6.3.4. Theoretical Implications for Rights Theory

The Inter-American Court's treatment of freedom of religion carries profound implications for fundamental debates in human rights theory, challenging orthodox positions while suggesting new theoretical directions. The Court's practice definitively refutes theories positing rights as incommensurable values that cannot be ranked or balanced. Instead, the jurisprudence demonstrates that practical adjudication inevitably creates hierarchies, even if these are context-dependent rather than absolute. This reality demands theoretical frameworks that can account for and guide hierarchical ordering rather than denying its existence.

The principle of indivisibility, a cornerstone of international human rights law, requires reconsideration in light of the Court's practice. While formally affirming that all rights are indivisible, the Court's adjudication shows that indivisibility operates more as an aspirational principle than a descriptive reality. Indivisibility implies that civil, political, economic, social, and cultural rights form a unified whole. Yet the Court consistently distinguishes and ranks rights when conflicts arise. As Van Boven (1984) observed, and as Chapter 2 examined, the gap between the ideological claim of indivisibility and its practical impossibility characterizes human rights adjudication universally. The Inter-American system illustrates this tension clearly, suggesting that indivisibility functions rhetorically to resist explicit hierarchies while allowing implicit prioritization in practice

The Court's approach illuminates tensions between individual and collective rights dimensions that challenge liberal theory's individualist foundations. While human rights theory traditionally emphasizes individual autonomy, freedom of religion inherently involves collective dimensions through religious communities and institutions. The Court's differential treatment of individual versus institutional religious claims reveals a fundamental paradox within secular states: the challenge of preserving individual rights while navigating the religious landscape (Poulat, 2012). This tension between respecting traditional practices and upholding individual freedoms raises important questions about protecting cultural groups while preventing group oppression of individuals. The Court's resolution: prioritizing individual dignity while limiting institutional autonomy, represents one approach to this paradox, though it remains deeply contested.

The relationship between universalism and cultural relativism (Donnelly, 2002) receives new illumination through the Court's freedom of religion jurisprudence. This approach rejects both absolute universalism that ignores context and absolute relativism that abandons universal standards. Instead, the Court adopts an approach based on dialogue between distinct cultural and legal traditions, seeking to interpret and reconcile diverse worldviews through a process of intercultural understanding and translation.

The temporal dimension of rights emerges as theoretically significant through the Court's evolving treatment of freedom of religion. Traditional rights theory often assumes fixed meanings, but the Court's practice demonstrates that rights meanings and relationships change over time in response to social transformation. This evolutionary understanding challenges original or fixed interpretations, suggesting instead that rights must be continually reinterpreted to maintain their protective function in changing contexts. The evolution of freedom of religion, from an almost absolute entitlement to a right subject to balance and contextual interpretation, illustrates how constitutional principles can preserve their foundational meaning while adapting to changing social and historical realities.

The Court's jurisprudence offers critical refinement to Rawlsian justice theory by demonstrating that lexical ordering operates contextually rather than absolutely. While Rawls posits that basic liberties can only be restricted for the sake of other basic liberties, the Inter-American practice reveals that the weight of each liberty varies according to its democratic function and the vulnerability of affected groups. This suggests a more nuanced lexical formula where priority rules themselves shift based on power asymmetries. This is a dimension Rawls's original position obscures by assuming equal bargaining power behind the veil of ignorance.

Furthermore, the Court's approach transcends the traditional binary debate between hierarchy and indivisibility by revealing them as complementary rather than contradictory principles. The formal commitment to indivisibility serves a legitimating function, preventing states from explicitly abandoning inconvenient rights, while implicit hierarchies enable practical adjudication when rights inevitably conflict. This dual structure, what might be termed 'functional hierarchy within formal indivisibility', resolves the theoretical impasse identified by Koji (2001) and Van Boven (1984) by showing that hierarchies need not be explicitly proclaimed to be operationally effective.

Most significantly, the Court's evolution suggests that rights hierarchies are neither fixed nor arbitrary but emerge through democratic contestation. Unlike natural law theories that derive hierarchies from metaphysical foundations, or positivist approaches that deny hierarchies exist, the Inter-American experience points toward a deliberative model where hierarchical arrangements reflect ongoing societal negotiations about fundamental values. Freedom of religion's declining position relative to equality rights exemplifies how hierarchies respond to social movements and changing democratic consensus, a process that enriches our understanding of rights as living instruments rather than static entitlements.

The Court's methodology in bioethical and family law cases, documented in Section 5.4.4, illuminates the theoretical distinction between religious participation in democratic deliberation and religious imposition through state power. The *Artavia Murillo* and *Pavez* jurisprudence demonstrates that the Court maintains space for religious communities to advocate their moral visions and participate in public debate while establishing limits on translating particular religious doctrines into binding law without secular justification.

This distinction operationalizes a sophisticated understanding of secularism: religious voices remain legitimate participants in democratic discourse, but legislative outcomes must be justifiable through reasons accessible to all citizens regardless of religious commitment. The framework preserves religious expression within democratic processes while preventing religious majorities from constraining minority rights through legislative power alone. This approach reflects what might be termed 'inclusive secularism,' where religion is neither excluded from public life nor permitted to dominate state action, a position that seeks equilibrium between the Court's protection of religious liberty and its commitment to equality and pluralism.

The Court's jurisprudence advances the discussion on the nature of human rights by adopting a pragmatic rather than metaphysical stance. Rather than grounding rights in divine, natural, or rational absolutes, its reasoning suggests that rights emerge through democratic deliberation and evolving social consensus. This perspective views human rights as products of collective agreement and shared concern for human dignity and the reduction of suffering, rather than as immutable moral truths. Consequently, the Court's changing hierarchies of rights mirror transformations in democratic values rather than the discovery of pre-established universal norms.

6.4. State Obligations and Implementation Framework

6.4.1. Typology of Obligations: Respect, Protect, Fulfill

Section 5.1.5 introduced the tripartite framework of state obligations: respect, protect, and fulfill. This section examines how these obligations operate asymmetrically when applied to freedom of religion claims versus competing rights, revealing hierarchical preferences embedded within ostensibly neutral obligation structures. The critical finding is not what these obligations require abstractly but how their application varies depending on which right is at stake and who invokes it.

Regarding the respect obligation, the documented cases show systematic variation. According to Article 12 of the American Convention, the right to freedom of conscience and religion encompasses the freedom to hold, change, profess, and disseminate one's religion or beliefs, while Article 1.1 explicitly prohibits discrimination based on creed and religion. The Court has established that respect obligations apply horizontally across government institutions and vertically through federal structures.

When indigenous communities invoke spiritual connections to land, as documented in Section 5.4.1, the respect obligation expands to require active state protection of sacred sites from third-party interference. When LGBTIQ+ individuals invoke dignity and equality, as documented in Section 5.4.2, the respect obligation demands that states ensure their institutions do not participate in discrimination. Yet when religious institutions invoke doctrinal autonomy, as documented in Section 5.2.2, the respect obligation contracts to require only that the state not directly prohibit worship; it does not prevent the state from requiring institutional compliance with anti-discrimination norms in quasi-public contexts.

This differential application reveals that 'respect' does not have fixed content but expands or contracts based on the right-holder's identity and the right's hierarchical position. The obligation appears neutral in formulation but produces systematically different outcomes in application.

Regarding the protect obligation, states must prevent third parties from violating freedom of religion, transforming the state from neutral abstainer to active guardian. As former UN Secretary-

General Ban Ki-moon (2008) articulated, 'States have a clear obligation to protect, promote, and fulfill economic, social, and cultural rights, and to refrain from interfering with their enjoyment,' a principle equally applicable to civil and political rights including freedom of religion. The Inter-American Court's interpretation follows the European Court's precedent that states bear 'positive obligations to protect the right to religion, even in cases of attacks by private individuals' (OAS, 1979, Resolution 444 (IX-0/79)), as demonstrated in *97 Members of the Congregation of Jehovah's Witnesses of Gldani v. Georgia* (2007).

Similar asymmetry appears in protection's application. The Pavez analysis in Section 5.2.2 demonstrates that when religious institutions invoke doctrinal objections to LGBTIQ+ employees, the Court frames this as discrimination requiring state intervention rather than religious exercise requiring state protection (Henríquez, 2022). The state's protective obligation runs toward the equality claimant rather than the religious institution. Yet when religious minorities face persecution, as in the Commission's early work documented in Section 5.2.3, protection runs toward the religious claimant. The direction of protection correlates with hierarchical positioning: higher-positioned rights receive protection against lower-positioned claims.

The protection obligation becomes particularly complex in contexts of competing religious claims. When religious groups clash over sacred sites, public expressions, or conversion practices, states must mediate while maintaining neutrality. As Cohen notes, neutrality does not imply cultural emptiness but ensures that state structures and policies are not derived from or justified by religious beliefs (Cohen, 2016). Religious discrimination affects the most vulnerable groups, including youth, women, the LGBTIQ+ community, indigenous groups, and religious minorities (Fox, 2017). This balancing act proves especially challenging in societies undergoing rapid religious change, where traditional privileges face challenges from religious diversity (Martín, 2009).

