MORE THAN THE ABSENCE OF RELIGION: NONRELIGION AND ITS POSITIVE CONTENT IN CANADIAN LAW

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Abstract

Since the 1960s there has been a rapid increase in the number of individuals throughout much of the Western world who identify as having no religion. This is particularly so in Canada where individuals who identify as having no religion now account for a rather sizeable portion of the total population. Despite the rapid and exponential growth in the number of people who no longer affiliate with religion, however, the sociological study of who the nonreligious are and what a social world not necessarily rooted in religion—what I call nonreligion—might entail have only recently captured the interests of sociologists. As a result, relatively little is known about this growing group of people and nonreligion. One such area that remains significantly understudied is the intersection of nonreligion and law. Canadian law has been called on by the nonreligious to decide upon the constitutionality of various legislation including that which has prohibited access to same-sex marriage, abortion, and physician-assisted dying. The intersection of nonreligion and law thus provides valuable insight into how nonreligious individuals attempt to promote social change in Canadian society. But, the law also acts as a window through which to explore the often-ignored meaningful beliefs, values, and practices of the nonreligious, or the positive content of nonreligion. Much research about nonreligion and the nonreligious has focused on what nonreligion is not and what the nonreligious do not do vis-à-vis religion, very little research engages with the meaningful aspects of nonreligion and nonreligious identities.

This thesis seeks to explore the meaningful aspects of nonreligion and contribute original research to this lacking body of scholarship. This thesis asks: How is nonreligion conceptualized in Canadian law and is this framing of nonreligion characterized by more than the simple rejection or negation of religion? In other words, does nonreligion have positive content in the context of law, and if so, what is this positive content? Drawing on the discourse analysis of the Supreme Court of Canada's *Latimer* (2001), *Bedford* (2013), and *Trinity Western* (2018) cases, I explore the concepts of human rights, morality, and dignity to draw attention to the ways in which nonreligion is socially constructed in law. My analysis shows that nonreligion is conceptualized in legal discourse as encompassing positive content. I argue that social constructions of nonreligion in law are inclusive of meaningful beliefs, values, and practices and that it is no longer sufficient to think of nonreligion and the nonreligious as simply deficit in nature.

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Introduction

As my eyes began to open from a desperately needed sleep, I could already feel the intense October heat of Las Vegas. Despite still feeling quite tired, I began my morning like any other morning, but today I was feeling particularly nervous. I was in Las Vegas to attend the Society for the Scientific Study of Religion's (SSSR) annual conference and today was the day I was to present my research. My mind was preoccupied with the normal thoughts one has before a presentation: was my research going to be well received? Would the audience sense my nervousness? Did I even belong here? My nerves aside, I was eager to get to the conference venue and to see a little bit of 'Sin City' on the way. After a few deep breaths, I rolled out of bed, readied myself, had a bite to eat at the hotel restaurant, and began my rather long walk along Las Vegas Boulevard.

After what felt like an eternity in the scorching heat, I arrived at the conference venue. It was 8 o'clock in the morning and I was already sweating—partly because of how hot it was outside, but mostly because I was nervous to present my work. As I entered the cool, air-conditioned building I found myself engulfed in an endless cloud of cigarette smoke radiating from the casino. Only would I experience this in Las Vegas. Although slightly nauseating, I was glad to finally be indoors. I proceeded to make my way to the room in which I was presenting. I sat at the participants' table anxiously waiting for it to be my turn to present. When it was finally my turn, I made my way to the podium, loaded my PowerPoint presentation, and began a presentation that would have lasting effects on my journey as a doctoral student.

My presentation in Las Vegas went smoothly, and, to my relief, was well received by the audience. There was lively discussion concerning my findings and my conclusions were generally accepted by most in the room. This was particularly surprising given that I was presenting on *nonreligion* at a conference about *religion*. Despite my presentation going well, I was struck by a series of questions that were asked of me and my research, all of which have since preoccupied my thinking about nonreligion. These questions included: why does it matter that we explore nonreligion? Why devote public research money to researching something that seems mundane and unsurprising? And, of what benefit and importance is this research to our society? I was quite taken back by these questions. To me the answers were obvious, but what became increasingly apparent was that to many of the scholars and researchers in the room, most of whom were sociologists of religion, the society in which we live is a 'secular' or nonreligious one. For these scholars, exploring what we are all so accustomed to and immersed in, and supposedly understand so well, seemed unnecessary. Nonreligion was something that did not warrant further exploration to many in the room.

To my surprise, similar sentiment about nonreligion was echoed during the conference in other presentations. It seemed a recurring theme that only religion, and not nonreligion, deserved the continued interest of sociologists of religion. Many suggested that religion needed to remain the object of study for sociologists of religion because of its increasing role in our secular and globalized societies. It was suggested that because so much remains unknown about religion and how it wields power in contemporary society that we as researchers should avoid devoting resources to the scholarly distractions of nonreligion and other social phenomena related to religion. For many of the conference participants, what really mattered was religion. It was the study of religion that would provide a more thorough exploration of contemporary society, not nonreligion.

While I thoroughly enjoyed my time at the conference and appreciated the research that was presented, I left the conference feeling that, at least in academia, nonreligion didn't matter. The academy is to some degree obsessed with religion and often ignores, or devotes little attention to, other equally important, complex, and interesting social phenomena related to matters of belief, faith, belonging, and spirituality (Campbell 1971; Cragun 2016). These other phenomena are often lost in the shadows of religion and only appear as minor passing objects of study. There are many reasons for this continued fixation on religion in academia, but such discussion is beyond the scope of this thesis.[1] I simply raise this point as the questions I was asked, and the sentiment I observed, during my time in Las Vegas have acted as the springboard from which my doctoral research, and subsequently this thesis, was launched.

This thesis is therefore in some way a response to the questions I was asked in Las Vegas. In what follows I draw attention to how the academic study of nonreligion matters and why nonreligion should be a primary object of study in its own right. The study of nonreligion should not always be found in the shadows of the study of religion. The research presented here is intended to contribute to a growing body of literature that places nonreligion at the centre of sociological, historical, and anthropological analyses.

What follows in the proceeding chapters is a sociological exploration of the social construction of nonreligion in law. I seek to explore how nonreligion might be constructed in

[1] For a more thorough discussion on the lack of interest in nonreligion see: Campbell (1971); Demerath (1969); Clarke and Macdonald (2017); Lee (2015); Smith and Cragun (2019), and Cragun (2016).

Canadian law through the discourse analysis of three Supreme Court of Canada decisions: *Latimer* (2001),[2] *Bedford* (2013),[3] and *Trinity Western* (2018).[4] I will introduce these three cases later in this chapter, but briefly, *Latimer* addresses questions about mercy killings and end-of-life care; *Bedford* addresses questions about sex work; and *Trinity Western* is about LGBTQ+ rights.

My interest in nonreligion and law concerns whether nonreligion is constructed as consisting of positive content in legal discourse. By positive content, I mean the meaningful values, practices, and beliefs of social constructions of nonreligion that are so often excluded from sociological, anthropological, and historical analyses of nonreligion (Manning 2015; Brown 2017; Quack et al. 2020; Blanes and Oustinova-Stjepanovic 2017). As will be discussed later, nonreligion is often characterized primarily by its rejection of religion, thus it is almost always defined by what it lacks (Lee 2015; Manning 2015). In conceptualizing nonreligion in this way, researchers miss the many positive attributes of nonreligion as it is imagined in society. This thesis attempts to think about nonreligion as more than deficit terminology—particularly in law (Lee 2015). I argue throughout this thesis that Canadian law acts as a medium through which we can see the meaningful beliefs, values, and practices that contribute to the social construction of what we might call nonreligion. As Flora Di Donato (2020) argues, the narratives found within law prove useful in understanding the construction of the social world.

With this in mind, it is important to note that while this thesis explores three Supreme Court of Canada decisions, the focus is not on these decisions themselves and the precedent set by these decisions. Instead, my focus is on the social construction of nonreligion and to some degree religion.[5] While the jurisprudence of *Latimer*, *Bedford,* and *Trinity Western* is interesting, my concern with these decisions relates to how they, and more generally how legal discourse, can provide insight into the positive content of nonreligion. In other words, I am interested in how nonreligion is constructed in legal discourse (note: not by legal discourse). It is through the exploration of the legal discourse of the three selected Supreme Court of Canada cases that one is

[2] *R. v. Latimer*, [2001] 1 S.C.R. 3, 2001 SCC 1.
[3] *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101.
[4] *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, [2018] 2 S.C.R. 293.
[5] Naturally, my analysis of nonreligion necessitates engagement with religion. What must be remembered, however, is that nonreligion is the primary object of analysis. My drawing on religion throughout is strategic: religion is juxtaposed with what I call nonreligion to reveal the contours of what constitutes a worldview commonly referred to as "religion's other" (Cragun 2016).

made aware of how nonreligion is socially constructed in the context of law.[6] What follows is therefore a socio-legal analysis. It is in no way a legal analysis. I purposely avoid commenting on the nature of various legal tools and tests used in the cases selected. I also avoid speculating on how these decisions could have been better addressed. I am not a trained lawyer and thus not qualified to comment or speculate on such matters.

This is all to say that the focus of what is to follow is on nonreligion. But why is nonreligion important? Remembering the comments of those sociologists at the SSSR's conference in Las Vegas, why have I continued to explore nonreligion and why did I devote the entirety of my doctoral research to it? Well, my time as a graduate student coincided with a very intriguing moment in Canadian social history, especially as concerning the religious demographic of Canada. This moment and what it entails very much fueled my interest in nonreligion.

Canada's Religious Landscape: A Changing Picture

Religion in Canada

The moment in Canadian social history that I'm referring to is one characterized by (1) a renewed interest in the public presence of religion and (2) growing nonreligiosity. Despite the work of numerous scholars who insisted that religion would become increasingly unimportant in contemporary society (Wilson 1998; Martin 1978; Bruce 1996), religion continues to feature in some public capacity throughout much of the world (Beyer 2006; Casanova 1994). Contrary to the predictions of early theories of secularization, religion continues to weave its way through the social fabric of not only Canadian society, but also of global society (Sandberg 2014).[7] Lori Beaman (2008) points out that religion still matters. Issues that challenge long standing social norms, like that of end-of-life care, physician-assisted dying, and abortion are particularly fruitful sites to explore how religion still very much occupies a position of privilege and guiding influence in contemporary Canadian society (Chambers 2011; Beaman 2020; Beaman and Steele 2018).

[6] Implied in my approach to nonreligion in these cases is that nonreligion does not exist a-priori, but rather is a social construct shaped and constructed through discourse and social interactions (Beckford 2003; Quack et al. 2020). Discourse is not merely neutral and transparent, but rather shapes and constructs the world in which we live (Fairclough 2010; Carabine 2001).

[7] For more on secularization, see Martin (1978, 2005); Wilson (1998); Bruce (1996); and Zuckerman (2008); Taylor (2007); Berger (1967); Stark and Bainbridge (1985, 1987).

Despite the continued political and social importance of religion, the number of people who identify as belonging to a religion is declining, particularly in the Western world. In the United States, for example, 83.1% of Americans identified as religiously affiliated in 2007, whereas 76.5% of Americans identified as religiously affiliated in 2014 (Pew Research Center 2015). Similarly, 74.5% of Australians identified as religiously affiliated in 1996, while only 53.8% of Australians identified as religiously affiliated in 2021 (Australian Bureau of Statistics 2022a).[8] In the United Kingdom, some estimates suggest that those who identify as religious now account for less than 50% of the population (Woodhead 2016).[9] The number of individuals who identify as religiously affiliated in Canada is also in decline. Census data reported by Statistics Canada indicates that religious affiliation has been in decline since the 1960s. In 2001, for example, 83% of the Canadian population had a religious affiliation (Statistics Canada 2016). According to the most recent 2021 census, however, only 65% of Canadians now identify as religiously affiliated (Statistics Canada 2023).[10] Despite what some scholars have argued, census data suggests that religion is not making its way back into the lives of the everyday Canadian (Clarke and Macdonald 2017).[11]

Despite the decline in religious affiliation in Canadian society, Canada is still very much a religious country given that most of the population still identifies as belonging to a religion.[12] Moreover, Christianity and Canadian churches have historically exerted considerable influence in Canada. As Roger O'Toole notes, "[Churches] succeeded in making social, economic, political, and constitutional concerns a part of their spiritual project", all of which resulted in the depiction of Canada as a "fundamentally religious nation" (O'Toole 2000, 41). [13]

[8] See also Australian Bureau of Statistics (2022b).
[9] The latest census from the UK suggests that 56.9% of the population identifies as religious (Office for National Statistics 2022).
[10] Decline is also seen in the number of individuals who say their religious beliefs are important to their daily lives. In 2003 71% of Canadians said their religious or spiritual beliefs "were somewhat or very important". In 2019 only 54% of Canadians said their religious or spiritual beliefs "were somewhat or very important" (Cornelissen 2021).
[11] Some sociologists argued that while religious affiliation may be in decline in many Western countries, there would be an eventual resurgence in religious affiliation in these same societies (Bibby 2004). Census trends to date do not support this conclusion. In fact, census data suggests that once people leave religion they remain unaffiliated (Clarke and Macdonald 2017).
[12] I would argue that Canada is more than just a "religious" country: it is a Christian country given that roughly 53% of Canadians identify as Christian (Statistics Canada 2023).
[13] See also Lyon and Van Die (2000) for an overview of the political influence and history of Christianity, and religion more broadly, in Canada.

The inclusion of Christianity and reference to the transcendent in various pieces of Canadian legislation further demonstrates the overtly religious (read: Christian) nature and heritage of Canadian society. Reference to "God" is found in the *Bill of Rights* and was also added to the Canadian national anthem in 1967 (O' Toole 2000). The preamble of the *Canadian Charter of Rights and Freedoms* (*Charter*) also reads: "Whereas Canada is founded upon principles that recognize the supremacy of ***God*** and the rule of law" (*Constitution Act* 1982, part I; emphasis added).[14] Canada, is not, however, the only country to have included God in its constitution. At the time of the enactment of the *Charter* in 1982, Canada joined "forty other states whose constitutions [made] explicit acknowledgement of God, Allah, or the Creator" (Egerton 2000, 90).[15] Currently, 125 state constitutions reference "God or other deities" (Constitution Project 2023).[16]

The overtly Christian social and political nature of Canada does not, however, point to the existence of religious establishment in Canada.[17] While the inclusion of God in the *Charter* may superficially hint at the establishment of Christianity by the Canadian state, Bruce Ryder (2005) argues that the inclusion of God in the preamble complements the various rights protected by the *Charter*. Ryder says that:

> the preamble's references to the 'supremacy of God' and the 'rule of law' express a form of reconciliation between the secular nature of the state and the importance of protecting religious belief and practice. They underline the fact that the state is secular and must be neutral between religions, but that it should also nurture and protect religious expression. In this way, there is a complementarity, not a conflict, in the preamble's reference to the 'supremacy of God,' the Charter's guarantees of religious freedom and equality, and the promotion of multiculturalism. The text of the Charter as a whole suggests that the Canadian state should aim to secure a religiously positive pluralism in an even handed manner. This is best accomplished by a secular state that is neutral between religions but not neutral about religion. (2005, 177)

[14] Reference to God in the constitution is not necessarily for religious purposes. Egerton suggests God was added to the preamble to maintain the political support of conservative Christian groups (2000, 107).
[15] Of particular interest is that at the time of writing my MA thesis in 2018, only 116 states included the "God or other deities" in their constitutions. Reference to God in constitutions seems to be growing.
[16] These include both Western and non-Western states. Other "secular" countries mention God in their constitutions. The Australian, constitution, for example reads: "WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established" (Parliament of Australia n.d.).
[17] Some scholars suggest that a type of "shadow establishment" has existed in Canada (see Martin 2000; Beyer 2000).