Regarding fulfilling obligation, asymmetry is most stark. The obligation involves taking positive measures to ensure freedom of religion's full realization, extending beyond protection to active promotion. Interfaith dialogue has been recognized as a valuable tool for facilitating intercultural and interreligious understanding, as well as for reducing prejudice and discrimination based on religious beliefs (Kusuma & Susilo, 2020). The Court has interpreted fulfillment obligations to include cultural and educational measures combating religious prejudice (Pope, 2019).

For indigenous spirituality, fulfillment requires territorial protection and cultural revitalization support, as documented in Section 5.4.1. The Sarayaku case established that 'the close relationship between indigenous peoples and their traditional territories encompasses spiritual and cultural elements' (IACHR, 2012), transforming the fulfill obligation into a duty to ensure territorial integrity as a prerequisite for religious exercise. For equality, fulfillment requires anti-discrimination legislation, training, and enforcement mechanisms. For religious institutional autonomy, fulfillment obligations remain minimal, limited to non-interference with core worship practices.

The intersection and mutual reinforcement of these obligations creates an integrated framework. The governments not only have a negative duty to refrain from violating rights but also a positive duty to adopt necessary and reasonable measures for their effectiveness (Buergenthal, 1994). This integration reflects the fundamental interdependence of human rights, where the violation of basic rights directly affects all other rights (Koji, 2001). The Court recognizes that meaningful freedom of religion requires not just absence of interference but presence of conditions enabling religious life to flourish, embodying the Inter-American system's commitment to the interdependence of all human rights (Duhaime & Décoste, 2020).

These asymmetries demonstrate that the tripartite framework, while formally neutral, operates as a vehicle for hierarchical preferences. The implications for understanding how neutral-sounding legal frameworks embed substantive priorities are examined in Section 6.2.4.

6.4.2. Positive and Negative Dimensions of State Duties

The Court's jurisprudence reveals that negative duties require particular vigilance in contexts of historical religious privilege. In societies where Catholicism enjoyed centuries of official establishment, formal disestablishment alone proves insufficient. Latin America traditionally had a consistent Catholic majority, and Catholicism was for a long time the official religion of almost all states. The Catholic base marks societies, also in the legal documents (Thorsen, 2023). In all countries, the Catholic Church has, in fact and often in law, a predominant presence requiring active dismantling of structural advantages: revising laws that privilege Catholic institutions, removing religious symbols from public buildings, eliminating religious oaths in official proceedings, and ensuring equal treatment in tax exemptions and public funding (Mallimaci et al.,

2015). Yet this dismantling of Catholic privilege paradoxically creates new hierarchies. While demanding states eliminate historical Catholic advantages, the Court simultaneously shows greater deference to indigenous spirituality and non-Western religious traditions. This selective application suggests the Court's concern lies not with religious establishment per se, but specifically with Western Christianity's perceived incompatibility with progressive democratic values.

Negative duties, traditionally understood as requiring state abstention, actually demand extensive positive action to ensure systematic non-interference. States must establish and maintain complex institutional architectures to prevent freedom of religion violations: training programs for police, military, and civil servants to recognize and avoid religious discrimination; oversight mechanisms to monitor and correct violations; judicial systems capable of providing effective remedies; and administrative procedures ensuring religious neutrality in public services. Secular governments must actively prohibit discriminatory acts even when guided by religious precepts (Sunstein, 2007). The Court has found states in violation not for active interference but for failing to establish these preventive infrastructures.

Positive duties encompass an expansive range of state actions necessary for meaningful religious exercise. The Court requires states to provide chaplaincy services in prisons, hospitals, and military institutions, ensuring that confinement or service doesn't impede religious practice. States must accommodate religious practices in public institutions through scheduling adjustments for religious observances, dietary accommodations in public facilities, and exemptions from dress codes that conflict with religious requirements. These accommodations must be equally available to all religions, not just dominant traditions.

The intersection of positive and negative duties creates interesting situations requiring sophisticated balancing. Protecting some groups' freedom of religion may require limiting others' religious expression, as when states restrict aggressive proselytism that amounts to harassment or prevent religious practices that harm others. In Latin America, proselytism has not generally been a contentious issue (Navarro Floria, Lo Prete 2011), though the Court applies the proportionality principle to evaluate whether limitations on religious practices are proportionate to legitimate objectives pursued by the government (Jolicoeur & Memmer, 2018). Some religious organizations

argue that compliance with anti-discrimination laws limits their right to freedom of religion ("Amicus Curiae", *Pavez vs Chile*, IACtHR 2021), but the Court's proportionality analysis provides guidance that states' responses must not be excessive concerning the perceived harm, though states face difficult judgments about when intervention is justified.

Resource allocation presents particular challenges for positive duties implementation. While the Court recognizes progressive realization for resource-intensive obligations, it maintains that certain core obligations are immediate regardless of resources. States cannot invoke poverty to justify discrimination or failure to protect religious minorities from violence. However, the extent of accommodation measures, support for religious education, or preservation of religious heritage sites may depend on available resources. The Court scrutinizes whether states allocate resources equitably among religious groups and whether resource constraints are genuine or reflect discriminatory prioritization.

The COVID-19 pandemic illuminated the compounded interplay between positive and negative freedom of religion duties. Government restrictions on the freedom to profess religion had significant impact on believers globally, raising questions about the proportionality of such measures (Begović, 2020). States faced competing obligations: protecting public health while ensuring religious exercise, preventing virus transmission while enabling spiritual comfort for the dying, maintaining social distance while respecting religious burial practices. The Court's preliminary decisions suggest a framework balancing freedom of religion with public health through proportionality analysis, though recognizing that emergencies may temporarily alter the balance between positive and negative duties.

6.4.3. Implementation Challenges and Institutional Responses

Implementation of the Court's freedom of religion jurisprudence confronts structural challenges that vary dramatically across member states, reflecting diverse institutional capacities, political contexts, and social dynamics. Federal systems face particular difficulties in ensuring consistent implementation across different levels of government, where subnational authorities may resist freedom of religion protections that conflict with local traditions or majority preferences. Brazil's federal structure, encompassing 26 states with significant autonomy, illustrates these challenges,

as some states maintain Catholic privileges in education and healthcare despite federal constitutional commitments to religious equality (Asiain Pereira, 2010).

The Court has addressed federal implementation challenges by holding national governments fully responsible for subnational violations, requiring them to establish mechanisms ensuring compliance throughout their territory. This approach creates pressure for federal coordination but faces practical limits in decentralized systems where subnational units enjoy constitutional autonomy. Mexico's experience demonstrates both progress and limitations, as federal human rights frameworks coexist uneasily with state-level practices that privilege Catholicism in public education and civic ceremonies (Esquivel, 2008).

Weak judicial systems in many member states impede the effective implementation of freedom of religion protections. Even when national legislation incorporates Inter-American standards, local courts may lack the training, independence, or resources to enforce these protections effectively. Judges socialized in societies with strong religious majorities may unconsciously favor dominant traditions, while those in secular legal cultures may misunderstand freedom of religion's scope. The Court increasingly requires states to provide specialized judicial training on freedom of religion, though implementation remains uneven.

Access to justice presents additional implementation challenges, particularly for religious minorities facing geographic, linguistic, economic, and cultural barriers (*Yakye Axa Indigenous Community vs. Paraguay* (IACHR, 2006)). Indigenous communities practicing traditional spirituality often lack resources to pursue lengthy litigation, while new religious movements face social stigma that deters legal action. The Court has responded by requiring states to ensure effective judicial remedies, including simplified procedures for vulnerable groups, legal aid for religious discrimination victims (Zepeda, 2022), and alternative dispute resolution mechanisms respecting religious diversity.

The relationship between religious and state institutions presents ongoing implementation challenges rooted in historical arrangements that resist change. Many Latin American states maintain concordats with the Vatican establishing Catholic privileges in education, military chaplaincy, and public ceremonies. While the Court has not demanded complete separation of

church and state, its equality jurisprudence increasingly questions these privileged arrangements. Colombia's Constitutional Court has progressively dismantled Catholic privileges, demonstrating possibilities for judicial implementation, though political resistance remains strong (Prieto, 2008; González Sánchez, 2011).

Civil society organizations play crucial but uneven roles in implementation across the region. The emergence of civil society represents one of three key factors shaping religious transformation in Latin America (Levine, 2009). In countries like Argentina and Chile, robust human rights organizations monitor freedom of religion violations, support strategic litigation, and advocate for policy reform. These organizations increasingly include interfaith coalitions that bridge religious divides to advocate for pluralistic frameworks. However, in countries like Venezuela and Nicaragua, civil society faces severe restrictions that limit its ability to promote freedom of religion implementation.

Religious organizations themselves vary dramatically in their capacity to engage with human rights mechanisms. Established churches possess institutional resources, legal expertise, and political connections facilitating advocacy. The Catholic Church maintains sophisticated human rights offices that monitor violations and support implementation, though primarily focusing on Catholic interests. Protestant denominations increasingly develop similar capacities, while minority religions and indigenous spiritual practitioners often lack institutional infrastructure for sustained advocacy.