In other words, the preamble "represents a kind of secular humility" (Ryder 2005, 177). The Canadian state recognizes, to some degree, that there are certain truths that have considerable influence on the way people live their lives outside the realm of law and that these differing sources of authority are to be respected and "nurtured", not shunned and restricted, by the state (Ryder 2005, 177). Thus, the constitutional reference to God may, in fact, strengthen claims brought before the courts by religious minorities precisely because the constitution allows for the recognition of both the rule of law and supremacy of God. This is all to say that despite the absence of an official state religion, the number of Canadians who still continue to affiliate with Christianity portrays Canada as a "decidedly Christian" state (O'Toole 2000, 45).

Accompanying this decline in religious affiliation is an *increase* in religious diversity. Migration has greatly increased the visibility of non-Christian religions in Western societies (Beyer 2006; Vertovec 2007; Furseth 2018; Burchardt 2017; Beaman 2017b). In Canada, for example, the most recent Statistics Canada census suggests that 4.9% of the Canadian population now identify as Muslim (2% in 2001); 2.3% as Hindu (1.0% in 2001); 2.1% as Sikh (1% in 2001); and 1.0% as Buddhist (1.0% in 2001) (Statistics Canada 2023, 2022, 2003).[18] In sum, as the number of Canadians who identify as belonging to a religion continues to decline, the diversity that comprises Canada's religious landscape is increasing. This changing religious diversity brings with it new questions and challenges, particularly in the realm of law (Moon 2008; Zubrzycki 2012; Bouma 1995; Burchardt 2017; Schuh et al. 2012; Furseth 2018).

Where are all the religious people going? Enter the Religious Nones

There has been a significant increase in the number of people throughout much of the Western world who no longer identify as having a religion (Smith and Cragun 2019; Brown 2017; Clarke and Macdonald 2017; Zuckerman et al. 2016;). It has, however, only been in the past twenty-to-thirty years that the number of number of people who no longer affiliate with religion has grown exponentially.[19] This exponential increase has resulted in the emergence of rather sizeable

[18] See also Statistics Canada (2022). As the overall percentage of the population that identifies as religious continues to decline, the proportion of those individuals who identify as belonging to non-Christian religions will likely continue to increase, particularly because of migration. Canadian immigrants are far more likely to identify as religious and participate in religious activities than people born in Canada (Cornelissen 2021).

[19] Throughout this thesis, I use the terms 'no religion' and 'nonreligious' interchangeably. I must make clear, however, that not all nonreligious individuals necessarily have no religion. In other words, being nonreligious does not equate to not affiliating with a religion. Beyer et al., for example, point out that nonreligious Canadians often declare some

populations of the nonreligious throughout the world. In Canada, for example, 34.6% of the population now identifies as having no religion, compared to roughly 1% of the total population in 1961 (Statistics Canada 2023; Clarke and Macdonald 2017, 163).[20] Brian Clarke and Stuart Macdonald (2017, 209) suggest that the percentage of Canadians who have no religion might actually be closer to 55% of the Canadian population.

Outside of Canada, close to 40% of Australians now identify as having no religion, compared to 19% in 2006 (Australian Bureau of Statistics 2022a, 2022b). In the United States, approximately 23% of Americans now identify as nonreligious, compared to only 7.5% in 1990 (Pew Research Center 2015; The National Survey of Religious Identification 1991). And in the United Kingdom, 31.44% of the population identified as nonreligious in 1983, compared to almost 50% of the population in 2016 (Woodhead 2016). Given the rate at which the nonreligious populations throughout much of the world are growing, people who have no religion represent the fastest growing group of individuals when it comes to matters of 'faith', particularly in Canada (Pew Research Center 2013).

The rapid increase in the number of individuals who no longer identify as religious is of particular importance to this thesis. The growing nonreligious populations throughout much of contemporary society have begun to pose various challenges to the norms, laws, and practices in societies that have traditionally been guided by religion (O'Toole 2000, 41; Beaman 2020; Wexler 2019; McAdam 2018). In the Canadian context, the issues raised by an increasing number of individuals who no longer affiliate with religion has prompted the social institutions responsible for regulating society to consider both religious and nonreligious worldviews when developing and implementing policies and laws. But little is actually known about what the nonreligious believe, value, and practice (Smith and Cragun 2019; Lee 2015; Quack 2014).

Moreover, the increasing number of individuals who identify as having no religion is salient precisely because religion still matters. Religious and nonreligious groups are often in conflict because these groups often occupy opposing stances concerning issues brought about by this changing (non)religious diversity. What results is often what Sarah Wilkins-Laflamme refers

"affinity with […] religion" (2016, 13). For the purposes of this thesis, I use "nonreligious" to refer to those individuals and organizations that are not affiliated, or identify, with a religion.

[20] In 1981, only 7.4% of the Canadian population identified as nonreligious (Statistics Canada 1983).

to as religious and nonreligious polarization: the "cleavage between secular and religious individuals" (2014, 288). The conflicts arising out of polarization present themselves as fruitful arenas to explore what the religious and nonreligious might consider meaningful. For the purposes of this thesis, I suggest that highly polarizing and controversial social issues, like those addressed in *Latimer, Bedford,* and *Trinity Western,* can tell us something about nonreligion. It is to these cases I now turn.

The Supreme Court of Canada Cases

In the analysis chapters that follow, I consider the three cases in conjunction with one another. I therefore provide an introduction to the cases below.

The Latimer Decision (2001)

> *It was a brisk Sunday morning on October 24th, 1993, in the small farming town of Wilkie, Saskatchewan. As the sun began to rise over the horizon grain fields that stretched for what seemed like an eternity became increasingly visible. It was a chilly night, so the fields were covered in dew and topped by a thin layer of fog. Inside one Prairie house an alarm sounded early that morning. It was time to get up. Like every Sunday morning, Robert Latimer, his wife Laura, and four children Tracy, Brian, Lindsay, and Lee enjoyed a family breakfast together before heading off to church. Today, however, was different. Robert was on edge and didn't seem like himself. Perhaps he was worried about the upcoming surgery his daughter Tracy was about to undergo to help with her cerebral palsy, or perhaps he was preoccupied about something to do with his harvest. Whatever the case, he turned to his wife Laura at the breakfast table, and with a calm, but slightly defeated voice, said to her that he was going to stay at home this morning with Tracy. He insisted, however, that Laura still take Brian, Lindsay, and Lee to church. Laura agreed and after finishing breakfast got the children ready and proceeded out the door to church. Robert watched at the door as Laura and the children made their way down the front path. The children turned and waved goodbye to their dad. They were curious as to why their dad and sister weren't coming with them today.*
>
> *When Laura and the children were out of sight, Robert slowly closed the front door and proceeded to the family room where Tracy was sitting in her wheelchair. Robert leaned over and picked Tracy up from her wheelchair. Held between his arms, Robert carried her slowly to his pickup truck (Latimer, at para. 15). He opened the door to the cab of his truck and placed Tracy down. He reached for a hose, connected one end to the truck's exhaust, then placed the other end inside the truck where Tracy was seated (Latimer, at para. 15). Robert started the engine of the truck, closed its door,*

and walked away. Shortly thereafter, Tracy died from the carbon monoxide coming from the truck's exhaust (at para. 15).[21]

Tracy Latimer suffered from a severe form of cerebral palsy (*Latimer,* at para. 6). She was quadriplegic and bedridden most of the time. She also had the mental capacity of a four-month-old baby and was only able to communicate through facial expressions, laughter, and crying (at para. 6). Tracy also experienced five to six seizures per day (at para. 6). These conditions combined, experts believed Tracy "experienced a great deal of pain" which "could not be reduced by medication since the pain medication conflicted with her anti-epileptic medication and her difficulty in swallowing" (at para. 6). As a result, Tracy "was completely dependent on others for her care" (at para. 6).

Tracy had undergone numerous surgeries and procedures intended to improve her condition and quality of life—all of which, however, caused further physical pain to Tracy (*Latimer,* at para. 13). [22] Consequently, both Robert and Laura Latimer viewed these surgeries as a type of "mutilation" (at para. 13). After "learning that doctors wished to perform [an] additional surgery, [Robert] decided to take his daughter's life" (at para. 15). On Sunday, October 24th, 1993, Robert took the life of his 12-year-old daughter (at para. 15).

Robert Latimer was initially charged with, and convicted of, first degree murder. This charge and conviction were overturned as there were issues with the jury selection process. Latimer was later retried and was convicted again by a jury, but this time for second-degree murder (*Latimer,* at para. 17). The trail judge granted Latimer a constitutional exemption from the mandatory minimum sentence for second degree murder ruling that, given the circumstances of Tracy's death, the mandatory minimum sentence amounted "to cruel and unusual punishment" (at para. 23).[23] Latimer was instead sentenced to one year of imprisonment and one year on probation (at para. 20).

Latimer appealed the trial court decision to the Court of Appeal for Saskatchewan. Latimer claimed that his trial was unfair on the basis that: (1) the trial judge's precluding of the defense of

[21] This is a fictional narrative intended to provide context and introduce the *Latimer* decision. Dates, locations, and other explicitly cited material are based on facts contained within the *Latimer* decision.
[22] Tracy underwent surgeries intended to balance muscles around her pelvis (*Latimer,* at para. 10) and to reduce "abnormal curvature in her back" (*Latimer,* at para. 10).
[23] The mandatory minimum sentence for second degree murder is life imprisonment without eligibility for parole for 10 years.

necessity and the timing at which this was done during the trial rendered the trial unfair (*Latimer,* at para. 18); and (2) "the trial judge interfered with the jury's ability to nullify by implying that the jury could offer input on sentencing [… and] that an accused person must have some right to a jury that is more likely to nullify" (at para. 59). The Court of Appeal affirmed the trial court's decision but reversed the trial judge's sentence. Instead, the Court of Appeal "imposed the mandatory minimum sentence for second degree murder of life imprisonment without eligibility for parole for 10 years" (at para. 21).

The case was then appealed to the Supreme Court of Canada. After careful consideration, the Supreme Court held that Latimer's conviction be upheld (*Latimer,* at para. 71). The Court ruled that the trial judge was correct "to remove the defence [of necessity] from the jury" (at para. 42) and that the timing of the removal of the defense of necessity "did not render [Latimer's] trial unfair" (at para. 51).[24] Concerning Latimer's complaints about the trial judge misleading the jury in matters related to sentencing, the Supreme Court held that the trial judge's comments "did not render the trial unfair" (at para. 66).

At the level of the Supreme Court, Latimer also sought a constitutional exemption from the mandatory minimum sentence for second degree murder. Latimer claimed that the mandatory sentence constituted "cruel and unusual punishment," particularly when considering the circumstances that led him to take his daughter's life (at para. 72). The Court held that Robert Latimer's actions "resulted in the most serious of all possible consequences, namely, the death of the victim" (at para. 81). The Court did not find the personal characteristics and motivations of Latimer enough to displace the seriousness of the offence (at para. 85). The Court found the minimum mandatory sentence did not violate Latimer's section 12 rights as protected by the *Canadian Charter of Rights and Freedoms.*[25] The Court dismissed the appeals brought before it by Latimer concerning his conviction and sentence and a constitutional exemption from the mandatory minimum sentence for second degree murder was not granted.

Despite disagreeing with the Court's decision, Latimer insisted that he "could lie in a dirty old jail cell easier than [Tracy] could lie on the floor, suffering like she was" (CBC News 2001).

[24] The Court also held that "We similarly reject the appellant's submission that the trial judge 'took sides' or became 'an advocate for the Crown', as there is no support in the record for this suggestion" (*Latimer,* at para. 55).
[25] Section 12 of the *Charter* states that "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment" See Government of Canada (n.d.).

Latimer has long maintained that he did the "right thing" (CBC News 2001). Latimer began serving his sentence on January 18th, 2001[26] and was granted full parole on December 6th, 2010.[27]

Latimer does not address matters related to religion (or nonreligion). The explicit absence of nonreligion and religion from *Latimer*, however, is what makes the case interesting and a fruitful avenue through which to explore the social construction of nonreligion in legal discourse. In navigating the nature of "mercy" or "compassionate" killings, *Latimer* draws into conversation questions about morality, life, death, and suffering. An exploration of how the religious and nonreligious social actors involved in the case draws attention to how religion and nonreligion are more subtly constructed in legal discourse and how such phenomena contribute to the construction of one's social world (Evans 2016; Cicirelli 2011). The explicit absence of discussion about religion and nonreligion in *Latimer* is precisely what makes it a useful case to explore these social phenomena. The absence of discussion about religion and nonreligion is what provides nuance to my study. *Latimer* allows one to see how nonreligion and religion are imagined without direct reference to these phenomena in the context of legal discourse about mercy killings and end-of-life care.

The Bedford Decision (2013)

> *What does Mr. Harper mean when he says prostitution? Does he mean sex for money? How about when I tie a man up and tickle him? Is it sex? Is it legal? Is it legal if I do it for free? When I put men in corsets and dresses am I a prostitute? I'm sure Mr. Harper can share some of his acknowledged expertise in these matters. He should because the laws he seeks to preserve are impermissibly vague in giving us answers. That means unelected officials, for arbitrary reasons, will decide when people's private consenting behaviour is not legal. And, if anyone knows anything of officials like that it's me. Now, women are having sex all over the place, everyday, wherever they want, whenever they want, including [in] the privacy of their own home. But, the minute one red cent changes hands she's a criminal. Now why does Mr. Harper feel the need, feeeeeel the neeeed, to have his lackeys tell me what I can and cannot do in the privacy of my home or my bedroom with another consenting adult. We must move away from a moral basis for legislating on this issue [of sex work] and towards a safety basis. We women must not lose control of our bodies or our lives […] Other countries are moving forward and emancipating women. Don't allow Mr. Harper to move us backwards. So, I turn to Laureen Harper, Mr. Harper's wife, and I ask her to read the decision and tell her elected husband what the findings were and send Mr. Prime*

[26] CBC News (2001).
[27] CBC News (2010).

Minister to me for a lesson in behaviour modification he'll never forget. I'll make a man of him. Thank you very much. – Terri-Jean Bedford (Ideacity 2012)

[…]

I would like to mention the good news is that in virtually every country of the world now sex workers are mobilizing to ensure our civil and our occupational rights. It's a global movement. Regrettably, um, religious fundamentalists and radical feminists, they're bedfellows, are right there and also mobilizing against sex work and any notion of sex worker rights. We call these people prohibitionists because they seek to end all prostitution. They will tell you they were on a crusade against human trafficking, but about 20 years ago, they changed their mandate to include all consensual adult sex work. They see all prostitution as bad and no prostitution can be prostitution of free will. If we disagree with them, they tell us we are in denial and suffering from a false consciousness. Sex can be a really good job [laugh], and we like our jobs, our clients are not some weird perverts from outer space. They're your fathers, husbands, your colleagues, your neighbors. We can set our own hours, we get to call the shots as to what we do and do not do, so we would like this to be decriminalized. We don't want to set up shop, a big brothel, next door to your house, we want to be in a commercially zoned area, but not a red-light district please, no ghettoes. Segregation has never worked anywhere that it has been tried […] We need to be able to control our own businesses. – Valerie Scott (Ideacity 2012) [28]

The above narrative is from an IdeaCity panel in 2012 which addressed the nature of sex work and constitutional reform in Canada. The panel was comprised of Terri-Jean Bedford, Amy Lebovitch, and Valerie Scott, all of whom had been, or were, sex workers. Collectively, they were responsible for bringing a constitutional challenge (*Bedford*) concerning several provisions in the *Criminal Code of Canada* that criminalized various aspects of sex work to the Supreme Court of Canada.

In *Bedford,* the women alleged that three provisions in the *Criminal Code* prevented sex workers from implementing certain safety measures designed to protect them from "violent clients" (*Bedford*, at para. 6). These provisions included: (1) the prohibition of bawdy houses; (2) living on the avails of prostitution; and (3) communicating in a public place for the purpose of engaging in prostitution. [29] They claimed that the restrictions infringed their rights as protected

[28] This narrative was transcribed from an IdeaCity (2012) video. In this video, Terri-Jean Bedford, Amy Lebovitch, and Valerie Scott discuss the March 2012 decision of the Ontario Court of Appeal concerning sex work.

[29] "The three impugned provisions criminalize various activities related to prostitution. They are primarily concerned with preventing public nuisance, as well as the exploitation of prostitutes. Section 210 [made] it an offence to be an inmate of a bawdy-house, to be found in a bawdy-house without lawful excuse, or to be an owner, landlord, lessor, tenant, or occupier of a place who knowingly permits it to be used as a bawdy-house. Section 212(1)(j) [made] it an

under Section 7 of the *Canadian Charter of Rights and Freedoms Charter*.[30] It is important to note that the women were not calling for the decriminalization of sex work—sex work itself was not illegal in Canada (at para. 5). Bedford et al. were instead challenging how Parliament limited the practicing of sex work in Canadian society (at para. 5). The women claimed, for example, that not being able to hire security guards or screen potential clients prior to meeting them created an unsafe work environment (at para. 6).

The women first brought their case before the Ontario Superior Court of Justice in 2010. The court found that the provisions in question deprived sex workers of their liberty and security of the person (*Bedford,* at para. 18). Justice Himmel held that the "three provisions prevent prostitutes from taking precautions, some extremely rudimentary, that can decrease the risk of violence towards them […]" (as quoted in *Bedford,* at para. 18). The decision of the Ontario Superior Court of Justice was appealed to the Ontario Court of Appeal in 2012. The majority of the Court of Appeal agreed, for the most part, with the decision of the Ontario Superior Court of Justice. It found all but one of the provisions unconstitutional.[31]

The Court of Appeal decision was then appealed to the Supreme Court of Canada. In 2013, the Supreme Court ruled, unanimously, that the provisions challenged by Bedford, Lebovitch, and Scott did not pass "constitutional muster" (at para. 2). Speaking for the majority, Chief Justice McLachlin, held that the bawdy-house prohibition prevented

> prostitutes from working in a fixed indoor location […] This, in turn, prevents prostitutes from having a regular clientele and from setting up indoor safeguards like receptionists, assistants, bodyguards and audio room monitoring, which would reduce risks (application decision, at para. 421). Second, it interferes with provision of health checks and preventive health measures. Finally […] the bawdy-house prohibition prevents resort to safe houses, to which prostitutes working on the street can take clients. (at para. 64)

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offence to live on the avails of another's prostitution. Section 213(1)(c) [made] it an offence to either stop or attempt to stop, or communicate or attempt to communicate with, someone in a public place for the purpose of engaging in prostitution or hiring a prostitute" (*Bedford,* at para. 4).

[30] Section 7 of the *Charter* reads: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

[31] "The majority of the Court of Appeal found the prohibition on communicating in public for the purpose of prostitution was constitutional. While it engaged security of the person, it did so in accordance with the principles of fundamental justice. The provision aims to combat nuisance-related problems caused by street solicitation. It is not arbitrary; it has been effective in protecting residential neighbourhoods from the targeted harms. Nor is it overbroad or grossly disproportionate" (*Bedford,* at para. 28).

On the prohibition against living on the avails of prostitution, Chief Justice McLachlin found that:

> Hiring drivers, receptionists, and bodyguards, could increase prostitutes' safety (application decision, at para. 421), but the law prevents them from doing so [which] negatively impacts security of the person and engages s. 7. (at para. 67)

And, finally, on the prohibiting of communicating in a public place for the purpose of engaging in prostitution, Chief Justice McLachlin held that:

> by prohibiting communicating in public for the purpose of prostitution, the law prevents prostitutes from screening clients and setting terms for the use of condoms or safe houses. In these ways, it significantly increases the risks they face. (at para. 71)

Interestingly, the Court found that:

> It makes no difference that the conduct of pimps and johns is the immediate source of the harms suffered by prostitutes. *The impugned laws deprive people engaged in a risky, but legal, activity of the means to protect themselves against those risks. The violence of a john does not diminish the role of the state in making a prostitute more vulnerable to that violence*. (at para. 89; emphasis added)

In summary, the Court found that the laws challenged by Bedford, Lebovitch, and Scott were unconstitutional, were "inconsistent" with the *Charter*, and thus ruled as "void" (at para. 164).

Much like the *Latimer* decision, *Bedford* is not about religion or nonreligion. *Bedford* is about sex work. It is the emphasis on sex work that makes *Bedford* a fruitful decision to explore the construction of nonreligion in legal discourse. In considering matters related to sex work, *Bedford* addresses questions concerning autonomy, dignity, vulnerable people, gender, sex, and morality. As was the case in *Latimer,* in considering these questions *Bedford* allows one to see how the nonreligious and religious social actors involved in the case construct their social worlds—including how they construct religion and nonreligion and how such constructions contribute in forming the narratives about sex work of these social actors. In other words, *Bedford* allows one to better explore the subtle ways in which nonreligion is imagined by the social actors involved in the case. *Bedford* also provides contrast to nonreligion as constructed in *Latimer.* Just as *Latimer* reveals how nonreligion is constructed in legal discourse about mercy killings and end-of-life care, *Bedford* reveals how nonreligion is thought of in legal discourse about sex work. One is then able to point to the similarities and differences in how nonreligion is conceptualized in the two very different contexts.

The Trinity Western Decision (2018)

> *Based on my experience, most LGBTQ individuals choose to omit revealing their sexual orientation and gender identity in various circumstances, hoping they will pass for straight and cisgender. For me, this has taken many forms. At times, I have allowed friends, family, employers, colleagues, and neighbours to believe that I am straight. Usually, this takes the form of split-second decisions triggered by questions about dating or spouses. Or deceptive pronoun practices that essentially result in lies ("I bought a house this winter" instead of "My partner and I bought a house this winter"). Or just choosing to obscure or not to share with others the ordinary experiences my partner and I enjoy because of my discomfort with not knowing which line of questions might follow. Even today, 20 years after graduating from high school, and especially as I am entering this rather conservative profession [i.e., law], I find myself occasionally undertaking a tiring risk–reward analysis: For how long can I get through my article without my principal finding out I'm gay? Might I be seen as "flaunting" my sexuality if I use the terms "my boyfriend" or "my partner"? Should I even care? Well, if you still find yourself seeking approval from your peers and superiors like I do, then these are the questions that form an anxious backdrop of many social and professional encounters.*
>
> *It goes without saying that many LGBTQ individuals will choose not to attend TWU [Trinity Western University] because of, among other things, the principles espoused in the Community Covenant which all students and staff are required to sign. But the LGBTQ student who attends TWU faces the ordinary identity dilemma writ large. The consequences of breaching the Covenant are not entirely clear […] Considering its potentially repressive effect on one's ability to express his or her identity fully, the Covenant either discourages queer and trans individuals from attending TWU, or it imposes a chilling effect on enrolled students.* (Shad Turner 2015, 22-23)

Founded in 1962, Trinity Western University is a private Christian university located in Langley, British Columbia, Canada. Over the years, it has become "Canada's premier Christian university and the largest liberal arts university in the country" (Trinity Western University 2023). The university teaches all its programs from a "Christian perspective" (*Trinity Western,* at para. 4). Part of teaching from this "Christian perspective" requires all staff (and previously students) at the university to sign, and abide by, the university's mandatory Community Covenant Agreement,[32] which governs the behaviour of staff and students both on and off campus (para. 6). Among other things, the Covenant explicitly prohibits "sexual intimacy that violates the sacredness of marriage between a man and a woman" (A.R., vol. III, at p. 403 as quoted in *Trinity Western*, at para. 6).

[32] Hereinafter referred to as the "*Covenant*".

The university offers several professional programs, including a Bachelor of Education through its School of Education, and a Bachelor of Science in Nursing through its School of Nursing.[33] The university, however, wished to further expand its course offerings by creating a three-year Juris Doctor law degree (at para. 11).[34] In June 2012 the university submitted a proposal to British Columbia's Minister of Advanced Education and the Federation of Law Societies of Canada for the approval to grant law degrees (at para. 11-12). In December 2013, the Federation of Law Societies of Canada and the Minister of Advanced Education both approved the university's proposed law school (at para. 12).

In December 2014, however, the Law Society of British Columbia (LSBC), through an internal voting process, decided not to approve TWU's proposed law school. The LSBC's decision was based on its duty to uphold and protect its "public interest" mandate. The LSBC decided that TWU's Covenant "effectively impose[d] inequitable barriers on entry to the school" and that these barriers decreased diversity within the legal profession (*Trinity Western,* at para. 32):

> Ultimately, the LSBC determined that the approval of TWU's proposed law school with a mandatory covenant would negatively impact equitable access to and diversity within the legal profession and would harm LGBTQ individuals, and would therefore undermine the public interest in the administration of justice. (at para. 39)

Shortly after the LSBC's decision to not approve TWU's law school, the Minister of Advanced Education also withdrew approval (at para. 22).

TWU sought legal action against the LSBC's decision. TWU argued before the Supreme Court of British Columbia that the LSBC's decision infringed its freedom of religion as protected under section 2(a) of the *Canadian Charter of Rights and Freedoms*.[35] The Supreme Court of British Columbia ruled in TWU's favour and revoked the decision of the LSBC—TWU's law school was therefore once again "approved" (*Trinity Western,* at para. 24). The decision of the

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[33] See https://www.twu.ca/academics/school-education and https://www.twu.ca/academics/school-nursing/nursing/program-overview.

[34] See Stueck and Dhillon (2018).

[35] Section 2 of the *Charter* reads:

"Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association."

Supreme Court of British Columbia was then appealed to the Court of Appeal for British Columbia. Like the lower court, the Court of Appeal ruled in TWU's favour. The Court of Appeal held that the LSBC's decision to not approve TWU's law school did not properly balance the LSBC's statutory objectives and the *Charter* (at para. 26). The Court of Appeal found that the LSBC's decision not to approve TWU's law school severely infringed TWU's freedom of religion and that such a decision was unreasonable (at para. 26).

The case was finally appealed to the Supreme Court of Canada.[36] In 2018, the majority of the Supreme Court ruled in favour of the LSBC, thus restoring the LSBC's decision denying the approval of TWU's law school. The majority of the Court held that the LSBC's decision did infringe the religious freedom rights of TWU's members (*Trinity Western,* at para. 75), but that such an infringement was reasonable given that the denial of TWU's law school was not

> a serious limitation on the religious rights of members of the TWU community. The LSBC's decision [did] not suppress TWU's religious difference […] no evangelical Christian [was] denied the right to practise his or her religion as and where they choose. (at para. 102)

The majority of the Court ruled that if granted accreditation, TWU's law school would be "closed off to the vast majority of LGBTQ individuals on the basis of their sexual identity" (at para. 95). Despite TWU's proposed law school adding 60 more law school seats in Canada, these seats would have remained "effectively closed to most LGBTQ people. In short, LGBTQ individuals would have fewer opportunities relative to others" (at para. 95).

The Court also ruled that LGBTQ students enrolled in the law school risked suffering harm to their "dignity and self-worth, confidence and self-esteem" and, as a result, may have experienced "stigmatization and isolation" (*Trinity Western,* at para. 98). The Court found that the LSBC's decision to deny accreditation to TWU ultimately promoted the public interest mandate of the LSBC by preventing harm coming to members of the LGBTQ community (at paras. 96-98).

[36] As a note, the Supreme Court of Canada decided two cases concerning TWU's proposed law school. I consider only one of these cases in my analysis (the Law Society of British Columbia case). The other case, *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33, [2018] 2 S.C.R. 453, was decided at the same time. In this decision, the Court also ruled in favour of the Law Society of Upper Canada. For the purposes of my analysis, the two cases are virtually the same. See Connor Steele's (2020) doctoral thesis for more on this.

Shortly after the release of the Supreme Court's judgement, TWU announced that it would no longer require any of its students to sign its Community Covenant (Brean and Selley 2018).[37] According to TWU's President, Bob Kuhn, the university's move to no longer require students to sign the Covenant was to show that the school did "not discriminate against LGBTQ students or others" (Brean and Selley 2018).[38] Despite dropping its community covenant, TWU has yet to resubmit a proposal for a law school (Stueck and Dhillon 2018).

Trinity Western is slightly different than both *Latimer* and *Bedford* given that this case is precisely about religion, freedom of religion, and religious practice and belief. In *Trinity Western* the Court is required to directly address matters related to religion, specifically Evangelical Christianity, and how the decisions of state actors infringe and/or respect one's religious freedom as protected under the *Canadian Charter of Rights and Freedoms*. When the Court addresses questions as to what constitutes religion and acceptable religious behaviour, it is, I argue, necessarily addressing what religion is *not*—what I refer to as nonreligion. *Trinity Western,* like *Latimer* and *Bedford,* also allows one to consider the more subtle ways in which religion and nonreligion are constructed and utilized by the social actors involved in the case in their discussions about topics not necessarily about religion (i.e., those of LGBTQ+ rights). The direct and indirect approach to the construction of religion and nonreligion in *Trinity Western* therefore provides texture to my analysis. Thus, *Latimer*, *Bedford,* and *Trinity Western* all draw attention to the subtle ways in which both religion and nonreligion are constructed in social debates not necessarily about religion. The combination of the three cases provides for a more rounded exploration of the social construction of nonreligion in legal discourse.