6.4.4. Evolving Standards of Compliance Assessment

The Inter-American system's approach to assessing compliance with freedom of religion obligations continues evolving in response to accumulated experience. The Court has moved beyond formalistic assessments to examine whether laws translate into effective protection in practice, supervising compliance through periodic requests for information and supervisory hearings (IACtHR Regulations, Section 5.1). This substantive approach requires states to demonstrate concrete results in reducing discrimination and enhancing religious pluralism, not merely formal compliance.

The Court's evolving methodology includes requiring states to provide information on implementation during compliance supervision phases (IACtHR Regulations, Section 5.1), though the document does not specify demands for disaggregated statistical data. The system's emphasis on state accountability is evidenced by the IACHR's condemnation of Venezuela for failing to protect its Jewish community from harassment (IACHR, Annual Report 2008, Chapter IV. Venezuela, paras. 364-367), establishing that states must actively ensure rights protection beyond mere legislative adoption.

Differentiated standards for assessing compliance recognize states' varying capacities and contexts while maintaining universal minimums (Van Boven, 1984; Shelton, 2006). Post-conflict societies like Guatemala face different implementation challenges than stable democracies like Costa Rica. States experiencing rapid religious diversification through migration confront different issues than those with stable religious demographics. The Court calibrates its assessments to these contexts while insisting that all states meet core obligations regardless of circumstances.

The Court has developed sophisticated indicators for measuring compliance that go beyond quantitative metrics to capture qualitative dimensions of freedom of religion. These include perceptual measures of religious minorities' sense of security, behavioral indicators of religious expression in public spaces, and institutional assessments of religious diversity in public employment. The Court increasingly recognizes that freedom of religion's meaning cannot be captured through simple metrics but requires thick description of lived experience.

Participatory monitoring mechanisms have emerged as essential tools for compliance assessment. The Court requires states to establish national monitoring systems that involve religious communities themselves in defining indicators, collecting data, and evaluating progress (Engstrom & Hillebrecht, 2018). These participatory approaches recognize that freedom of religion's meaning varies across traditions and that top-down assessment may miss crucial dimensions.

The temporal dimension of compliance assessment has gained prominence as the Court recognizes that protecting freedom of religion requires sustained effort rather than one-time reforms. The Court's compliance supervision procedures examine whether initial progress is maintained, whether new challenges receive adequate responses, and whether implementation systems show

institutional learning. States must demonstrate continuous improvement, with backsliding triggering enhanced supervision. Venezuela's regression on freedom of religion protections has led to sustained Court monitoring and repeated compliance hearings (IACHR, 2008).

Compliance assessment increasingly examines the intersection between freedom of religion and other rights, recognizing that isolated assessment may miss systemic patterns. The Court evaluates whether freedom of religion implementation reinforces or undermines gender equality, indigenous rights, and LGBTIQ+ protection. This intersectional approach reveals composite compliance patterns where states may protect the majority's freedom of religion while failing minority religions, or respect individual belief while restricting institutional autonomy.

6.5. Societal Implications and Vulnerable Populations

6.5.1. Impact Analysis on Marginalized Groups

The differential impacts of the Court's freedom of religion jurisprudence on marginalized populations reveal how abstract legal principles translate into concrete consequences that either ameliorate or exacerbate existing inequalities. Indigenous peoples experience significant effects from the Court's jurisprudence. As documented in Section 5.4.1, the Court's recognition of spiritual practices as integral to cultural survival has strengthened land claims and resource rights by triggering consultation and consent requirements unavailable through traditional freedom of religion doctrine alone. The Sarayaku framework requires meaningful consultation before activities affecting spiritually significant territories, providing procedural protection that enables challenges to extractive projects.

However, as the analysis in Section 5.4.1 noted, this protection requires framing indigenous spirituality through collective rights and cultural survival rather than individual religious liberty. Indigenous communities whose claims do not fit this analytical framework, or whose spirituality is not tied to specific territorial claims, may find the protection unavailable. The requirement to conform to Western legal categories of collective cultural rights, rather than having indigenous cosmologies recognized on their own terms, reflects what some scholars characterize as ongoing colonial dynamics within ostensibly protective frameworks (An-Na'im, 2000; Chaibi, 2022)

Women within religious minorities face intersectional challenges that the Court's jurisprudence only partially addresses. While the Court increasingly protects women from discrimination justified by religious doctrine in public spheres, it remains hesitant to address discrimination within religious communities (Vaggione, 2018). Women in conservative religious groups may face restrictions on education, employment, leadership, and autonomy that the Court struggles to address without being accused of interfering with freedom of religion. The challenge intensifies when women internalize and defend practices that external observers view as oppressive, raising questions about agency, false consciousness, and the limits of human rights intervention (Carbonelli, 2016).

The Court has begun developing frameworks for addressing these intersectional challenges, recognizing that women's freedom of religion includes freedom from religious oppression (Arlettaz, 2011; Klein, 2008'). Cases involving reproductive rights violations justified through religious arguments about women's reproduction establish that states cannot invoke religious or cultural justifications for violating women's bodily autonomy ('Mallimaci, 2017; Vaggione, 2018). Yet the Court has not extended this analysis to address systematic discrimination within religious institutions that receive state recognition or support (Fox, 2017; Carbonelli, 2016'), highlighting the persistent challenge of balancing religious autonomy with gender equality in the Inter-American system.

LGBTIQ+ individuals navigate particularly fraught relationships with freedom of religion protection, experiencing both protection and persecution through freedom of religion frameworks. The Court has clearly established that freedom of religion cannot justify discrimination in public employment, services, or benefits, as demonstrated in the *Pavez* and *Atala Riffo* cases. Advisory Opinion OC-24/17 went further, establishing that states must ensure marriage equality regardless of religious objections, stating that "religious convictions cannot condition what the Inter-American Convention establishes" (IACtHR, 2017).

It bears emphasis that the Court's protective stance toward LGBTIQ+ individuals responds to documented patterns of discrimination, violence, and social exclusion throughout Latin America. Employment discrimination based on sexual orientation causes material deprivation through loss of livelihood, psychological harm through institutional rejection and stigmatization, and dignitary

injury through the message that LGBTIQ+ individuals are unworthy of equal participation in public life. In cases like *Pavez*, where twenty-two years of effective teaching demonstrated that sexual orientation bore no relationship to professional competence, the revocation of employment credentials appears arbitrary rather than doctrinally necessary. Moreover, permitting religious institutions to discriminate in quasi-public functions risks creating zones of exclusion where anti-discrimination principles lose force precisely where vulnerable individuals most need protection.

The subordination of religious institutional autonomy to equality norms, while constraining religious communities, simultaneously enables LGBTIQ+ individuals to participate in employment, education, and public life without facing exclusion based on identity characteristics unrelated to their capacities or conduct. This protective function represents the subordination's affirmative justification, not merely its consequence. The Court's resolution favoring equality reflects a judgment that these concrete, documentable harms outweigh the more abstract injury to institutional religious autonomy, a judgment that, while contestable, rests on coherent normative foundations rather than mere hostility to religious conviction.

Yet LGBTIQ+ individuals from religious backgrounds face unique challenges that the Court's framework inadequately addresses. Religious rejection by families and communities causes profound psychological harm, particularly for youth dependent on religious families. LGBTIQ+ individuals may experience religious trauma from teachings that their identity constitutes sin deserving eternal punishment (Vaggione, 2018). The Court's framework provides limited tools for addressing this harm while respecting religious autonomy, though emerging jurisprudence on psychological violence may offer future possibilities.

Afro-descendant religious practitioners face ongoing marginalization that formal freedom of religion protections struggle to remedy. Despite legal recognition, African-derived religions like Candomblé, Santería, Vodou, and Umbanda continue facing social stigma, police harassment, and exclusion from interfaith dialogues. These religions are often characterized as "cults" rather than legitimate religions, facing discrimination in zoning for temples, animal sacrifice practices, and public funding. Brazil's terreiros (Candomblé temples) report frequent attacks by Evangelical groups who consider African religions demonic, yet police often fail to investigate these as religious hate crimes (Frigerio, 2018; Alcalá, 2018).

The Court's formal equality approach proves insufficient to address deep-seated prejudices marking African religions as primitive, dangerous, or illegitimate. These communities require not just negative protection from interference but positive measures to overcome historical subordination: public education combating stereotypes, inclusion in official interfaith bodies, protection of sacred sites from urban development, and recognition of African religious knowledge in healthcare and education. The Court has begun recognizing these needs, but implementation remains minimal across the region.

6.5.2. Religious Minorities: Protection Patterns and Challenges

Protection patterns for religious minorities in the Inter-American system reveal convoluted dynamics where formal legal protections coexist with persistent discrimination, marginalization, and violence. Evangelical and Pentecostal churches, despite explosive growth making them majorities in some countries, continue facing discrimination in nations where Catholicism enjoys *de facto* or *de jure* privileges (Stoll, 1990; Carbonelli, 2016). This reflects broader patterns where 'religious diversification reshapes societal, political, and religious dynamics' (Alcala, 2018) while historical privileges remain embedded in state structures.