[37] A motion passed by TWU claims that "In furtherance of our desire to maintain TWU as a thriving community of Christian believers that is inclusive of all students wishing to learn from a Christian viewpoint and underlying philosophy, the Community Covenant will no longer be mandatory as of the 2018-19 Academic year with respect to admission of students to, or continuation of students at, the University" (Brean and Selley 2018). The community covenant reads: "TWU welcomes all students who qualify for admission, recognizing that not all affirm the theological views that are vital to the University's Christian identity. While students are not required to sign this covenant, they have chosen to be educated within a Christian university that unites reason and faith. The TWU community is committed to preparing students for a life of learning and service, including by developing a spiritual dimension through exposure to a reflective and caring, Christ-centred community that encourages a Christ-like way of life." The Covenant applies to all staff. See Trinity Western (2019).

[38] TWU's decision to no longer require students to sign the community covenant was "not about the law school" (Brean and Selley 2018).

Exploring the Social Construction of Nonreligion

This thesis explores legal discourse about (1) mercy killings and end-of-life care; (2) sex work; and (3) LGBTQ+ rights in the Supreme Court of Canada's *Latimer, Bedford,* and *Trinity Western* cases respectively. I use legal discourse to explore the positive content of nonreligion as constructed in law (again, not constructed by law). With this in mind, this thesis asks: How is nonreligion conceptualized in Canadian law and is this framing of nonreligion characterized by more than the simple rejection or negation of religion? In other words, is nonreligion constructed as having positive content in the context of law, and if so, what is this positive content?

My analysis presupposes that nonreligion is not a phenomenon with a clear set of boundaries or substantive qualities. I approach nonreligion as a social construct—a point I discuss in more detail in Chapters One and Two.[39] My findings in this thesis draw attention to nonreligion as constructed in the legal contexts of mercy killings and end-of-life care; sex work; and LGBTQ+ rights. My analysis and its conclusions are therefore rather specific in that they provide a snapshot of nonreligion at a particular moment in time in very specific contexts. In what follows I argue that nonreligion as constructed in the contexts I explore is more than the mere rejection of religion. I show that nonreligion is constructed as encompassing its own positive attributes and content. It is this positive content which deserves more scholarly attention to better understand what a social world not rooted in religion might look like.

As a methodological note, I am aware that at times I essentialize, or conflate, religion and Christianity. This is not intentional, but instead a reflection of the data I explored. I recognize there is variability in Christianity and that there are a multitude of ways in which Christianity is lived (see Ammerman 2007; Orsi 2002). But, the voices of the religious actors in the data I explored are those of conservative Christian actors. The voices of other Christians and religious groups are missing from my analysis precisely because they are absent from the available data. The backdrop that characterizes my analysis is thus one informed by the legal voices of conservative Christian social actors.

[39] I adopt a social constructionist approach to nonreligion meaning that nonreligion is not itself some naturally occurring phenomenon, but rather constructed through discourse, experience, and social interaction (see Beckford 2003).

As noted earlier, my interest in nonreligion is a response to the claims of some of the participants at the SSSR conference I attended in Las Vegas in October 2018. I in no way disagree with the assertion of these individuals that religion still matters or is important. I am also fascinated by religion and agree that it remains an important social phenomenon deserving of academic inquiry. There are many facets of religion we have yet to explore. I am not of the opinion, however, that nonreligion is irrelevant and not worthy of being an object of study in its own right. We currently live in interesting times: times marked by a decline in religious affiliation and an exponential increase in the number of individuals who identify as having no religion. Despite thinking that the nonreligious are unremarkable (see Demerath 1969; Campbell 1971; Vernon 1968), this group of people continue to perplex sociologists and confuse what we thought was once clear about the contemporary world and the mundaneness that exists outside the realm of religion. What has become increasingly clear is that we know (relatively) very little about nonreligion and the nonreligious. What were once unremarkable are showing themselves to be quite remarkable. In this light, this thesis is my way of saying that the study of nonreligion does matter—it warrants the attention of sociologists and scholars of other fields and disciplines.

The changing Canadian (non)religious landscape has had implications for many of Canada's social institutions. Many of these social institutions have had to renegotiate what is understood as nonreligion and religion (Beaman and Steele 2021; Clarke and Macdonald 2017, 131). One such institution called on quite frequently to help address matters raised by this "new diversity" is law (Beaman 2017b; Beaman 2020; Strumos 2022; Dabby 2021). As increasingly diverse nonreligious and religious practices and values have become more prominent in Canadian society, Canadian law has been called upon to recognize the existence and legitimacy of nonreligious ways of framing and addressing various social issues of critical concern to Canadians (Beaman 2008; Beaman and Steele 2018, 2021; Bibby 2004; Cragun 2016; Sandberg 2014). The Supreme Court of Canada, for example, has been required to navigate and decide upon complex and controversial socio-legal issues, which have historically been guided by religion (such as physician-assisted dying, LGBTQ+ rights, sex work, etc.). Canadian law has had to take more seriously alternatives to religious ways of doing thing, which often challenge the ways in which things have historically been done.

Very little, however, is known about nonreligion and what being nonreligious entails, particularly in the context of law. Despite the ever-increasing number of Canadians who identify as having no religion, little scholarly attention has been devoted to the study of nonreligion and law (Årsheim 2018; McAdam 2018). My research contributes to the literature concerning the intersection of nonreligion and law. I do not aim to provide a grand, overarching answer to all things about nonreligion in law. I instead provide insight into what nonreligion might look like in certain legal contexts. I demonstrate that the law can tell us something useful about the imagining of nonreligion. Most importantly, I show that nonreligion as constructed in law is more than just the rejection or absence of religion—it is comprised of having meaningful positive attributes.

Chapter Overviews

What follows is divided into seven chapters, including the introduction and conclusion chapters. Chapter One is a literature review and sets the stage for the research I have undertaken. In this chapter, I explore relevant literature related to the study of religion; the study of nonreligion; who the nonreligious are; the methodological difficulties associated with the study of nonreligion; secularization theory; and religion and law. The purpose of drawing on this literature is twofold: First, I use it to situate my own research in broader debates about the sociological study of religion and nonreligion and law; and second, my discussion draws attention to some of the gaps in the existing literature which this thesis aims to help fill.

Chapter Two discusses the methodological approach used to conduct my study and to analyze the collected data. This chapter draws attention to the theoretical assumptions underlying my analysis, including the discursive construction of reality and the social construction of nonreligion, along with the method used to conduct my analysis. I outline my approach to discourse analysis used to analyze *Latimer, Bedford,* and *Trinity Western.* This chapter concludes by detailing my research design.

Chapters Three through Five are analysis chapters. In these chapters, I explore the similarities and differences in the ways in which the religious and nonreligious social actors involved in *Latimer, Bedford,* and *Trinity Western* frame human rights, morality, and dignity. My exploration of these similarities and differences are ultimately what shed light on the meaningful beliefs, values, and practices of both the religious and nonreligious social actors involved in the cases.

In Chapter Three I explore the concept of human rights. In this chapter I compare how the religious social actors and nonreligious social actors involved in *Latimer, Bedford,* and *Trinity Western* conceptualize human rights. I argue that for the religious social actors in these cases human rights are grounded in the transcendent. For these actors, human rights are divinely inspired. What's more, the religious social actors utilize human rights in somewhat of a unique way. These social actors draw more concretely on values derived from human rights (e.g., dignity, life, morality, etc.) in their arguments, rather than directly on specific human rights themselves. In contrast, the nonreligious social actors in the three cases approach human rights somewhat differently. For the nonreligious social actors, human rights are constructed as being rooted in immanence. Human rights are framed as intertwined with immanent worldly affairs like that of self-determination, medicine, equality, sexuality, gender, and health care. For these social actors, there is no transcendental element to human rights, they are the product of law. I conclude this chapter by drawing attention to how the nonreligious social actors utilize human rights differently than the religious social actors. I argue that the nonreligious social actors more frequently draw on and reference specific human rights in their arguments, rather than values derived from these rights.

In Chapter Four, I explore the notion of morality. I point out that the religious social actors in *Latimer, Bedford,* and *Trinity Western* explicitly use the language of morality to frame their arguments. I argue that the interventions of the religious social actors in the three cases are framed as moral interventions. I also draw attention to how these social actors incorporate a transcendental element into their understanding of morality. Finally, I argue that the religious social actors use the language of morality to promote the idea of community and the social good. I then turn my attention to the ways in which morality is framed by the nonreligious social actors. I highlight that these social actors very rarely draw on the language of morality—their interventions are thus not understood as moral interventions, but instead constructed as legal interventions grounded in the protection of human rights. I also explore how the nonreligious social actors establish their moral positions in *Latimer, Bedford,* and *Trinity Western* without drawing on the language of morality. I suggest that the nonreligious social actors draw on law, human rights, discrimination, and race, gender and sex to establish their moral positions concerning the issues addressed in three cases. I posit that the nonreligious social actors are more likely to distance themselves from and to not draw on rigid ideological claims in thinking about morality (see also Salonen 2018).

Finally, in Chapter Five, I explore the concept of dignity and its relation to agency and autonomy. I argue that for the religious social actors dignity is also something rooted in the transcendent. Dignity was imagined as bestowed upon an individual by a transcendent being. In this light, dignity was framed as an inherent human quality. For the religious social actors, all human life has an intrinsic worth and this worth is not contingent on immanent social factors—an individual's dignity could be "disrespected", but it could not be demeaned or removed. I suggest that this understanding of dignity results in a rather limiting approach to autonomy and agency, particularly in *Latimer* and *Bedford*. For the religious social actors in *Latimer* and *Bedford* autonomy and agency were narrowly understood so as to avoid introducing to society behaviour that could "disrespect" a person's dignity. In *Trinity Western*, however, the religious social actors approach autonomy and agency more broadly to preserve and protect religious beliefs, values, and practices which are related to one's dignity. I then turn my attention to the arguments made by the nonreligious social actors. I argue that dignity for these actors was not rooted in the transcendent, though still constructed as an inherent human quality. Dignity for these social actors, however, was thought of as *conditional* and/or *contingent* on immanent social factors and the place and status of an individual in society. The social world necessarily has implications for one's dignity: a person's dignity can be disrespected, demeaned and also diminished/removed. As a result, I argue that the nonreligious social actors imagine the free exercising of agency and autonomy as tied to bolstering one's dignity.

The conclusion chapter attempts to summarize the findings of my analysis and provides an answer to the research question posed above. This chapter also seeks to generalize the findings of my analysis to the broader debates about nonreligion to more concretely contribute to the literature about nonreligion and law. I also use this chapter to discuss some of the conceptual limitations of my study. Finally, I consider future areas of research concerning the study of nonreligion and law and pose new questions worth exploring.

Chapter One: Literature Review

> *I think books are like people, in the sense that they'll turn up in your life when you most need them.* - Emma Thompson

Introduction

Religion has long been the object of sociological study. The sociological exploration of religion can be traced back to the mid-to-late nineteenth century in the works of Karl Marx, Émile Durkheim, and Max Weber. While the classical theories of religion first proposed by Marx, Durkheim, and Weber have been, and continue to be, foundational and influential in the sociological study of religion, the countercultural, social, and intellectual movements that characterized the mid-twentieth century brought about new ways of theorizing, conceptualizing, and exploring questions about religion (Davie 2007a; Altglas and Wood 2018; Day 2011). These social changes resulted in the emergence of the *contemporary* sociological study of religion and the development of the sub-discipline of the sociology of religion (Davie 2007a; Spickard 2017). This thesis is situated in the contemporary sociological study of religion.

The serious academic and sociological study of nonreligion, however, is in its infancy. Nonreligion has only recently captured the gaze of scholars and sociologists (Smith and Cragun 2019; Thiessen and Wilkins-Laflamme 2020; Thiessen 2015; Campbell 1971; Lee 2015).[40] What currently exists when it comes to most matters related to nonreligion is an underdeveloped, though growing, body of literature. There is yet to exist an established, and well recognized, sub-discipline of the sociology of nonreligion.[41] The infancy of the academic study of nonreligion points to the fact that this field of study is the product of contemporary sociology, anthropology, and religious studies (Lee 2015; Quack 2014; Blanes and Oustinova-Stjepanovic 2017; Baker and Smith 2015).

This chapter seeks to explore some of the key themes and debates that exist in literature related to religion and nonreligion. At first, it might seem odd to explore literature pertaining to

[40] There are, however, a growing number of research networks, university undergraduate programs, peer-reviewed journals, and associations that are focused on the study of nonreligion as its own object of study. See for example the Nonreligion and Secularity Research Network (www.theNSRN.org); the International Society for Historians of Atheism, Secularism, and Humanism (www.atheismsecularismhumanism.wordpress.com); the British Columbia Humanist Association (www.bchumanist.ca). Pitzer College offers a program in Secular Studies, see https://www.pitzer.edu/academics/field-groups/secular-studies/. For more discussion on the emergence of groups centered on nonreligion see Smith and Cragun (2019).

[41] Whether or not nonreligion is afforded its own sub-discipline within the larger discipline of sociology remains open to debate, but given the academy's (lack of) interest in the topic, I remain skeptical.

the academic and sociological study of religion given that this thesis is about nonreligion. But, as will become clear, nonreligion, as it is currently conceptualized in scholarship, is necessarily dependent on religion (Campbell 1971; Lee 2015; Quack 2014; Cotter 2020). Thus, the literature about religion is useful in telling scholars and researchers something about nonreligion. In addition to consulting literature about religion and nonreligion, I also briefly discuss the scholarship related to secularization theory; religion and law; and finally, nonreligion and law.[42] The literature discussed in this chapter is intended to help situate my research in the broader fields of the academic study of religion and nonreligion and law.

Religion and its Many Faces

The field of religious studies, and in particular the sub-discipline of the sociology of religion, has struggled, and continues to struggle, with difficulties when addressing the very nature of its object of study: religion (Spickard 2017; Woodhead 2011; Bender et al. 2013; Ammerman 2016; McGuire 2008). Debates about the nature of religion have existed "from the first days of sociology" (Davie 2007a, 19). Karl Marx, for example, conceptualized religion as a form of alienation. [43] He argued that:

> Religious distress is at the same time the expression of real distress and also the protest against real distress. Religion is the sigh of the oppressed creature, the heart of a heartless world, just as it is the spirit of spiritless conditions. It is the opium of the people.
>
> To abolish religion as the illusory happiness of the people is to demand their real happiness. The demand to give up illusions about the existing state of affairs is the demand to give up a state of affairs which needs illusions. The criticism of religion is therefore in embryo the criticism of the vale of tears, the halo of which is religion (Marx and Engels 1975, 196-197)

To Marx, religion hides from society the "exploitative relationships of capitalist society […] it persuades people that such relationships are natural and, therefore, acceptable" (Davie 2007a, 26). Thus, individuals, and society at large, need to rid themselves of religion to reveal the injustices of the capitalist system.

[42] The discussion of the literature in this chapter is not intended to be an exhaustive discussion and/or analysis of the literature for each respective topic. Rather, this chapter is an overview of various themes found within larger bodies of literature that offer insight, and are important, for my doctoral research.