The Court's equality jurisprudence has prompted some states to reform discriminatory laws, but implementation remains deeply uneven. Following constitutional reforms like Colombia's 1991 shift from a confessional model (Prieto, 2008), practical changes often lag behind formal reforms. Public education and state funding frequently maintain 'disproportionate flows to Catholic institutions under historical agreements' (Navarro Floria, 2011). The Court increasingly scrutinizes these arrangements, but political resistance to change remains strong given Catholicism's cultural entrenchment.

Evangelical political mobilization has created new dynamics where these churches simultaneously seek protection as minorities while advocating positions that restrict others' rights. 'Evangelical groups have aligned with conservative political movements, focusing on issues such as opposition to abortion and same-sex marriage' (Mallimaci, 2017; Freston, 2008). This creates layered situations where religious minorities claim discrimination while potentially discriminating against others. The Court must balance protecting Evangelical churches from Catholic hegemony while

preventing them from 'imposing their own religious values through political power' (Stoll, 2014; Gonzalez, 2021)

Small religious minorities (Jews, Muslims, Buddhists, Hindus, Bahá'ís, and others) face distinct challenges in achieving meaningful protection. Their limited numbers mean political marginalization and practical difficulties accessing religious services (IACtHR, 2008). Jews in countries like Peru or Ecuador struggle to maintain kosher food, religious education, and burial practices. Muslims face suspicion and surveillance under anti-terrorism frameworks that conflate Islam with extremism (Alcala, 2018). The Court's individual complaint mechanism may be inaccessible due to resource constraints, language barriers, and unfamiliarity with international procedures.

When cases from small minorities do reach the Court, the judges' limited familiarity with non-Christian traditions affects their ability to understand and protect these religions adequately. The Court has shown a sophisticated understanding of Catholic-Protestant dynamics but less grasp of dharmic religions, Islamic jurisprudence, or Asian spiritual traditions. This knowledge gap risks superficial protection that misunderstands these traditions' needs. Training judges and staff in religious diversity becomes essential for meaningful protection.

New religious movements encounter particular suspicion and discrimination that existing frameworks struggle to address. Emerging spiritual practices face characterization as marginal rather than legitimate religions, reflecting patterns of 'religious diversification and reconfiguration in Latin America' (Bastian, 2010; Carbonelli, 2016). Media representation and social attitudes often create challenging environments for 'spiritual practices that previously existed underground or in private spaces' (Frigerio, 2018; Alcala, 2018).

The Court faces difficult line-drawing exercises distinguishing legitimate concern for vulnerable individuals from discrimination against unpopular religions, requiring careful 'balancing of competing rights under principles of proportionality' (Klein, 2008; Arlettaz, 2011). When should states intervene to protect individuals from potentially problematic religious groups? How can law distinguish between authentic religious commitment and other concerns? The Court's general framework emphasizing 'neutral, generally applicable laws rather than religion-specific

restrictions' (Guastini, 2011) suggests skepticism toward targeted regulations, while acknowledging the state's role in preventing genuine harm.

Atheists, agnostics, and non-religious individuals constitute growing minorities whose protection raises questions about freedom of religion's scope. While the American Convention protects freedom of conscience alongside religion, the Court's jurisprudence has focused primarily on religious believers. Non-religious individuals face discrimination in societies where religious identity is assumed normal. Political candidates face religious tests despite constitutional prohibitions. Conscientious objection often requires religious rather than philosophical justification.

6.5.3. Tensions in Pluralistic Democratic Societies

Religious pluralism creates tensions that test democratic societies' capacity to maintain social cohesion while respecting diversity, with the Inter-American region experiencing particularly acute challenges as rapid religious change disrupts established patterns (Levine, 2009). Traditional Catholic hegemony faces simultaneous challenges from secularization among educated elites and religious diversification among popular classes. These contradictory trends generate conflicts over public space, education, bioethics, and family law that resist simple resolution through rights adjudication.

Education emerges as a primary battlefield where competing visions of freedom of religion clash with particular intensity (Casanova, 2009). Parents claim rights to direct their children's religious education, invoking Article 12.4 of the American Convention protecting parents' rights to ensure religious and moral education in accordance with their convictions. States assert interests in promoting tolerance, critical thinking, and common citizenship through secular curricula. Religious institutions seek to maintain doctrinal integrity in their educational institutions while receiving public funding. The Court attempts to balance these competing claims, but its solutions often satisfy no one.

The controversy over gender ideology education illustrates these tensions starkly. Conservative religious groups across Latin America have mobilized against educational programs addressing gender equality and sexual diversity, claiming these violate parental rights and freedom of religion.

Peru's "Con Mis Hijos No Te Metas" (Don't Mess With My Children) movement successfully blocked curriculum reforms through mass protests invoking freedom of religion (Meneses, 2019). The Court faces pressure to clarify whether freedom of religion includes rights to shield children from information about gender and sexuality, with profound implications for LGBTIQ+ youth in religious families.

Public religious expression generates ongoing controversy about appropriate boundaries between freedom of religion and secular public space. While the Court protects religious manifestation, disputes arise over religious symbols in public buildings, religious invocations at state ceremonies, and religious arguments in political debate. The Court's public-private distinction offers some guidance but proves inadequate for societies where religion has traditionally been public and where privatization itself is seen as hostile to religion (Modood, 2010).

Indigenous peoples particularly resist privatization models that separate spirituality from land, governance, and daily life. For many indigenous communities, spirituality permeates all aspects of existence, making Western secular-religious distinctions meaningless. The Court increasingly recognizes this general approach, but it creates tensions with secular frameworks premised on religion's privatization. How can states maintain religious neutrality while recognizing indigenous governance systems with inherent spiritual dimensions?

Bioethical controversies increasingly generate freedom of religion tensions as medical technology advances and social values evolve. Reproductive rights trigger intense conflicts, with religious groups claiming freedom to oppose abortion, contraception, and assisted reproduction while women's rights advocates demand access to reproductive healthcare (Mallimaci, 2017; Vaggione, 2018). The Court has established that states must ensure access to legal reproductive services regardless of religious objections, but implementation faces massive resistance from religious healthcare providers and institutions.

End-of-life decisions create equally tensions. Religious groups oppose euthanasia and physician-assisted death as violations of life's sanctity, while advocates invoke autonomy and dignity. Several countries have legalized these practices despite religious opposition, creating conflicts when religious healthcare providers must refer or transfer patients seeking these services (Irrazabal,

2010). The Court has not definitively resolved these tensions, though its jurisprudence on personal autonomy suggests support for individual choice over religious objections.

Same-sex marriage and adoption have become flashpoints for freedom of religion tensions. Following the Court's Advisory Opinion OC-24/17, states must ensure marriage equality, but religious opposition remains fierce. Religious officials claim conscience rights to refuse performing same-sex marriages, religious adoption agencies seek exemptions from placing children with same-sex couples, and religious employers resist recognizing same-sex spouses for benefits. The Court requires equal treatment in civil law but has not fully clarified religious exemptions' scope.

6.5.4 Future Trajectories and Emerging Challenges

The future trajectory of freedom of religion protection in the Inter-American system faces emerging challenges that will test existing frameworks and require doctrinal innovation beyond current paradigms. Climate change introduces novel conflicts as environmental protection measures increasingly restrict religious practices. Indigenous ceremonies using endangered species face prohibition under conservation laws. Religious pilgrimages contributing to carbon emissions encounter restrictions. Sacred sites face flooding, desertification, or development for climate mitigation projects. The Court must develop frameworks balancing freedom of religion with increasingly urgent environmental imperatives that may constitute survival prerequisites trumping other rights.

Religious communities' responses to climate change vary dramatically, creating new tensions. Some embrace environmental stewardship as a religious obligation, while others view environmental regulations as secular impositions threatening freedom of religion, reflecting 'the tangled interplay between religious values and public policy frameworks' (Casanova, 2009; Blancarte, 2012).

In the Amazonian territories of Peru and Ecuador, indigenous groups have mobilized against environmental hazards such as oil pipelines, uniting under spiritual emblems to challenge economic agendas (Díaz Polanco, 2013), while other religious traditions may resist conservation efforts. Environmental organizations in Latin America increasingly 'frame the protection of nature

not only as a rational duty but also as a spiritual calling', invoking concepts like Pacha Mama to advocate for ecological preservation.

Ethnic communities like the Aymara and Mapuche in Chile have stood against commercial encroachment on their lands, invoking sacred traditions and symbols to affirm their cultural rights (Alcala, 2018), demonstrating how indigenous spirituality intertwines with environmental defense. The Court faces challenges adjudicating between these competing religious environmentalisms, navigating 'the blurred boundaries between social activism and religious expression and determining how to 'balance religious autonomy with state responsibilities in environmental governance.

Digital transformation creates unprecedented challenges that existing freedom of religion frameworks cannot adequately address. Online religious expression faces algorithmic content moderation that may discriminate against minority religions or controversial religious speech. Artificial intelligence systems trained on biased data perpetuate religious stereotypes and discrimination. Virtual religious services raise questions about what constitutes religious gathering. Can states restrict online worship during emergencies? Do religious Zoom services require the same protections as physical gatherings?

Social media platforms exercise quasi-governmental power over religious expression through community guidelines and content policies. Facebook's ban on dangerous individuals and organizations has removed religious content deemed extremist, raising questions about corporate censorship of religious speech. The Court's territorial jurisdiction model struggles with freedom of religion violations in borderless digital spaces controlled by foreign corporations (Boog, 2018). New frameworks must address platform power while protecting legitimate religious expression.

Migration and demographic transformation will fundamentally reshape freedom of religion challenges in the coming decades. Climate migration alone may displace millions, creating religious minorities in previously homogeneous societies. Venezuelan migration has brought Santería and other Afro-Caribbean religions to countries unfamiliar with these traditions. Central American migration carries Mayan spiritual practices north. Middle Eastern refugees bring Islam

to countries with minimal Muslim populations. These demographic shifts test receiving societies' commitment to freedom of religion and create new minorities requiring protection.

The rise of religious nationalism across the Americas poses existential challenges to the liberal democratic framework underlying the Inter-American system. Leaders like Bolsonaro in Brazil have invoked religious identity to justify authoritarian measures (Gonzalez, 2021). Religious nationalist movements reject secular human rights frameworks as Western impositions incompatible with authentic religious values. They frame international human rights supervision as violations of sovereignty and freedom of religion itself.

These movements create paradoxes the Court must navigate: How to protect freedom of religion for groups that would eliminate it for others if empowered? Can freedom of religion include rights to establish theocratic governance through democratic means? The Court faces a "paradox of tolerance" (Popper, 1945), whether tolerant societies must tolerate intolerance. The challenge intensifies as religious nationalists gain electoral victories and reshape state institutions.

Biotechnology raises fundamental questions about human nature that religions address differently. The Court will need frameworks for adjudicating between religious claims about human dignity and individual autonomy to pursue genetic enhancement, balancing traditional conceptions of divine creation with emerging technological possibilities (Joas, 2011). The Court will need frameworks for adjudicating between religious claims about human nature and individual autonomy to pursue enhancement. Should Amish-like religious communities have rights to reject enhancement technologies for their children? Can religious groups claim conscience exemptions from enhancement mandates if they become standard healthcare? These questions challenge anthropocentric assumptions underlying current human rights frameworks.

The COVID-19 pandemic provided preview of how global crises generate freedom of religion challenges. Future pandemics, potentially more severe, will require balancing religious practice with public health (IACtHR, 2020). Climate disasters will force evacuation of sacred sites and suspension of religious gatherings. Resource scarcity may require rationing conflicts with religious obligations. Nuclear conflict or environmental collapse could create situations where survival

imperatives override all other rights. The Court must develop crisis frameworks that protect freedom of religion while recognizing extraordinary circumstances.

The Inter-American Court stands at a critical juncture where established frameworks encounter unprecedented challenges. The patterns identified throughout this analysis - freedom of religion's qualified position in the normative hierarchy, the complex state obligations its protection entails, and its differential impacts on vulnerable populations - provide foundations for addressing emerging challenges. While the Court's ability to adapt its jurisprudence will determine the system's continued relevance, protecting freedom of religion in increasingly diverse societies ultimately requires not just legal doctrine but sustained social commitment to pluralism, tolerance, and human dignity that law alone cannot secure.

The jurisprudence of the Inter-American Court regarding adjudicative balancing reveals an ongoing effort to develop principled yet flexible frameworks for navigating rights conflicts. This continuous expansion of the range of human rights has generated significant concerns (Harrington, 2013; Pasqualucci, 2018; Therrien-Tomas Miss, 2021). The Court's approach demonstrates recognition that mechanical hierarchies cannot adequately address the contextual complexities of rights conflicts, instead requiring careful attention to power dynamics, historical injustices, and evolving social values.

The future trajectory of the Court's balancing methodology will require continued adaptation as new forms of rights conflicts emerge. The question posed by Meron (1986) remains salient: can we rank achievements, making hierarchical distinctions between the rights of different generations, between individual and collective rights? The danger exists that states would exploit formal ranking to selectively protect some rights while suppressing others. The Court must maintain vigilance against attempts to instrumentalize freedom of religion for discriminatory purposes while preserving genuine space for religious diversity and dissent. As Tahvanainen (2006) observed, if human rights are 'indivisible,' establishing hierarchy between them presents inherent tensions. This delicate balance remains central to the Inter-American system's capacity to protect human dignity while fostering peaceful coexistence.

The Inter-American Court's jurisprudential evolution in balancing freedom of religion with competing rights reveals both achievements and ongoing challenges. The Court has developed sophisticated doctrinal tools, including proportionality analysis, margin of appreciation adaptation, burden-shifting frameworks, and purpose inquiry, that enable nuanced resolution of complex conflicts. Yet implementation remains uneven, with some states invoking sovereignty and cultural particularity to resist the Court's interpretations. The cases analyzed throughout this thesis demonstrate that while the Court has established principles prioritizing equality and non-discrimination when they conflict with religious claims in public spheres, the translation of these principles into domestic law remains contested. As Latin America experiences simultaneous processes of secularization and religious revival, the Court's balancing methodology will continue to evolve, requiring constant recalibration to maintain legitimacy while protecting fundamental rights.

CHAPTER 7: CONCLUSIONS

7.1. The Hierarchy Thesis: Empirical Confirmation and Theoretical Implications

The comprehensive examination of Inter-American Court jurisprudence from 1990 to 2024 establishes an incontrovertible empirical reality: despite formal commitments to rights indivisibility articulated at the Vienna World Conference (1993) and reinforced through decades of human rights discourse, the Inter-American human rights system operates through systematic hierarchical ordering. This investigation demonstrates that Alexy's (2002, 2008) characterization of human rights as principles requiring optimization within factual and legal constraints provides a more accurate descriptive and normative framework than the indivisibility doctrine's aspirational rhetoric.

The five-tier hierarchical structure identified through systematic analysis of the Court's jurisprudence reveals patterns that transcend individual case outcomes to constitute a coherent adjudicative methodology. At the apex, *jus cogens* norms prohibiting torture, slavery, and forced disappearance occupy an absolute position that admits no derogation or balancing, as definitively established in *Barrios Altos v. Peru* (2001). The Court's declaration that amnesty laws preventing investigation of serious human rights violations "are inadmissible" reflects what Klein (2008) identifies as hierarchical superiority grounded in fundamental values that precede and constrain positive law.

The second tier encompasses non-derogable rights under Article 27 of the American Convention, including rights to life, humane treatment, and due process. These rights, while not absolute in application, receive heightened protection requiring compelling state justification and narrow tailoring when limitations arise. The third tier consists of what this investigation terms "quasi-fundamental rights" including freedom of expression, political participation, and equality, which receive robust but not absolute protection through strict scrutiny and heavy presumptions against restriction. Freedom of religion occupies a fluctuating position (fourth tier) between the second and third tiers, its protection varying dramatically based on contextual factors including the nature

of conflicting rights, the characteristics of claimants, and the Court's evolving jurisprudence on secularism and pluralism.

The fifth tier, persistently subordinated despite formal recognition, comprises economic, social, and cultural rights. Even landmark decisions such as *Lagos del Campo v. Peru* (2017), which extended direct justiciability to labor rights, reveal a weak justiciability characterized by deferential review and limited remedial consequences (Abramovich, 2009) terms). This stratification contradicts the indivisibility rhetoric while vindicating theoretical predictions by Shue (1996), Farer (1992), and Hierro (2001) that hierarchical ordering proves inevitable when rights conflict in adjudication.

Four factors influence this hierarchical ordering. First, democratic necessity drives the Court to prioritize rights deemed essential to democratic functioning, particularly freedom of expression and political participation, which receive categorical precedence over rights characterized as individual preferences. Second, historical vulnerability shapes protection patterns, with rights protecting historically marginalized populations including indigenous peoples and victims of gender-based violence receiving enhanced judicial solicitude through differential evidentiary standards and burden-shifting frameworks. Third, institutional capacity constraints necessitate subordination of rights requiring positive state action and resource allocation relative to negative liberties requiring only governmental restraint. Fourth, philosophical commitments embedded in secular public reason position religious claims as comprehensive doctrines that must yield to political values capable of securing pluralistic consensus. These factors operate synergistically to establish the comprehensive hierarchical framework this investigation documents.

The tension between formal indivisibility and practical hierarchy reflects what Donnelly (2002) identified as the distinction between the rhetoric of human rights and their implementation through legal institutions. The Vienna Declaration's proclamation that "all human rights are universal, indivisible and interdependent and interrelated" (1993) operates as aspirational principle rather than adjudicative reality. When the Inter-American Court confronts conflicts between religious institutional autonomy and non-discrimination norms, as in *Sandra Pavez v. Chile* (2022), or between religious sensibilities and freedom of expression, as in *Olmedo Bustos v. Chile* (2001),

the Court consistently prioritizes certain rights through methodological mechanisms that establish de facto hierarchy. This systematic prioritization represents not judicial inconsistency but rather structural necessity of hierarchical ordering within international legal systems, as Koji (2001) theorizes.

7.2. Freedom of religion's Subordinate Position

The position of freedom of religion within the Inter-American system's normative hierarchy represents this investigation's central empirical finding and directly addresses the core research inquiry into freedom of religion's hierarchical status. Through systematic analysis of thirty-four years of jurisprudence, this research establishes that freedom of religion occupies a fluctuating but consistently subordinate position when confronting rights the Court deems essential to democratic functioning or protection of historically vulnerable populations.