[43] Davie argues that Marx's work on religion is "central to the evolution of the sub-discipline" of the sociology of religion (2007a, 27).

Despite there being issues with Marx's approach to religion,[44] his work remains important precisely because he was among one of the first people to suggest that religion could not be neatly separated from the society and social world in which we live: "[religion's] form and nature are dependent on social and above all economic relations, which constitute the bedrock of social analysis" (Davie 2007a, 26; see also Horii 2019).

Beyond the work of Marx, early approaches to religion, particularly within the sociology of religion, were somewhat homogenous. Debates about the nature of religion were primarily concerned with religion's substantive and/or functional qualities (Cipriani 2015; Berger 1974; Davie 2007a). Early sociologists like Weber conceptualized religion substantively thereby stressing the supposed content of religion. Substantive approaches to religion most commonly emphasized beliefs and practices concerning the supernatural (Berger 1974; Davie 2007a, 20).

It is important to note here, however, that Weber did not define religion in his work. Weber quite famously said in his *The Sociology of Religion* that:

> To define "religion," to say what it *is*, is not possible at the start of a presentation such as this. Definition can be attempted, if at all, only at the conclusion of the study. The essence of religion is not even our concern, as we make it our task to study the conditions and effects of a particular type of social behavior.
>
> The external courses of religious behavior are so diverse that an understanding of this behavior can only be achieved from the viewpoint of the subjective experiences, ideas, and purposes of the individuals concerned—in short, from the viewpoint of the religious behavior's "meaning" (*Sinn*). (1965, 1)

Similar to Marx, Weber's work suggests that religion does not exist independent of the world in which we live. Religion is socially constructed through a variety of human behaviours, subjective experiences, and ideas. Religion is a "psychological state experienced by individuals" that can facilitate social change (Horii 2019, 28). Despite not defining religion, Weber's emphasis on the supernatural aspects of religion—that is, the "magical factors", charisma, spirits, the soul, etc.—leads one to argue that Weber approaches religion substantively (1965, 1-19).[45]

[44] See Davie (2007a) and Horii (2019).

[45] Weber argues "What is primarily distinctive in this whole development is not the personality, impersonality or superpersonality of these supernatural powers, but the fact that new experiences now play a role in life. Before, only the things or events that actually exist or take place played a role in life, now certain experiences, of a different order in that they only signify something, also play a role in life" (1965, 6).

In contrast, sociologists like Durkheim promoted functional theorizations of religion. These theorizations of religion draw attention to what religion does, or its practical role, in society. Durkheim, for example, defined religion as:

> A unified system of beliefs and practices relative to sacred things, that is to say, things set apart and forbidden—beliefs and practices which unite into one single moral community called a Church, all those who adhere to them. (Durkheim 1995, 44) [46]

In this light, religion is a collective phenomenon, or group, comprised of shared beliefs, values, and practices, which act as a glue that binds society together (1995, 44). Religion ultimately fosters community and, rather than facilitating social change, provides for a sense of social stability (1995, 41). Durkheimian approaches to the study of religion emphasize the group as being the basis for all religion (1995, 41).[47]

Substantive and functional sociological approaches to religion are still the topic of scholarly debate in the contemporary study of religion. The definitional tensions of classic sociological substantive and functional understandings of religion are thus by no means resolved.[48] Such tensions find themselves infused in debates about contemporary framings of religion (Altglas and Wood 2018; Casanova 1994). Despite their critics, these two approaches to religion are analytically useful in telling scholars and sociologists something about the nature of religion in society.

In contrast to the classic sociological conceptualizations of religion, what is found in the contemporary sociology of religion are constructionist and/or relational theorizations of religion that usually: (1) adopt and perpetuate the normative claims of "church" informed religion; and/or (2) conceptualizations of religion that more carefully consider how power and the social and

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[46] The Church Durkheim refers to is not some physical entity like a building, but instead a social group or community that is united because of their *shared* beliefs in the sacred world and the *shared* practices that result from these beliefs (1995, 41). Durkheim suggests that the Church is sometimes "narrowly national; sometimes it extends beyond frontiers; sometimes it encompasses an entire people (Rome, Athens, the Hebrews); sometimes it encompasses only a fraction (Christian denominations since the coming of Protestantism); sometimes it is led by a body of priests; sometimes it is more or less without any official directing body" (1995, 41).

[47] Durkheim points out that "wherever we observe religious life, it has a definite group as its basis" (1995, 41).

[48] Debates about the functional and substantive nature of religion are not limited to the sociology of religion. Similar debates also exist within the anthropology of religion. E. B. Tylor provided a "minimum" substantive definition of religion defining it as "the belief in Spiritual Beings" (1871, 383). Clifford Geertz defined religion functionally as: "(1) a system of symbols which acts to (2) establish powerful, pervasive, and long-lasting moods and motivations in men by (3) formulating conceptions of a general order of existence and (4) clothing these conceptions with such an aura of factuality that (5) the moods and motivations seem uniquely realistic" (1966, 4). For debates about the very usefulness of the category religion see Smith (1998).

cultural are all bound together to construct what is understood as religion in a specific context (Beckford 2003; Davie 2007a; Spickard 2017; Berger 1967; Day 2011). This is not to say that contemporary theorizations of religion no longer consider the substantive or functional qualities of religion—they do (Day 2011; McGuire 2008). Rather, I suggest here that a more critical sociology of religion has emerged, which seeks to challenge normative assumptions that have characterized much of the sociology of religion's history (Altglas and Wood 2018; Beckford 2003; Doggett and Arat 2018; Bender et al. 2013).

One of the contemporary approaches to religion that has emerged that is more critical and reflexive in its nature, is the social constructivist approach proposed by James Beckford (2003). Rather than formulating religion as some phenomena largely independent of the social and therefore existing in and of itself, Beckford draws on social theory to use the concept of religion to denote the various ways of "human knowing, feeling, acting and relating" (Beckford 2003, 4). For Beckford, religion is given meaning through various social processes and is thus challenged, rejected, and re-cast in numerous ways (2003, 3). The degree to which the social plays in the construction of religion, however, is open to debate (McGuire 2008; Davie 2007a; Day 2011; Berger 1967; Beyer 2006; Spickard 2017; Bender et al. 2013; Woodhead 2011). Many scholars, for example, are dismissive of the role gender, power, and class play in the construction of religion (Altglas and Wood 2018).

The idea of religion as a social construct extends beyond the boundaries of the sociology of religion. Within the broader field of religious studies,[49] various critical religionists who question the usefulness of the category of religion argue that religion is itself a social construct and thus there is nothing in this world that is essentially religious (Asad 2003, 25; Cotter 2020). William Arnal and Russell McCutcheon, for example, argue that religion is an "artificial or *synthetic* construct such that its very creation is itself an implicit theorization of cultural realities" (2013, 18; emphasis in original). Similarly, Jonathan Z. Smith asserts that there exists no underlying essence to religion (1982, 18). "'Religion' is not a native term; it is a term created by scholars for their intellectual purposes and therefore is theirs to define […]" (Smith 1998, 281).[50] Arnal,

[49] For debates about whether religious studies is an academic field of study or discipline, see https://www.religiousstudiesproject.com/response/sociology-of-religion-and-religious-studies-disciplines-fields-and-the-limits-of-dialogue/.

[50] In contrast to social constructionist approaches to religion, there are those within the field of religious studies, like Ninian Smart, who argue that religions "exist in the world" (1998, 21). Some scholars posit that there is an underlying

McCutcheon, Smith, and others thus propose more critical approaches and theorizations to religion.

Similarly, the concepts "lived religion" and "everyday religion" are contemporary and critical theorizations of religion that draw attention to how individuals construct and practice religion in their daily lives, outside of an institutional religious setting (Ammerman 2007; McGuire 2008; Hall 1997; Orsi 2002). Robert Orsi, for example, defines lived religion as "religious practice and imagination in ongoing, dynamic relation with the realities and structures of everyday life in particular times and places" (2002, xxxi). Classic sociological approaches to religion often ignore how the everyday person constructs and experiences religion—such theories privilege the experience of religious experts (Ammerman 2007). Lived religion aims to draw attention to how nonexperts construct religion to reveal "unconventional" religious practices and beliefs (Ammerman 2007). Lived religion encourages sociologists to rethink what they understand as religion thereby allowing them to more accurately capture the diverse ways in which religion is constructed and lived in the everyday (McGuire 2008). In doing so, lived religion allows sociologists to more thoroughly account for the continued presence of religion in the public sphere (McGuire 2008; Furseth 2018), while also providing insight into questions concerning religious diversity, multiculturalism, and social belonging (Heelas and Woodhead 2005; Day 2011; Beaman 2017a; Mahmood 2016; Bouma 1995).

Religion is thus a complex social phenomenon. Changes in religious diversity and what is ultimately understood as religion in society has prompted scholars to move beyond the traditional boundaries of the academic and sociological study of religion (Davie 2007a; Doggett and Arat 2018; Edgell 2012; Beaman 2017a; Williams 2015). New critical ways of thinking about religion encourage scholars to move away from what is referred to as "religious sociology" (Altglas and Wood 2018). A more critical approach to religion refrains from unreflexively adopting the concepts used by religious actors and instead aims to more thoroughly explore the various social factors that contribute to what is thought of as religion (Altglas and Wood 2018; Spickard 2017; Garbin and Strhan 2017). Debates about the nature of religion are thus still alive in the contemporary academic and sociological study of religion. What counts and is defined as religion

mystical, spiritual, religious experience, or essence of religion that exists independent of human action or intentionality (Taves 2009, 3). As a result, "many scholars and decision makers understand 'religions' as singular and coherent entities" (Hurd 2015, 12).

may differ from study to study (and, more generally, from geographic region to geographic region). What scholars must be aware of are the various normative claims that underlie their approach to religion and the implications religion, as a social construct, has for other theories related to religion (e.g., secularization theory); nonreligion; and society (Beckford 2003). My study employs the use of a social constructionist approach to religion, something I discuss in greater detail in Chapter Two.

Defining Nonreligion

Unlike the academic study of religion, intellectual curiosity about nonreligion is a relatively recent phenomenon. Nonreligion has not received the same degree of scholarly attention as religion (Smith and Cragun 2019; Cragun 2016; Lee 2015; Cotter 2020). While Colin Campbell first called for more scholarly attention to be given to what he referred to as irreligion and the irreligious in his 1971 book *Toward a Sociology of Irreligion,* it has only been within the past two decades[51] that nonreligion (or irreligion) has been the subject of serious scholarly inquiry.[52] Research about nonreligion and people who do not identify as religious is thus considerably lacking (Smith and Cragun 2019).[53]

Like religion, what is meant by nonreligion is contested. Nonreligion is something of a quagmire (Beaman et al. 2018). Nonreligion is often used as a placeholder term to refer to numerous ways in which people distance themselves from religion (Woodhead 2016). Throughout its history, however, nonreligion and its derivatives have undergone a variety of changes and thus their meanings are constantly in flux (Lee 2015; Quack 2014; Cotter 2020; Schmidt 2016; Marks 2017; Quack and Schuh 2017). Nonreligion, for example, has historically been understood as referring to phenomena that lack or reject religion. Put more simply, nonreligion is frequently used

[51] Nonreligion has only received serious scholarly attention since the beginning of the early 2000s (Smith and Cragun 2019, 1; Cragun 2016).

[52] Glenn Vernon (1968) also argues that early sociologists of religion were not overly concerned with the study of "religious nones".

[53] Despite the infancy of nonreligion as a topic of serious scholarly inquiry, nonreligion itself (and its various iterations) have long been present in some form in society, particularly Western society. As Zuckerman et al. point out, "there have always been nonreligious men and women. There exists evidence of skepticism, naturalism, secularism, and anticlericalism from thousands of years ago in ancient India, China, Rome, and Greece. And there were clearly doubters and nonbelievers in medieval Europe as well, even when the power of the Catholic Church was at its apex. However, the actual study of nonreligious people is a relatively new enterprise. Indeed, irreligion and secularity have been sorely neglected by the social sciences for some time" (2016, 6).

to describe a world in which "there is no God" (Brown 2017, 1-5; Clarke and Macdonald 2017; Zuckerman 2012).

Nonreligion is therefore quite often used as a reference or catchall category to describe the ways in which people live their lives without a belief in some supernatural being, or religion more generally (Frost and Edgell 2017; Woodhead 2016, 2017; Quack and Schuh 2017). The terms irreligion, agnosticism, atheism, unbelief, secular, secularist, anti-religion, apostate, always atheist, infidels, and freethinkers are all used interchangeably with nonreligion (Zuckerman 2008; Zuckerman et al. 2016; Schmidt 2016; Lee 2015; Brown 2017; Day 2013; Quack 2014; Wallis 2014; Marks 2017). Thus, much of the scholarship that does exist defines nonreligion according to what it lacks—nonreligion is primarily deficit in nature—and generally focuses on what nonreligious individuals do not do in their lives relative to religion and religious individuals, rather than on what they do without religion (Lee 2015, 54). Such approaches paint nonreligion as a residual category devoid of anything meaningful or substantial, thus failing to consider what nonreligion "brings to the table' (Lee 2015, 61).[54]

Moreover, what exists in much of the literature on nonreligion is a fascination and preoccupation with atheism, and to some extent agnosticism (Cragun 2016; Lee 2015; Brown 2017). Despite atheists representing a rather small portion of the global population there is a disproportionate amount of literature devoted to this very specific group of individuals (Lee 2015, 62; Woodhead 2016; Thiessen and Wilkins-Laflamme 2020; Cragun 2016;). Nonreligion, however, entails much more nuance than just atheism, which much of this literature fails to capture

[54] These are more commonly referred to as subtraction accounts or theories of nonreligion and the secular (Lee 2015, 50-51). Subtraction theories suggest that nonreligion and the secular are what remain when religion has been removed from something (Taylor 2007). Subtraction theories focus on what phenomena lack, rather than on what they possess.

(Beaman 2017a; Lee 2015; Quack 2014; Thiessen 2015; Quack et al. 2020; Steele 2020).[55] Put more simply, atheism often occupies a position at the top of the nonreligion hierarchy.[56]

In contrast to the catchall or placeholder approach to nonreligion, there exists a growing body of literature that seeks to explore nonreligion as a social phenomenon characterized by more than the mere rejection or absence of religion (Cotter 2020, 56). This scholarship argues that nonreligion is a diverse phenomenon and that it is no longer sufficient to speak of nonreligion as primarily deficit in nature—nonreligion has *positive* content (Manning 2015; Quack et al. 2020; Smith and Halligan 2021; Beaman 2017a; Beyer 2015, 2021). As Christel Manning points out, nonreligious people have their own substantial and meaningful values, practices, and beliefs (2015, 188). Petra Klug (2017) similarly argues that rejection and the absence of religion are but only a few ways in which nonreligion manifests. This literature attempts "to give substance" to the category of nonreligion (Cotter 2020, 56). Callum Brown, for example, defines nonreligion (or atheism) as a worldview in which individuals "live their lives as if there is no god", but nuances this definition later in his work by highlighting the positive and substantial attributes of nonreligion (2017, 1). Brown's framing of nonreligion is demonstrative of how more recent literature first draws attention to what nonreligion lacks, but then focuses more concretely on what is meaningful about it as a social phenomenon.