The Olmedo Bustos case (2001) established the foundational framework for freedom of religion's subordination to other human rights. When Chile defended film censorship as protecting religious sentiment, the Court rejected this reasoning through characterizing freedom of expression as "one of the essential foundations of a democratic society" (IACHR, 2001). This framing, positioning expression as foundational to democracy while treating religious sensibilities as individual preferences, created hierarchical ordering that subsequent decisions would reinforce and extend across diverse contexts. The Court's methodology reveals what Arlettaz (2011, 2012) identifies as freedom of religion's ambiguous status: formally recognized as fundamental yet practically subordinated when conflicting with rights linked to democratic governance.

The Pavez jurisprudence crystallizes three mechanisms through which freedom of religion's subordination operates methodologically. First, categorical trumping: once equality rights are invoked, freedom of religion claims receive no substantive balancing but automatic subordination. Second, burden reversal: religious institutions must prove their practices cause no discriminatory effects, inverting traditional presumptions favoring fundamental rights. Third, scope contraction: any engagement with public functions strips religious institutions of autonomy protections otherwise available in private spheres.

The Court's reasoning that "the autonomy of religious institutions cannot be invoked to justify discrimination" (IACHR, 2022, para. 137) reflects hierarchical ordering where equality norms categorically prevail over religious exercise claims. This pattern repeats across multiple contexts: in *Atala Riffo v. Chile* (2012), religious objections to same-sex parenting cannot justify custody discrimination; in *Advisory Opinion 24/17* (2017), the Court declared that "philosophical or religious convictions cannot be used as a parameter of conventionality" (OC-24/17, 2017, para. 223), positioning religious reasoning outside legitimate bases for legal differentiation.

The contrast between freedom of religion's treatment and the protection afforded indigenous spiritual practices illuminates the Court's hierarchical methodology and reveals contextual factors influencing rights' relative positions. In *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012), the Court recognized spiritual relationships with territory as integral to indigenous cultural survival, granting protection that mainstream religious claims rarely receive. This differential treatment reflects an enhanced protection for collective rights of historically marginalized groups (Anaya, 2009). When the Court protects indigenous spirituality tied to land while subordinating institutional religious autonomy, the hierarchy becomes unmistakable: spirituality linked to cultural survival and historical vulnerability receives protection denied to established religious institutions.

Artavia Murillo v. Costa Rica (2012) exemplifies freedom of religion's subordination extending beyond conflicts with liberal rights to encompass bioethical controversies where religious and secular reasoning diverge. The Court invalidated Costa Rica's prohibition of in vitro fertilization, explicitly rejecting religious conceptions of embryonic personhood. The Court's statement that "the embryo cannot be understood to be a person for the purposes of Article 4.1 of the American Convention" (IACHR, 2012, para. 264) directly contradicts Catholic doctrine that influenced the prohibition, subordinating religious epistemology to scientific and philosophical frameworks the Court deems appropriate for rights adjudication.

The theoretical framework established through Rawls's political liberalism provides explanatory power for freedom of religion's subordinate position. Rawls (1993) distinguishes between comprehensive doctrines, including religious worldviews, and political values that can secure

overlapping consensus in pluralistic democracies. The Inter-American Court's jurisprudence implicitly adopts this distinction, treating religious claims as comprehensive doctrines that must yield to political values including expression, equality, and non-discrimination capable of securing pluralistic agreement. Yet freedom of religion's subordination creates profound tensions for religious minorities whose fundamental commitments face systematic devaluation within public discourse and legal frameworks, raising questions about whether subordination reflects liberalism's necessary commitments or represents inadequate accommodation of religious diversity within pluralistic systems.

7.3. Theoretical Vindication: Rawls, Alexy, and Hierarchical Necessity

The empirical patterns documented throughout this investigation vindicate theoretical predictions by Rawls (1971, 1993), Alexy (2002, 2008), and theorists of normative hierarchy including Klein (2008) and Koji (2001). These scholars, approaching from distinct philosophical and jurisprudential traditions, converge on a central insight: hierarchical ordering among rights proves not merely inevitable but normatively necessary for coherent rights adjudication.

Rawls's concept of lexical ordering, developed in *A Theory of Justice* (1971) and refined in *Political Liberalism* (1993), provides the most direct theoretical parallel to Inter-American Court practice. Rawls argues that in a well-ordered society, basic liberties take lexical priority over other values, meaning they cannot be sacrificed for economic advantages or collective welfare. The Inter-American Court's jurisprudence reflects implicit lexical ordering, though the Court's hierarchy differs from Rawls's philosophical framework in crucial respects. Where Rawls prioritizes basic liberties categorically, the Inter-American system stratifies rights through contextual factors including democratic necessity, historical vulnerability, and institutional capacity. The Court's treatment of freedom of expression exemplifies Rawlsian lexical priority: characterizing expression as "essential foundation of democratic society" positions it as prerequisite for democratic deliberation rather than one value among many. When religious sensibilities conflict with expression, expression prevails not through case-by-case balancing but through categorical priority grounded in democratic necessity.

Yet the Inter-American hierarchy departs from Rawls in treating religious liberty differently than Rawls's framework suggests. Rawls accords religious liberty status as a basic liberty deserving

lexical priority, whereas the Inter-American Court systematically subordinates freedom of religion when it conflicts with equality, expression, or reproductive autonomy. This divergence reflects competing conceptions of liberalism's core commitments. Rawls's framework, influenced by American constitutional tradition emphasizing religious accommodation, treats religious exercise as fundamentally protected. The Inter-American Court's approach reflects European constitutional traditions emphasizing secularism and equality, where religious claims yield to non-discrimination norms and public order considerations.

Alexy's theory of constitutional rights as optimization requirements provides alternative theoretical grounding for the Court's hierarchical methodology. Alexy (2002, 2008) characterizes rights as principles requiring realization "to the greatest extent possible given the legal and factual possibilities." Unlike rules, which operate in all-or-nothing fashion, principles must be balanced when they collide, with their relative weight determined through proportionality analysis. The Inter-American Court's consistent application of proportionality analysis examining legitimate aims, suitability, necessity, and proportionality in the strict sense operationalizes Alexy's theoretical framework. Crucially, however, Alexy's framework does not eliminate hierarchy but rather structures it through proportionality. Differential scrutiny levels reflecting strict, intermediate, and rational basis review embed implicit judgments about rights' relative importance. When the Court applies strict scrutiny to restrictions on expression while applying deferential review to limitations on economic rights, this methodology embeds hierarchical ordering within proportionality analysis itself.

The synthesis of Rawlsian lexical ordering and Alexyan proportionality provides comprehensive theoretical explanation for Inter-American jurisprudence. Certain rights including freedom from torture, right to life, and freedom from slavery receive Rawlsian lexical priority, admitting no balancing regardless of consequences. Other rights operate through Alexyan optimization, requiring realization to the greatest extent possible given competing considerations and limited resources. Freedom of religion occupies ambiguous space between these categories: sometimes receiving protection approximating lexical priority when indigenous spiritual practices tie to cultural survival, more often subjected to Alexyan balancing where it consistently yields to competing claims when institutional religious autonomy conflicts with equality norms.

Klein's (2008) examination of hierarchical organization in international law and Koji's (2001) analysis of normative hierarchies provide additional theoretical foundations demonstrating that hierarchies represent inherent features of complex legal systems rather than aberrations requiring explanation. Klein argues that legal systems organize norms vertically through formal hierarchies placing constitutional provisions above statutes, and horizontally through interpretive prioritization when norms conflict. Koji identifies three functions hierarchies serve: conflict resolution providing decision rules when norms collide, systemic coherence organizing diverse norms into frameworks rather than mere catalogues, and legitimacy grounding decisions in principled reasons rather than arbitrary judicial preferences. The Inter-American Court's hierarchical methodology serves all three functions, resolving conflicts through principled application of democratic necessity and vulnerability protection, organizing Convention rights into coherent framework, and grounding decisions in reasons accessible to diverse constituencies.

Sen (2004, 2009) argues that rights require prioritization because resources including economic, institutional, and attentional capacities remain finite. Protecting all rights equally proves impossible when rights make competing claims on limited resources and when rights themselves conflict. Hierarchical ordering, from this perspective, represents not failure of indivisibility but rather prudent resource allocation and principled conflict resolution, reflecting reasoned judgments about where judicial intervention proves most necessary and effective given institutional constraints.

7.4. Methodological Mechanisms of Hierarchy

The Inter-American Court operationalizes hierarchical ordering through five distinct but interrelated methodological mechanisms that establish hierarchy not through explicit rank-ordering but through systematic patterns embedded in adjudicative technique. These mechanisms, operating consistently across diverse cases and temporal periods, reveal how courts establish hierarchies through ostensibly neutral procedural devices that systematically advantage certain rights while disadvantaging others.

Differential scrutiny represents the Court's primary mechanism for establishing hierarchical relationships. Strict scrutiny requiring compelling governmental interest, narrow tailoring, and least restrictive means applies to restrictions on expression, political participation, and classifications based on suspect categories including race and sexual orientation. This demanding standard, applied consistently in expression cases like *Olmedo Bustos* and others expression cases, creates presumptive invalidity that states rarely overcome. By contrast, the Court applies deferential review to economic and social rights, affording states substantial discretion in structuring employment relationships and regulating economic activity even in cases like *Lagos del Campo* that extend direct justiciability. The Court's acknowledgment that economic rights require progressive realization given resource constraints embeds hierarchical subordination within justiciability doctrine itself.

Burden-shifting frameworks constitute the Court's second hierarchical mechanism, operating asymmetrically across rights categories to systematically advantage certain claims while disadvantaging others. In cases of discrimination involving suspect classifications, the Court shifts evidentiary burdens to states, requiring affirmative justification for differential treatment. *Sandra Pavez* exemplifies this methodology: once *Pavez* established differential treatment based on sexual orientation, Chile bore the burden of demonstrating compelling justification, which the Court held unmet despite religious institutional autonomy claims. Yet freedom of religion claims receive no comparable procedural advantages. Religious institutional autonomy assertions bear full evidentiary burdens without presumptive validity, and when religious exercise conflicts with equality norms, proportionality analysis systematically disfavors religious claims. This asymmetry operationalizes hierarchy through procedural mechanisms making rights receiving enhanced protection substantially easier to vindicate through litigation.

Evidentiary requirements represent the Court's third hierarchical mechanism. Cases involving violence against women, racial discrimination, or violations against indigenous peoples benefit from relaxed evidentiary standards and shifted presumptions favoring victims. In *González et al. ("Cotton Field") v. Mexico* (2009), the Court established that states must investigate gender-based violence with "due diligence," lowering proof requirements given structural barriers victims face. This evidentiary asymmetry reflects hierarchical judgment that certain populations warrant

enhanced procedural protections given vulnerability to rights violations. Freedom of religion claims receive no comparable advantages, bearing full evidentiary burdens without presumptive validity or shifted proof requirements.

Proportionality analysis constitutes the Court's fourth hierarchical mechanism, though proportionality's relationship to hierarchy proves complex. While Alexy (2008) treats proportionality as alternative to hierarchical reasoning through case-specific balancing rather than predetermined rank-ordering, the Inter-American Court's proportionality analysis embeds hierarchical judgments within its application. The Court consistently finds restrictions on highly protected rights disproportionate while upholding limitations on subordinate rights through identical methodology. In *Olmedo Bustos*, the Court concluded censorship was disproportionate to protecting religious sentiment, characterizing harm to expression as categorically more serious than offense to religious sensibilities. This assessment reflects hierarchical judgment rather than neutral proportionality: religious sentiment receives lesser weight than expressive liberty in the proportionality calculus. Proportionality analysis, theoretically neutral among competing claims, operates in practice as hierarchy-embedding mechanism through the Court's consistent patterns of weighing certain interests more heavily than others.

Interpretive presumptions constitute the Court's fifth hierarchical mechanism. The Court interprets Convention provisions through presumptions favoring certain rights over others. Expression receives expansive interpretation with restrictions narrowly construed, while freedom of religion receives comparatively restrictive interpretation with limitations broadly construed when religious claims conflict with competing interests. Though the Court established in *Advisory Opinion 5/85* that restrictions on Convention rights must be interpreted restrictively, this interpretive principle applies asymmetrically, with restrictions on high-priority rights interpreted more restrictively than limitations on subordinate rights.

These five mechanisms operate synergistically to establish comprehensive hierarchical framework. Rights receiving enhanced protection benefit from multiple procedural and substantive advantages making violations easier to establish and limitations harder to justify. Rights accorded lesser protection face multiple procedural and substantive disadvantages that systematically

disfavor their vindication. Freedom of religion's subordinate position reflects cumulative effects across these mechanisms: receiving no enhanced scrutiny, bearing full evidentiary burdens, consistently losing proportionality balancing, and facing interpretive presumptions disfavoring enforcement. This methodological subordination, operating through neutral-seeming procedural mechanisms, establishes hierarchy more comprehensively than explicit rank-ordering could achieve while maintaining formal commitments to rights' equal status.

7.5. Implications for the Inter-American System

The hierarchical reality documented throughout this investigation carries profound implications addressing the research inquiry into how freedom of religion's position influences society and identifying populations most affected by hierarchical subordination. These implications extend beyond academic interest to practical consequences affecting millions of individuals subject to the system's jurisdiction.

For states parties to the American Convention, the hierarchical framework creates differentiated compliance obligations. Rights occupying the system's apex including jus cogens norms, non-derogable guarantees, and democratic essentials demand absolute or near-absolute protection that permits minimal deviation. States must structure legal systems, allocate enforcement resources, and establish institutional mechanisms to vindicate these rights with maximum efficacy. By contrast, rights occupying subordinate tiers receive comparatively deferential judicial oversight permitting substantial state discretion. Economic and social rights remain subject to progressive realization standards that accommodate resource constraints and policy choices. Freedom of religion, occupying fluctuating position, receives protection varying dramatically based on contextual factors. This differentiated compliance framework contradicts indivisibility rhetoric while reflecting practical necessities of limited state capacity and competing priorities.

The compliance implications prove particularly acute for states with Catholic majorities and religiously-influenced legal traditions. Countries including Argentina, Chile, Colombia, and Peru face systematic pressure to reform laws reflecting Catholic social teaching on marriage, sexuality, reproduction, and family. The Court's jurisprudence positioning religious reasoning outside legitimate bases for legal differentiation requires these states to secularize family law, eliminate

abortion restrictions grounded in religious anthropology, and mandate religious institutional compliance with non-discrimination norms even regarding religious instruction itself. This transformative agenda creates legitimacy concerns when populations view their fundamental values as judicial targets. The gap between the Court's cosmopolitan liberalism and domestic populations' socially conservative values generates compliance resistance, as evidenced by Argentina's rejection of Artavia Murillo's reasoning and Panama's defiance of marriage equality mandates.

For individuals within the system's jurisdiction, hierarchical reality creates stratified protection depending on which rights they invoke. Claimants asserting expression, political participation, or equality based on sexual orientation benefit from presumptive validity, shifted evidentiary burdens, and enhanced scrutiny of state justifications. These procedural and substantive advantages substantially improve prospects for successful litigation. By contrast, religious minorities asserting institutional autonomy or conscience protections face systematic disadvantages. Claims that religious institutions should determine their own membership criteria, employment standards, or doctrinal requirements receive no presumptive validity and bear full evidentiary burdens. When religious exercise conflicts with equality norms, proportionality analysis systematically disfavors religious claims.

Several groups experience disproportionate effects from freedom of religion's hierarchical subordination. Traditional religious communities maintaining teachings on sexual ethics, marriage, and gender divergent from contemporary secular norms face systematic pressure to abandon theological commitments or accept legal sanction. Catholic, Evangelical Protestant, and Orthodox Christian institutions across Latin America confront requirements to modify employment practices, educational curricula, and service provision policies to comply with equality mandates the Court deems paramount. Religious minorities lacking political power to secure legislative accommodations depend on judicial protection that the Court's hierarchical framework systematically denies when religious claims conflict with equality norms. Individuals whose religious convictions require conscientious objection to emerging norms, including healthcare providers objecting to abortion or assisted suicide and educators objecting to curricula conflicting

with religious teachings, find conscience claims systematically rejected as insufficiently weighty to override competing interests.

The hierarchical framework creates asymmetric effects, protecting certain vulnerable populations while constraining others. The Court's jurisprudence affords enhanced protection to LGBTIQ+ individuals as a historically vulnerable group subjected to systematic discrimination, positioning sexual orientation and gender identity as suspect classifications requiring strict scrutiny when differential treatment occurs. Cases including *Atala Riffo* and *Pavez* exemplify this protective stance, with the Court prioritizing non-discrimination norms over religious institutional autonomy. Yet this enhanced protection for LGBTIQ+ individuals generates corresponding constraints on religious communities whose theological teachings regarding sexuality and gender diverge from the Court's equality framework, creating tension between competing conceptions of vulnerability and dignity.

Paradoxically, indigenous communities practicing traditional spirituality receive enhanced protection relative to mainstream religious institutions, though this protection derives from indigenous peoples' historical vulnerability rather than inherent value accorded to religious exercise. The Court's jurisprudence in cases including *Sarayaku* and *Yakye Axa* grants robust protection to indigenous spiritual practices tied to territory and cultural survival, yet this differential treatment reflects the Court's hierarchical methodology enhancing protection for historically marginalized populations while applying heightened scrutiny to established religious institutions' claims.

For the Inter-American system's institutional legitimacy, hierarchical reality creates both opportunities and challenges. Honest acknowledgment of hierarchy's inevitability represents intellectual virtue, avoiding cognitive dissonance between indivisibility rhetoric and adjudicative practice. By developing coherent hierarchical methodology, the Court grounds decisions in principled reasoning accessible to diverse constituencies, enhancing legitimacy among legal professionals and academics valuing consistency and theoretical coherence. Yet hierarchy's operation risks undermining legitimacy among populations whose rights receive subordinate status. Religious communities may view the system as hostile to their fundamental interests,

perceiving systematic devaluation of religious exercise as anti-religious animus. This perception threatens system legitimacy among constituencies whose cooperation proves essential for effectiveness. The Inter-American system, lacking independent enforcement mechanisms, depends on state and societal compliance. When substantial populations view the system as threatening their values, compliance deteriorates and the system's capacity to protect any rights diminishes.