Included in this emerging body of scholarship are relational or substantial theories of nonreligion (Cotter 2020). Johannes Quack (2014,), Quack et al. (2020), and Lois Lee (2015) have all proposed relational theories of nonreligion intended to more carefully explore the various ways in which nonreligion manifests and differs from religion. Relational approaches to nonreligion attempt to distinguish nonreligion from the broader literature concerning religion and "not religion", or what is more commonly referred to as the "secular" (Lee 2015). Nonreligion does not

[55] The failing to capture more than just atheism in studies of nonreligion is often the result of research design. Many of these studies employ the use of methodologies specifically designed to only measure/capture atheism. In other words, this literature uses data that addresses questions about belief in God or other supernatural beings. Other studies conducted by those outside the field of religious studies, or the social sciences may poorly delimit their object of study and thus focus on atheism because of unfamiliarity with debates within the literature. Regardless, the literature that does exist that focuses on atheism often fails to capture the varieties of atheism that exist in contemporary. See, for example, Ecklund and Johnson (2021) for an analysis of the varieties of atheism in science. There is no conclusive answer as to why there are so many studies that intentionally focus on atheism, other than that the term is commonplace within the general public in Western society (Lee 2014).

[56] By this I mean that atheism still features in studies of nonreligion over other types of nonreligion. Other constructions of nonreligion are not always given the same primacy or conceptual accuracy as atheism in more recent scholarly literature.

exclusively refer to all phenomena that are themselves "not religious." Thus, nonreligion is not to be used interchangeably with the word "secular" (Quack 2014, 445). Relational approaches to nonreligion posit that nonreligious phenomena are in some way still *related* to religious phenomena, whether through, for example, instances of rejection, adoption, hostility, or indifference to religion (Quack et al. 2020). Lois Lee makes this clear, defining nonreligion as "a phenomenon understood in contradistinction to religion" (2015, 32). Nonreligion, in this light, refers to phenomena that are related to, but distinct from, religion (Lee 2015, 32). Moreover, Johannes Quack argues that:

> "Nonreligion" is not to be understood as something that has a thing-like existence or as something that has clear definitions with primary and secondary features; instead, it should be used to denote the various ways that relationships between a religious field and positions considered to be on the outside are established. (2014, 448)

As a relational concept that is dependent on religion, what nonreligion entails is entirely context dependent (Cragun 2016). How nonreligion is theorized and conceptualized depends precisely on how religion is conceptualized. What is therefore understood as nonreligion in one social or geographic context may not be so in another (Quack 2014).

Nonreligion as a relational concept thus nuances the binary approach to religion and "not religion" that is often found in studies of religion and nonreligion. Relational approaches to nonreligion draw attention to the relationships nonreligious phenomena often have with religion throughout a variety of social and geographic contexts (Cragun 2016; Lee 2015; Quack 2014).[57] Relational theories of nonreligion seek to more carefully consider the complex ways in which constructions of religion and nonreligion are related and intertwined with one another in contemporary society. Such theories are vital to (1) establishing a framework for understanding the social construction of nonreligion; and (2) giving nonreligion substance. By more fully exploring the ways in which religion and nonreligion are related, one is then made aware of the fact that, as a social phenomenon, nonreligion is far from homogenous (Quack et al. 2020). There are multiple ways in which nonreligious phenomena can be distinguished from religion. Any study

[57] Some scholars, however, argue that relational approaches and the study of nonreligion actually limit inquiry into "that which is not religious." Zuckerman et al. (2016) suggest that nonreligion be supplemented by the term "secularity". They suggest that "secularity" provides for a broader exploration of nonreligion and nonreligious phenomena by looking at both "areligious" phenomena (i.e., phenomena that are not related to religion) and "nonreligious" phenomena (i.e., phenomena related to religion) (2016, 25). Zuckerman et al. (2016) argue that a focus exclusively on phenomena that are related to religion limits what scholars might recognize as nonreligious.

of nonreligion must therefore consider the diverse nature of this social phenomenon (Thiessen 2015; Zuckerman et al. 2016; Voas and McAndrew 2012; Quack et al. 2020; Hassal and Bushfield 2014; Block 2016). In the analysis that follows, I use nonreligion as a relational concept. I expand on my use of nonreligion in the discussion of my methodology found in Chapter Two.

Who are the Nonreligious?

Like nonreligion, there is great diversity in what is meant when people identify as nonreligious (Thiessen and Wilkins-Laflamme 2020; Wilkins-Laflamme 2022; Quack et al. 2020; Zuckerman et al. 2016). *Who* constitutes the nonreligious and what nonreligious beliefs and practices include are as diverse as the meanings attributed to nonreligion itself. As Jesse Smith and Ryan Cragun point out, "the category 'nonreligious' is broad and inclusive of a diverse, even divergent, array of individuals with respect to beliefs and behaviors" (2019, 322; see also Brown 2017; Manning 2015; Marks 2017; Block 2016; Schmidt 2016; Baker and Smith 2015).

Demographically, the nonreligious have traditionally been overrepresented by people of certain socioeconomic groups. In many Western countries, particularly Canada and the United States, the nonreligious have been, and continue to be, predominantly male;[58] less likely to have married; less likely to have children;[59] more highly educated; more financially secure; and more likely to be politically liberal (Thiessen and Wilkins-Laflamme 2020, 15; Smith and Cragun 2019; Campbell 1971; Zuckerman et al. 2016; Zuckerman 2012; Baker and Smith 2015; Thiessen 2015; Marks 2017; Block 2016). The nonreligious are also less likely to be foreign born (Thiessen and

[58] Thiessen and Wilkins-Laflamme point out that "religious nones are more likely to be male when compared to those affiliated with a religion, representing 54% of nones in the United States and 57% in Canada" (2020, 15). Men may overrepresent the nonreligious because of the negative social consequences many women face when they identify as nonreligious. Women are more likely to be discriminated against than men when they adopt a public nonreligious identity, thus often assume more "modest" nonreligious descriptors such as "spiritual but not religious" (Edgell et al. 2017). In short, women assume a much larger "social risk" when identifying as nonreligious than men—especially in the United State—and face the most difficulty by way of family and societal opposition when becoming nonreligious (Brown 2017, 3). This draws attention to the fact that that an overrepresentation of men among the nonreligious does not necessarily entail that men are more nonreligious than women. As Beyer et al. argue: "women may not simply be straightforwardly 'more religious' and/ or 'more spiritual' than men; rather it appears that it is more accurate the say that women tend to be less non-religious than men; or at least women in this population are more likely to express their lesser to marginal to non-existent religiosity— with the exception of those who are explicit atheists— in more spiritual terms, in terms that they do not understand as religious but which still fall within the semantic and experiential range of what they consider religious" (2019, 50).

[59] "Traditional family structures, taught and valued by most organized religious groups, […] seem to be less present among religious nones" (Thiessen and Wilkins-Laflamme 2020, 17).

Wilkins-Laflamme 2020, 15).[60] Those who identify as nonreligious have historically belonged to a rather distinct portion of the overall population—the middle-to-upper classes of society (Marks 2017; Block 2016).

Recent research, however, challenges this demographically homogenous portrayal of the nonreligious. Studies now reveal that the nonreligious are becoming *less* demographically distinct, particularly when it comes to age and the highest level of education an individual has completed (Smith and Cragun 2019, 323). In the United States, for example, as the nonreligious start to represent a larger portion of the population they are "becoming less distinct from the rest of the population" (Smith and Cragun 2019, 323). Similarly, in Canada, Joel Thiessen and Sarah Wilkins-Laflamme point out that "almost as many religious nones are university educated, live in rural settings, or are visible minorities as those who affiliate with religion" (2020, 17).[61] Studies that more carefully explore who constitutes the nonreligious have therefore drawn attention to the fact that the nonreligious are not necessarily a demographically distinct and homogenous group (Wilkins-Laflamme 2022).[62]

Just as studies are beginning to reveal the growing demographic diversity of the nonreligious, so too have studies unearthed the vast array of beliefs and practices that characterize those who identify as nonreligious. The nonreligious have generally been understood as those who: (1) do not identify as religious (i.e., individuals who do not claim to have a religious identity); and (2) as lacking any religious and/or spiritual beliefs (Smith and Cragun 2019; Marks 2017; Block 2016; Brown 2017). Being nonreligious has largely been understood as referring to the "state of being" that remains after one has distanced themselves from religion (Taylor 2007).[63] This "state of being" is perceived by many as lacking substantial meaning. Unsurprisingly, the nonreligious have traditionally been understood as people who lack *substantial* and *meaningful* beliefs and practices (Brown 2017; Manning 2015; Beyer 2015, 2021; Lee 2015; Brown 2017; Taylor 2007).

[60] In Canada, nones are more likely to be born outside the country than in the United States. 18% of nonreligious individuals were born outside of Canada, compared to 12% of nonreligious individuals in the United States (Thiessen and Wilkins-Laflamme 2020, 15).
[61] In Canada, 15% of religiously affiliated people live in rural settings, compared to 12% of nonreligious individuals (Thiessen and Wilkins-Laflamme 2020, 17).
[62] Tina Block (2016) and Lynne Marks (2017) also draw attention to the heterogeneity of the nonreligious by highlighting that those who identify as nonreligious in Western Canada and the United States (primarily Washington and British Columbia) differ from their Eastern counterparts.
[63] Approaches to the nonreligious that portray it as the state of being that exists when one removes religion from their lives are understood as "subtraction theories" (Taylor 2007).

As Brown points out, much of the research on the nonreligious is "encased in negativity — about loss of religion, collapsing church and moral deterioration — and fails to conceptualize the positive story of freedom from religion fostering a new comprehensive moral outlook and a blossoming of the autonomous self" (2017, 5). Nonreligion is "bereft of much narrative substance" (Brown 2017, 71).

Recent research, however, reveals that the nonreligious do in fact live lives as meaningful as religious individuals (Stacey 2021). The nonreligious have a diverse and rich collection of meaningful and substantial beliefs and practices (Manning 2015; Brown 2017; Beyer 2015, 2021; Blanes and Oustinova-Stjepanovic 2017; Epstein 2009; Schnell and Keenan 2011; Wilkins-Laflamme 2022). Brown, for example, notes that the nonreligious have a fulfilling moral outlook, one that is "distinct from a religious one" and characterized by its own set of positive beliefs, emotions, and practices (2017, 2, 184). Similarly, Christel Manning observes that the nonreligious have their own substantial and meaningful beliefs and practices (2015, 188). Such research points to the fact that it is no longer sufficient to characterize the nonreligious as characteristically lacking something. The absence of religion from one's life does not necessarily entail a life devoid of meaning and value (Brown 2017; Beyer 2015; Smith and Halligan 2021; Epstein 2009; Lee 2015; Quack et al. 2020).

More careful and detailed analyses of the substantial and meaningful beliefs and practices of the nonreligious have also highlighted that not all nonreligious individuals necessarily identify as having no religion (Beyer et al. 2016, 2019). Historically, those individuals who identified as nonreligious were assumed to not be affiliated with religion or hold any religious beliefs (Smith and Cragun 2019). While *most* individuals who identify as nonreligious also identify as having no religion, it is important to point out that not *all* nonreligious individuals identify as having no religion. As Beyer et al. point out, the nonreligious "include a fair number of people who are actually religious or spiritual" (2019, 39).[64] Joel Thiessen similarly observes that the nonreligious "are not a homogeneous secular group. Some believe in God, in miracles, or in the afterlife, and they attend religious services, pray, or believe that religion is important" (2015, 94-95).[65]

[64] In Beyer et al.'s study (2019, 39) 43 of 125 individuals (34%) categorized as "nonreligious" identified with a religious tradition.

[65] It is important to note that some beliefs and practices of nonreligious are in fact religious/spiritual in nature. Nonreligious beliefs and practices do not necessarily have to be free of religion/spirituality (Manning 2015).

Surprisingly, in Canada and the United States, almost a third of nonreligious individuals felt as though their religious beliefs were, to some degree, important to how they lived their lives (Thiessen and Wilkins-Laflamme 2020, 65).[66] Recent research into the nonreligious thus reveals that not all nonreligious individuals are straightforwardly without religion. In this light, the "nonreligious" might generally be better understood as referring to those who construct an identity that is "other" to religion, rather than necessarily referring to those who identify as having no religious affiliation.

In summary, the nonreligious are a complex and heterogenous social group. While it was assumed that the nonreligious belonged to a specific demographic, research is beginning to draw attention to the diversity that characterizes this group of people. It is no longer sufficient to think of the nonreligious as being white, educated men. The nonreligious are found throughout all social groups and are becoming less distinct from the general population. Moreover, the nonreligious are not necessarily individuals who no longer affiliate with, or practice religion. There are nonreligious individuals who continue to engage with religion and believe in gods, spirits, and other aspects of the supernatural. Further research into the lives of the nonreligious will continue to reveal the complexities that characterize this growing group of people.

Nonreligion and its Methodological Difficulties

Since recent studies of nonreligion and the nonreligious reveal that such phenomena are far from homogenous, methods normally used to explore these phenomena are no longer adequate. Debates have arisen concerning the need to reconsider how to best measure "that which is not religious" (Wallis 2014; Cragun et al. 2015; Clarke and Macdonald 2017). Surveys that rely on variables traditionally used to measure religiosity have been ineffective in measuring nonreligion and its diversity, thus alternatives are required (Wallis 2014; Cragun et al. 2015; Lee 2015).[67] As Cragun et al. point out, no current measures of personal religiousness and spirituality have been capable of "*reliably* and *validly* assessing individuals who identify as nonreligious and nonspiritual" (2015, 49; emphasis added). Surveys that rely on traditional measures of religiosity to measure

[66] "In the 2010 General Society Survey, an estimated 67% of American nones indicated that they do not try to carry their beliefs into other aspects of their lives. Similarly, in Canada for the same year an estimated 67% of nones declared that religious or spiritual beliefs were not very or not at all important to how they live their lives" (Thiessen and Wilkins-Laflamme 2020, 65).

[67] Lee argues that traditional, large-scale surveys used to measure religiosity are "not designed for the possibility that 'secular' experiences and identities might be heterogenous" (2015, 51).

nonreligiosity ask respondents to indicate to what degree they agree with statements, for example, such as "I believe in a God who watches over me". This statement, and others like it, do not allow researchers to discern whether participants who strongly disagree with the question (1) believe in a non-watchful god; or (2) do not believe in any god (Cragun et al. 2015, 37). Questions such as these force nonreligious individuals to "*implicitly recognize* the existence of a god" and therefore reveal nothing of the person's *actual* beliefs and practices concerning God (Cragun et al. 2015, 37).[68]

To better measure nonreligiosity, researchers have attempted to reformulate surveys to better measure the beliefs and practices of the nonreligious by using concepts and questions not based on variables traditionally used to measure religion. These surveys attempt to avoid using "tradition" specific questions (Cragun et al. 2015). One such survey is the Nonreligious-Nonspirituality Scale (NRNSS) developed by Ryan Cragun, Joseph Hammer, and Michael Nielsen. The NRNSS more accurately measures nonreligiosity by considering the multi-dimensional nature of (non)religiosity (2015, 38).[69] Other surveys that more accurately measure (non)religious identity include that developed by Peter Beyer, Alyshea Cummins, and Scott Craig (2019). Unlike the NRNSS, the survey created by Beyer et al. attempts to more accurately capture religious *and* nonreligious identities. In this light, Beyer et al.'s survey aims to measure religion differently and in a more "neutral way" that is "less susceptible to taking certain forms of religion as the presumptive standards for understanding all possible religious forms and religious identities" (2019, 34).[70] Beyer et al.'s survey provides a way to explore the content of nonreligious identities more carefully (2019, 34-43). Developments in survey design have therefore helped sociologists and others interested in the study of nonreligion to better measure the varying ways and degrees in which nonreligion manifests at the individual level.

Despite the development in surveys, however, it is important to point out that surveys intended to better measure nonreligiosity still often fall short in capturing many of the nuances that define a person's nonreligiosity (Wallis 2014). Surveys and censuses often insufficiently capture

[68] Questions that force respondents to accept certain assumptions that may not be true to survey respondents are referred to as "one-and-a-half barreled questions" (Cragun et al. 2015, 37).
[69] Dimensions of (non)religiosity include, but are not limited to: belief, experience, morality, and practice (Cragun et al. 2015, 39).
[70] Beyer et al.'s survey was accurate in measuring the religious identity of those who "did religion differently" (2019, 34, 49).

"what respondents actually mean when they choose to identify in a particular way" (Wallis 2014, 71). An individual's choice to choose "no religion" or "Christian" on a survey reveals nothing of that person's "beliefs, belonging and behaviours" (Wallis 2014, 71).[71] Properly designed quantitative research methods are certainly useful for measuring nonreligion, but to better measure nonreligion and more carefully consider the meaningful beliefs and practices that define a person's nonreligiosity scholars propose that surveys and censuses be used in conjunction with qualitative research methods (Wilkins-Laflamme 2022). Simeon Wallis, for example, suggests that qualitative "bottom-up" research methods, such as interviews, be used to more concretely discern one's meaningful nonreligious beliefs and practices (2014, 72). Similarly, Ruy Llera Blanes and Galina Outstinova-Stjpanovic call for the use of ethnographic research methods to better understand the "cultural and subjective" forces that are at play when people distance themselves from religion—things surveys often fail to capture (2017, 6).[72]

Researchers have also begun to employ methods similar to that of "lived religion" to better explore an individual's nonreligiosity (Beyer 2015; Caldwell-Harris et al. 2011; Thiessen 2015; Beaman 2017a). While it is important to analyze how atheism (and nonreligion) operates at the "social, normative, or institutional level", it is equally important to analyze how atheism operates at the level of the individual (Beyer 2015, 137).[73] In short, concepts like that of "lived atheism" can be used to explore how nonreligion (or atheism, agnosticism, etc.) are practiced and experienced by individuals in their daily lives. "Lived atheism" thus reveals the nuances that characterize nonreligion while also highlighting how people derive a sense of "meaning" in their lives without religion (Trzebiatowska 2018; Zuckerman et al. 2016; Schnell and Keenan 2011; Thiessen 2015).

[71] This is not to say that all surveys are unable to reveal something of a person's nonreligious beliefs and practices. As pointed out, the NRNSS and Beyer et al.'s (2019) survey has demonstrated that they are capable of delving deeper into what individuals might mean when they select "no religion" compared to other surveys and censuses that rely on traditional measures of religiosity.

[72] Blanes and Outstinova-Stjpanovic (2017) argue that ethnographic approaches to studying nonreligion and nonreligious people help reveal that nonreligion and being nonreligious differs across historical and cultural contexts. Concerning the nonreligious, Sarah Wilkins-Laflamme also notes that "more research is needed – both quantitative, in terms of larger and even longitudinal surveys as well as big data analytics, and qualitative, in terms of interviews, focus groups, cultural content analysis and observation – to further avenues of knowledge of this growing phenomenon" (2022, 20).

[73] In his analysis of how individuals construct their atheism, Beyer (2015, 149) suggests that "institutional or systemic atheism" is virtually absent from how individual's construct atheism as it is lived in their daily lives. Nonreligious identities are often constructed without reference to institutional forms of nonreligion (Beyer 2015).

Nonreligion and the nonreligious are complex social phenomena. To explore such complex phenomena, multiple research methods must be used. Surveys and censuses are useful in quickly measuring whether an individual identifies with a specific religion or "no religion." But, surveys and censuses alone cannot capture the many subtleties that define a person's nonreligion. To more fully capture this diversity and to more accurately consider the place of nonreligion in contemporary society and what people mean when they identify as nonreligious, scholars must employ the use of both quantitative *and* qualitative research methods (Wallis 2014; Blanes and Outstinova-Stjpanovic 2017; Brown 2017; Thiessen 2015). It is only through more carefully designed studies that what nonreligion entails and who the nonreligious are will be revealed.

Secularization Theory

Academic debates about nonreligion draw into conversation questions about the secular and secularization theory. In fact, much of the existing literature on nonreligion attempts to distinguish itself from the secular and processes of secularization. While nonreligion and secularization are related, they are distinct phenomena (Quack 2014). As noted above, the study of nonreligion is a relatively new endeavor. The study of the secular and secularization, however, have long been objects of study. The academic and sociological study of religion have been preoccupied with debates about the secular and secularization theory (Brewer 2007, 8). Notions of secularization are central to the theories of religion proposed in the early works of Marx, Weber, and Durkheim. Scholars have long hypothesized that in an industrialized and "modern", world, religion would become increasingly marginalized (Casanova 1994; Berger 1967).[74] Weber, for example, proposed that religion would cease to be an "effective force in society", thus resulting in the "disenchantment" of the world (Davie 2007a, 28-29). Similarly, Durkheim noted that:

> If there is one truth that history teaches us beyond doubt, it is that religion tends to embrace a smaller and smaller sector of social life. Originally, it pervades everything; everything social is religious. The two words are synonymous. Then political, economic, scientific functions gradually free themselves from religious control, establish themselves separately and take on a more and more openly temporal character. God, if one may express the matter this way, was at first present in all human relations, but progressively withdraws from them; he abandons the world to men and their disputes […] This regression did not begin

[74] There are, of course, differences between notions of secularization proposed by Marx (and thus found in Marxist ideology) and those that came later by Weber, and Durkheim. For the purposes of this summary, it is sufficient to say that all focused on the changing (and declining) roll and place of religion in society (Davie 2007a, 27; Berger 1967; Spickard 2017).

> at some certain moment of history […] It is thus linked to the fundamental conditions of the development of societies, and this shows that there is a decreasing number of collective beliefs and sentiments which are both collective and strong enough to assume a religious character. (Durkheim as quoted in Giddens 1972, 245)

Despite its long history in the sociology of religion, the process of secularization and what it entails is, like the concepts of religion and nonreligion, a topic of great debate (Casanova 1994; Beyer 2006; Taylor 2007; Bruce 1996; Wilson 1998). There exists a wide variety of ways in which secularization is understood.

Peter Berger (1967), for example, famously understood secularization and conditions of secularity as being intertwined with and caused by processes of pluralization. For Berger (1967), religion would become increasingly unimportant because of the increased "pluralistic situation" that was to define modern society. Berger notes, for example, that "the pluralistic situation multiplies the number of plausibility structures competing with each other. Ipso facto, it relativizes their religious contents. More specifically, the religious contents are 'de-objectivated,' that is, deprived of their status as taken-for-granted, objective reality" (1967, 175). For Berger, processes of secularization result in a plurality of truths, which includes religions, used to explain the world in which we live. The more pluralistic society becomes, the less likely a given religion is capable of presenting itself as reality, or as a canopy used to explain human experience (Berger 1967, 173-174).[75]

Berger represents what are often labeled as classic, or hard approaches to secularization and secularity (Davie 2007a). While differences exist in hard approaches to secularization, these theories largely posit that religion would become increasingly unimportant in contemporary society because of modernization. Brian Wilson (1998), for example, proposed that religion would lose its social significance in contemporary modern society such that it was no longer needed for the operation of the "social system." Similarly, Steve Bruce (1996) hypothesized that religion would becoming increasingly unimportant because of increased individualism and rationality. In short, hard, or classic, theories of secularization propose a view of "modern" society in which God

[75] To Berger (1967, 178), secularization not only produced pluralism, but pluralism so too contributed to processes of secularization. It is also important to note here that Berger renounced his hypothesis concerning pluralization and its effects on religion in subsequent work. Nonetheless, his initial insights into secularization remain influential to sociologists of religion.

is left behind. To hard theorists of secularization, religion is largely incompatible with modernity (Sandberg 2014, 59; Taylor 2007).

In contrast to hard theories of secularization are soft theories. Soft theories generally assume that modernity and religion are not necessarily incompatible. While there exists a complicated relationship between modernity and religion, this relationship is not necessarily a negative one (Sandberg 2014, 60). Modernity need not imply the disappearance or marginalization of religion (Beyer 2006; Casanova 1994; Taylor 2007). Soft theories offer explanations as to how religion might "transform rather than disappear" in the modern world (Davie 2007a, 62). It is within this category of theories we perhaps see more nuance in discussions about the decline and/or change in religion in contemporary society.

Grave Davie, for example, proposes the notion of "vicarious religion" to challenge classic accounts of secularization. While she acknowledges declining religious affiliation in the United Kingdom, she notes that traditional accounts of secularization theory fail to adequately explore new ways of being religious. Thus, she proposes the idea of "vicarious religion", which she defines as:

> *the notion of religion performed by an active minority but on behalf of a much larger number, who (implicitly at least) not only understand, but, quite clearly, approve of what the minority is doing*" (2007b, 22; emphasis original).[76]

The idea of vicarious religion helps explain the continuing, and often central, role of churches in modern society, despite the ever-decreasing number of individuals who identify as religious (Davie 2007b, 24-25).

Abby Day's "believing in belonging" similarly pushes back against traditional accounts of secularization theory. Day (2011, 156) aims to explain the large number of individuals (primarily in the United Kingdom) who claim to be nonreligious, yet still identify as Christian. To do so, Day rethinks the very nature of belief, knocking it from its theological roots and instead reconceptualizing it as connected more to "personal values, trust and emotion" (2011, 44). Using

[76] Davie's vicarious religion emerged from her other theoretical approaches that challenged secularization theory, namely her idea of "believing without belonging" (2007b, 22). Believing without belonging is used to explain the continued vitality of religion in contemporary society as indicated by "less rigorous dimensions of religiousness (nominal membership and non-orthodox beliefs)" (Davie 2007a, 138). The concept was designed to challenge indicators of religiousness that relied on orthodox notions religious belief and practice (e.g., institutional life and commitment) (Davie 2007a, 138).

believing in belonging, Day (2011, 44) suggests that nonreligious people in the United Kingdom continue to identify as Christian because of their desire to belong in a particular culture represented by universal "personal values". Believing in belonging is therefore a performative act that creates identity and promotes a sense of "cultural homogeneity" (2011, 49). Day's approach thus challenges classic accounts of secularization by providing insight into why certain individuals continue to identify as religious on censuses, despite considering themselves nonreligious in other contexts.[77] Believing in belonging helps explain the continued presence of religion in various aspects of society, which traditional accounts of secularization fail to do.

Some scholars of nonreligion also push back against traditional, hard accounts of secularization theory. Quack, for example, notes that studies and theories of secularization can provide "a very rich and productive history of material and analytical distinctions" (2014, 443). Secularization theories are useful in distinguishing religious phenomena from phenomena that are straightforwardly not religious (Quack 2014, 443). But, secularization theories themselves are often plagued with definitional, theoretical, and analytical issues that blind researchers to the reality that exists in contemporary society when it comes to the variety of ways in which religion and nonreligion matter.

Lee argues that the broad conceptual net cast by traditional accounts of secularization renders everything other than religion as "fundamentally insubstantial", or lacking meaning (2015, 50). Hard approaches to secularization fail to capture the meaningful ways in which phenomena not defined by religion can be imagined. In addition, Beaman also argues that theories of secularization are "simplistic" and need to be complicated to better understand "the messy nature of individuals' lives" (2017a, 11). The critiques of these scholars point to the need for more nuanced ways of describing the place of religion and nonreligion in society. Traditional accounts of secularization are ill equipped to accurately describe phenomena that do not fit neatly into the categories of "religion" and "not religion". The focus of these theories exclusively on the decline of religion in society results in an inability to properly explore "the 'void' left by religion" and

[77] Day's "believing in belonging" is similar to the idea of "nominalist Christians" (Day 2011, 176).

account for "different kinds of nonreligion or modes of nonreligiosity" that exist in the world (Quack 2014, 444).[78]

Despite their issues with traditional theories secularization, Quack and Lee do not dismiss secularization theories entirely. In fact, both scholars insist secularization theories can tell us something useful about society. But, as Quack observes, nonreligion, as a *relational* concept,[79] can complement and add depth to theories and studies of secularization (2014, 441). Nonreligion adds depth to studies of secularization by allowing researchers to better reveal the positive aspects that define different modes of nonreligiosity.[80] In this light, the study of nonreligion, and by extension this thesis, aims to nuance the simplistic and one-dimensional account of society that traditional accounts of secularization provide (Beaman 2017a).

Other scholars have also contributed to more nuanced and complex understandings of secularization theory. Peter Beyer (2006) and José Casanova (1994), for example, articulate an understanding of secularization that focuses on the differentiation of religion from other social or function systems.[81] Casanova suggests that what often "passes for a single theory of secularization is actually made up of three different propositions: secularization as religious decline, secularization as differentiation, and secularization as privatization" (1994, 7). Scholars must take more seriously each of these propositions to fully evaluate the role of religion in contemporary society. In considering secularization as three distinct propositions, we are better able to explain the reemergence, or what Casanova calls the deprivatization of religion in the "modern world." It is through processes of deprivatization that "modern religion" abandons its place in the private

[78] Quack notes several other issues with secularization theory: "First, secularization theory has a problematic genealogy that reaches back to the nineteenth century, and contemporary accounts have a hard time unburdening themselves from outdated evolutionistic and modernistic ideas. Second, the terms secular, secularity, and secularism have problematic political connotations and implications […] Third, the popular and often simplistic debate between those who see religion as a vanishing or at least a declining entity in contrast to those who consider it to be merely transforming, re- emerging, or growing has made it difficult for more nuanced positions to elide this superficial either-or logic […] Fourth, there are so many different and partly contradictory understandings of terms like secular or secularity that debates often talk past one another [… and] Finally and most importantly, the focus on the question as to whether (the influence of) religion is declining has resulted in a blind spot for different kinds of nonreligion or modes of nonreligiosity" (2014, 443-444).

[79] See above for more on nonreligion as a relational concept.

[80] Beaman also seeks to rethink theories of secularization by focusing on, for example, "the commitment by some atheists to the notion of the 'spiritual' and the folding in of religious upbringing and nonreligious identities" (2017a, 11).