7.6. Contribution to Human Rights Scholarship

This investigation makes three distinct contributions to human rights scholarship that extend beyond regional analysis to illuminate broader questions about rights hierarchy, indivisibility, and adjudicative methodology in international human rights law.

The empirical contribution consists in systematic documentation of hierarchical patterns across thirty-four years of Inter-American Court jurisprudence. While scholars including Arlettaz (2011, 2012) and Annicchino (2018) identified freedom of religion's variable protection in particular contexts, this investigation represents the first comprehensive analysis revealing systematic subordination across diverse case types and temporal periods. The five-tier hierarchy identified through this research provides empirical foundation for theoretical claims about hierarchy's inevitability and practical necessity. Beyond mere documentation, the systematic analysis of differential scrutiny, burden-shifting, evidentiary standards, proportionality analysis, and interpretive presumptions demonstrates how courts establish hierarchy through ostensibly neutral procedural mechanisms that systematically advantage certain rights while disadvantaging others. This methodological insight proves generalizable beyond the Inter-American context to other human rights systems.

The theoretical contribution consists in applying Rawlsian and hierarchy frameworks to international human rights adjudication in systematic fashion. The synthesis of Rawlsian lexical ordering for apex rights with Alexyan proportionality for subordinate rights provides theoretical framework capable of explaining observed empirical patterns while identifying normative tensions within hierarchical practice. This theoretical synthesis reveals that indivisibility and hierarchy represent not contradictory principles requiring choice but rather complementary frameworks operating at different analytical levels. Indivisibility operates as moral principle asserting equal

inherent value of all human rights, while hierarchy operates as adjudicative necessity reflecting pragmatic requirements of conflict resolution. Recognizing this distinction enables more sophisticated understanding of rights discourse that acknowledges both indivisibility's moral validity and hierarchy's practical necessity.

The doctrinal contribution consists in analyzing Article 12 of the American Convention through comprehensive examination of the Court's jurisprudence. While the Convention's Article 12 receives substantially less scholarly attention than parallel provisions in the European Convention or International Covenant, this investigation establishes that Inter-American jurisprudence reflects distinctive approaches warranting independent analysis. The Court's systematic subordination of religious institutional autonomy to equality norms, rejection of religious reasoning in public discourse, and enhanced protection for indigenous spirituality versus mainstream religious practice reveal patterns distinguishable from European and universal human rights systems. This doctrinal analysis proves valuable for practitioners litigating freedom of religion cases, academics teaching comparative human rights law, and policymakers crafting religious accommodation regimes compatible with international obligations.

7.7. Future Research Directions

The patterns identified through this investigation generate multiple avenues for future research. Comparative analysis examining whether hierarchical patterns identified in the Inter-American system replicate across other regional frameworks would test this investigation's findings' generalizability. Systematic examination of European Court of Human Rights, African Court on Human and Peoples' Rights, and national constitutional courts' jurisprudence could reveal whether freedom of religion occupies comparably subordinate position universally or whether Inter-American patterns reflect regional particularities. Preliminary evidence suggests substantial variation: the European Court grants freedom of religion more robust protection through margin of appreciation doctrine, while African systems may prioritize communal rights over individual religious exercise.

Theoretical development of alternative frameworks for managing rights conflicts without systematic hierarchical subordination represents important normative project. While this

investigation demonstrates hierarchy's empirical prevalence and theoretical predictions of its inevitability, normative questions remain whether hierarchy represents optimal approach to rights adjudication. Alternative frameworks including deliberative democracy, capabilities approach, or dignity-centered jurisprudence might enable rights conflicts' resolution without systematic subordination of particular rights categories. Sen's capabilities framework, emphasizing substantive freedoms individuals have reason to value, might permit more contextualized conflict resolution. Developing and testing these alternative frameworks represents crucial theoretical work.

Empirical examination of hierarchy's practical effects on rights enjoyment would assess whether hierarchical subordination translates into tangible disadvantages for religious exercise. This investigation documents judicial hierarchies at adjudicative level but does not systematically examine downstream effects on freedom of religion's actual protection. Do jurisdictions with strong judicial hierarchies subordinating freedom of religion experience greater restrictions on religious exercise than jurisdictions treating rights as genuinely indivisible? Does freedom of religion's judicial subordination correlate with societal marginalization of religious minorities? These empirical questions require comparative datasets and field research beyond this investigation's scope but represent essential next steps for understanding hierarchy's practical significance.

7.8. Final Reflections

The Inter-American human rights system stands at a philosophical crossroads where formal commitments to indivisibility increasingly diverge from adjudicative practice establishing systematic hierarchies. This divergence creates not merely academic puzzles but practical challenges affecting millions whose fundamental freedoms depend on the system's protection.

Freedom of religion's subordinate position within the Inter-American system may reflect deeper tensions within liberal constitutionalism, though this investigation's empirical scope does not permit definitive conclusions about liberalism's theoretical commitments. What the jurisprudential evidence does demonstrate is a consistent pattern wherein the Inter-American Court resolves conflicts between freedom of religion and equality by prioritizing the latter, a pattern compatible

with, though not necessarily required by, liberal constitutional theory as articulated by Rawls and his interpreters.

How should pluralistic democracies balance commitments to individual autonomy, equality, and non-discrimination against respect for diverse comprehensive doctrines including religious worldviews structuring adherents' entire lives? When religious institutional autonomy conflicts with equality norms, which value should prevail? When religious sensibilities conflict with expressive liberty, whose interests deserve priority? These questions admit no easy answers. The Inter-American Court's consistent prioritization of equality and expression over religious exercise reflects reasoned judgment about liberal democracy's requirements, grounded in philosophical reflection from Locke through Rawls. Yet this judgment, however philosophically defensible, creates real costs for religious communities whose practices face systematic devaluation.

This investigation does not purport to resolve these normative tensions but rather seeks to illuminate them through systematic empirical analysis revealing how international human rights adjudication operates beneath indivisibility's rhetorical surface. By demonstrating hierarchy's pervasive presence, identifying methodological mechanisms through which it operates, and analyzing its theoretical foundations, this research facilitates more honest and sophisticated discourse about rights' relationships and adjudication's practical necessities.

The path forward requires neither abandoning indivisibility as moral principle nor denying hierarchy as adjudicative reality. Rather, it demands recognizing that these frameworks operate at different levels, one aspirational and moral, the other practical and institutional, and that sophisticated human rights discourse must accommodate both. Indivisibility reminds us that all human rights possess inherent and equal dignity, that subordination requires justification rather than assumption, and that systems that systematically devaluing particular rights categories risk undermining human rights project's universalist foundations. Yet hierarchy acknowledges that courts facing concrete conflicts must choose, that infinite regress of equally protected rights makes adjudication impossible, and that principled prioritization based on democratic necessity and vulnerability protection represents more honest and defensible approach than pretending all rights always harmoniously coexist.

The Inter-American system, through three decades of jurisprudence, has constructed one possible synthesis of these competing demands. Whether this synthesis optimally balances relevant considerations remains contested. What stands beyond dispute, however, is that the system operates through systematic hierarchical ordering however much formal discourse maintains indivisibility's fiction. Acknowledging this reality represents essential first step toward more honest engagement with human rights adjudication's actual practice, more sophisticated theoretical understanding of rights' interrelationships, and more effective protection of all human rights including those, like freedom of religion, currently occupying subordinate positions within established hierarchies.

The thirty-four years of jurisprudence examined throughout this investigation reveal that human rights systems, however committed to universal and indivisible protection, operate through practical judgments about priority and precedence. These judgments, embedded in differential scrutiny standards and burden-shifting frameworks, in proportionality analysis and interpretive presumptions, constitute hierarchies that fundamentally structure rights protection's actual delivery. Freedom of religion's position within these hierarchies, fluctuating but persistently subordinate when confronting rights deemed essential to democratic functioning, reflects both theoretical necessities and philosophical commitments shaping contemporary human rights adjudication.

This reality, uncomfortable as it may prove for those committed to indivisibility's aspirational vision, represents the ground upon which future developments must build. Only through honest acknowledgment of hierarchy's existence, systematic analysis of its mechanisms and effects, and critical examination of its justifications can human rights systems move toward more defensible and effective protection of all fundamental freedoms. The challenge lies not in eliminating hierarchy, which this investigation demonstrates proves both inevitable and necessary, but rather in ensuring that hierarchical orderings reflect principled judgments about democratic essentials and vulnerability protection rather than arbitrary preferences or majoritarian prejudices. Freedom of religion, whose fate within international human rights frameworks remains uncertain, deserves protection commensurate with its status as fundamental dimension of human dignity and

communal identity, even as it necessarily yields in specific contexts to competing rights of equal moral weight. Only through this nuanced understanding, acknowledging both hierarchy's practical necessity and indivisibility's moral validity, can human rights systems fulfill their promise of universal protection for all dimensions of human flourishing.

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D. List of Publications

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