[81] Beyer's (2006) formulation of secularization allows us to see how religion is a relevant part of processes of globalization—something traditional accounts of secularization fail to acknowledge or reveal.

sphere and enters the "undifferentiated public sphere of civil society" (1994, 66). As a result, there are religions in the modern world that do not necessarily endanger "individual freedoms or modern differentiated structures" as classic constructions of secularization suggest (1994, 215). Religion need not be antithetical to modern developments and necessarily occupy a place on the fringes of society. Like the call by Quack and Lee to nuance traditional accounts of secularization, Casanova's rethinking of secularization allows sociologists to better explain the revitalization of religious groups that traditional accounts of secularization had deemed as irrelevant (1994, 5). This rethinking better helps scholars understand the relationship between religion and nonreligion in contemporary society.

The purpose of the above discussion about secularization is twofold. First, it is intended to draw attention to the importance of secularization theory to the study of religion and nonreligion. Questions of secularization and the differentiation of religion in the modern world from other social systems have long occupied the thoughts of scholars and sociologists of religion and nonreligion (Beyer 2006, 299; Berger 1967; Quack et al. 2020). Secularization and its various iterations have thus been central to how religion and nonreligion are theorized (Brown 2017; Cotter 2020). Second, and perhaps more importantly, despite the definitional ambiguities surrounding secularization and what secularization theories entail, secularization remains a useful analytical concept and can help one think about nonreligion (Lee 2015; Quack 2014; Beckford 2003; Beyer 2006). While there are valid critiques of secularization, the contested nature of the term should encourage scholars to be more critical in their use of the concept and its implications for religion and nonreligion. Rather than abandoning the term, researchers must be clearer in how the concept and theory is applied in their research (Altglas and Wood 2018; Casanova 1994). As Beckford points out, when properly defined, secularization has an "important heuristic role to play in social theorizing about religion" and, subsequently, nonreligion (2003, 33).

Religion and Law

One of the most important developments in the contemporary sociology of religion and general study of religion is thinking about the law's construction and regulation of religion (Richardson 2015; Sullivan 1994; Hurd 2015). Law is increasingly involved in what is referred to as the "judicialization of religion": the process through which courts, rather than religious bodies and institutions, decide on major religious matters (Richardson 2015; Mayrl 2018; Koenig 2015). Law

has to some degree commandeered, or taken some control of, religion (Berger 2015). Moreover, given the increasing visibility of nonreligion in contemporary society, some too now argue that nonreligion is constructed and regulated by the law (McAdam 2018; Steele 2020). To properly account for the place and role of religion and nonreligion in contemporary society, one must therefore think seriously about law and how it shapes religion (Beaman 2008).

Just like religion, law too has long been the object of sociological study (Breskaya et al. 2018; Sandberg 2014). Despite religion and law capturing the gaze of scholars and sociologists of religion, however, both are frequently treated as distinct and isolated social phenomena (Sullivan 1994; Sandberg 2014; Berger 2015; Moon 2008). In short, the sociology of religion rarely looks to the sociology of law to better understand the complex relationship between law and society, and the sociology of law seldom consults the sociology of religion to better understand the place and role of religion in society (Sullivan 1994; Sandberg 2014). What has emerged in sociological literature concerning religion *and* law are significant blind spots that fail to accurately explore the relationship between religion and law in contemporary society. What results are studies that often flatten the nuances of religion at the expense of a more social, or complex, understanding of law (Sullivan 2005, 1994; Moon 2008; Edge and Harvey 2000). While recognizing the merit and usefulness in the sociology of religion and the sociology of law occupying their own intellectual spaces,[82] there is need for both sub-disciplines to adopt a more interdisciplinary approach when attempting to explore the relationship that exists between religion and law (Sullivan 1994).

Legal expertise can help explain and provide the technical knowledge of laws concerning religion, while the sociology of religion can help contextualize the way law navigates questions about religion (Sandberg 2014, 220). As Russell Sandberg points out, the law and religion are far from distinct and unrelated social spheres (2014, 9). The structures and processes of law have considerable influence on the organizing and governance of religious communities (Sandberg 2014). On one hand, the legal notions of "justice, order, dignity, atonement, restitution, [and] responsibility […] pervade the theological doctrines of countless religious traditions" (Witte 2015, 41). On the other hand, the way the law navigates religion influences not only the way in which people perceive religion, but also the way in which the everyday religious person understands and

[82] As Sandberg (2014) points out, in allowing the sociology of religion and the sociology of law to exist as distinct intellectual pursuits, these sub-disciplines have been able to develop the necessary methodologies required to more fully explore their respective objects of study.

pursues his or her religious freedom rights (Fokas 2018, 27; Fokas 2017). To understand the place and role of religion more accurately in contemporary society, the law and its radiating effects must be understood in conjunction with, not distinct from, religion.

Similarly, both Benjamin Berger (2015) and Winnifred Sullivan (2005; 1994) have called for more careful attention to be paid to how the law constructs the category of religion. To these scholars, religion is constructed by law according to various social and cultural markers. Berger argues, for example, that Canadian law renders religion according to a specific set of constitutional "cultural commitments" (2015, 66; see also Laborde 2017). The law does not sit on a pedestal above other social phenomena acting as a custodian of social order separated from the realms of the social and cultural (Berger 2015, 17). The law is itself a "cultural form – that is, an interpretive horizon composed of sets of commitments, practices, and categories of thought, that both frames experience and is experienced as such" (2015, 17). [83]

Viewed as a form of culture, law constructs social phenomena according to its underlying normative assumptions and commitments. In the Canadian context the "cultural commitments of law results in legal framing of religion as (1) individualistic; (2) as a matter of autonomy and choice; and (3) as characteristically private (Berger 2015, 67-102). Sullivan similarly argues that religion, as understood within an American legal context, is "largely, although not exclusively, indebted, theologically and phenomenologically, to *protestant* reflection and *culture*" (2005, 7-8). By protestant, Sullivan refers to a specific set of cultural commitments: political ideas and cultural practices that originate in Europe following the Reformation (2005, 7-8). Law thus shapes and regulates religion according to a specific set of social and cultural commitments. The social and cultural context within which law finds itself necessarily impacts the way in which religion is rendered (Berger 2015; Sullivan 1994; Hurd 2015; Ahmed 2015). Careful analysis, one that more fully explores the cultural and social aspects of law, is therefore needed to fully understand the relationship between religion and law in contemporary society (Berger 2015, 193).

Since the law narrowly defines religion according to a specific set of cultural commitments, religion as presented in law that falls beyond the boundaries of these social and cultural commitments is often not legally protected as religion (Berger 2015; Hurd 2015). Courts have

[83] In framing law as a cultural form, Berger "seeks to knock law from its managerial or curatorial perch, from where it administers and assesses cultural claims" (2015, 17).

therefore become involved in the delimiting of legally protected, or true, religion and false religion (Sullivan 2005; Richardson 2015; Mayrl 2018). Since the law's articulation of religion often fails to recognize the variety of ways that religion is *practiced* in the everyday, only a specific type or form of religion is protected by the scope of freedom of religion and other such guarantees. As a result, religious freedom clauses often fail to protect the religious beliefs and practices of a large percentage of individuals (Sullivan 2005; Hurd 2015).

In this light, the law's obsession with an essentialized understanding of religion limits its ability to adequately protect the diversity that religion necessarily entails (Sullivan 2015, 155; Beaman 2008, 2020). Instead of protecting a wide range of religious beliefs and practices, religious freedom clauses protect only those practices deemed as acceptable by the state (Hurd 2015; Mahmood 2016; Beaman 2008, 2020; Richardson 2015). Religious freedom clauses therefore often serve to promote *state* interests, not the interests of the individual (Hurd 2015; Mahmood 2016). What results is the need for minority religious and nonreligious groups, and others whose religion is not protected by law, to reshape their (non)religious identities and practices to conform to what legally qualifies as religion and is protected as such (Beaman 2008; Sullivan 2005). By ignoring the diversity that (non)religion entails, religious freedom clauses may not be useful in protecting the very populations they were designed to protect.

There has thus emerged a bourgeoning body of literature that explores the impact law's conceptualization of religion has on religious freedom (Hurd 2015; Breskaya et al. 2018; Mahmood 2016; Sullivan 2015; Moon 2008; Ahmed 2015). While religious freedom guarantees protect religion to some degree, debates remain as to whether other human rights guarantees, like that of equality, are better suited to more fully protect religious belief and practice in contemporary society (Ryder 2008). Despite such arguments, most cases concerning religion that are brought before courts still rely on religious freedom clauses when addressing matters related to religious discrimination (Breskaya et al. 2018; Richardson 2015). As a result, there is a growing need to carefully consider the ways in which religious freedom clauses create feelings of inclusion and exclusion in an ever-increasing diverse society (Kislowicz 2015).

The imagining of religion in law and the inability to legally fully protect the diversity of religion necessarily have implications for nonreligion. The implications for nonreligion, however, remain largely speculative given the lack of empirical studies into the intersection of nonreligion

and law. While there exists literature on nonreligion and law, such literature is considerably lacking compared to the body of research concerning religion and law (Årsheim 2018). There exist very few studies that explore nonreligion and law (see for example, McAdam 2018; Wexler 2019; Beaman 2020; Strumos 2022; Nixon 2020; Zwilling and Årsheim 2022) and far fewer studies that explore the construction of nonreligion in law (see Dabby 2021; Steele 2020). Scholarship that is available that addresses nonreligion and law primarily focuses on the discrimination of atheists in the public sphere (Edgell et al. 2016; Beaman et al. 2018; Cragun et al. 2012; McAdam 2018; Quillen 2018; Amarnath and Bird 2016). Much like scholarship on nonreligion, this overemphasis on a specific type of nonreligion fails to capture the relationship that exists between the law and other variations of nonreligion.

What scholarship about nonreligion and law does reveal, however, is that just as the law regulates religion, law may also be involved in the regulating of nonreligion (Beaman 2020; McAdam 2018; Zwilling and Årsheim 2022; Steele 2020). The law has, along with other political and religious powers, encouraged and even forced the nonreligious to "hide the true nature of their beliefs, and risk discrimination, persecution, punishment or even death for manifesting them" (McAdam 2018, 50). The law often renders religion as superior to nonreligion, affording more legal protection to religion than nonreligion (McAdam 2018). Just as the law regulates religion, the law also regulates nonreligion in ways that have profound effects on individuals (Dabby 2021; Beaman 2020; McAdam 2018).

In summary, law has considerable control over what is understood as religion, and perhaps nonreligion, in society. The law regulates and shapes the category of religion in profound ways (Smart 1989; Sullivan 1994; Beaman 2008). When exploring the relationship between religion and law, it is therefore equally important to explore the power it exerts by what it includes and excludes from its framing of religion (Smart 1989). Such analysis is needed to ensure individuals can live well together in an increasingly diverse society and to ensure both the religious and nonreligious are afforded full and equal participation in society (Beaman 2020; Beaman and Steele 2021; Kislowicz 2015).

Conclusion

The above discussion was intended to draw attention to some of the key themes and debates within the sociology of religion and how such debates are critical to the academic study of nonreligion.

In doing so, this literature review drew attention to questions concerning the various nature of religion and nonreligion from a sociological perspective; debates about theories of secularization; the intersection of law and religion; and a brief overview of the very understudied field of nonreligion and law. The above discussion is by no means a comprehensive overview of all research available on religion and nonreligion. It was crafted to help readers better understand the theoretical and methodological lenses that inform the analysis to come. In the proceeding chapter, Chapter Two, I draw on this literature more concretely to establish my own theoretical and methodological position.

The study of nonreligion is still in its infancy. Nonreligion has yet to receive the same degree of scholarly attention as the study of religion. While the literature currently available about the study of nonreligion certainly tells us something useful about nonreligion, there are significant gaps that remain pertaining to what nonreligion entails and who the nonreligious are and what these people believe, practice, and value. This is particularly so regarding literature about the intersection of nonreligion and law. There is research that explores this intersection, but such research is characterized by a fixation on atheists and the alleged violations of their freedom of religion (see McAdam 2018; Beaman 2015). Very little research explores nonreligion as an analytical concept in law, or how nonreligion, like religion, is constructed in (or by) law. It is my hope that the findings of this thesis contribute something original and useful to this small, but growing body of literature.

Chapter Two: Methodology

> *He who loves practice without theory is like the sailor who boards ship without a rudder and compass and never knows where he may cast.* – Leonardo da Vinci

All experiments and studies are guided by both theory and method. To conduct research without theory is to lack the ability to interpret one's data.[84] And, to use the words of Albert Einstein, to engage with theory without method is merely "intellectual play."[85] This thesis and the research presented within it are no different than other sociological experiments: it employs the use of both theory and method. What follows in this chapter is a discussion of the theory and method used to conduct my research.[86]

To begin, I must mention two things. First, as discussed in the introduction chapter, I remind readers that this thesis is a *socio-legal* analysis of three Supreme Court of Canada cases. While the jurisprudence of all three cases is interesting in and of itself, the purpose of my analysis is to draw attention to the ways in which nonreligion is imagined in the legal discourse about mercy killings and end of life care (*Latimer*), sex work (*Bedford*), and LGBTQ+ rights (*Trinity Western*). I emphasize the social in these cases, not law. I am interested in how the voices of those involved in *Latimer, Bedford,* and *Trinity Western* "animate" the cases and construct the social world (Di Donato 2020, 287). I thus employ the use of a sociological, not a legal, methodology. I am therefore not confined to the tools, tests, and standards of a traditional legal analysis, which often fail to reveal the contours that characterize social life and society in the context of law (Smart 1989, 2009; Di Donato 2020; Cammiss 2013).[87] A sociological methodology allows for more analytical flexibility and better reveals how the social features in law (Sullivan 1994; Altglas and Wood 2018).

Second, my analysis of nonreligion is confined to law. I consider how nonreligion is conceptualized in law in the legal decisions about mercy killings, sex work, and LGBTQ+ rights. Nonreligion is constructed very differently in medical, educational, or scientific discourses about

[84] There are, of course, exceptions to every rule. See Massimiliano Tarozzi's (2020) work on grounded theory. See also Glaser and Strauss (2017).
[85] There are times when intellectual play is needed and warranted. Intellectual play often results in the development of theories. But, to test theories methods are required.
[86] Methodology here refers to the combination of theory and method (see Stausberg and Engler 2011).
[87] Steven Cammiss argues that "to make a successful legal claim, one must fit one's story into the language of law […] the application of legal rules works to silence those who do not speak the language of law" (2013, 222-223)

the same social issues (Quack 2014; Quack et al. 2020).[88] My intent here is not to erase, or ignore, the nuances that exist across contexts when it comes to thinking about nonreligion. Rather, to explore nonreligion across a variety of contexts and social institutions is an incredibly large undertaking and one beyond the limits of this thesis. This thesis and its scope are therefore restricted to the social institution that interests me most: law. This is not to suggest, however, that the cases and my analysis do not speak to contexts other than law. As will become clear, how nonreligion is constructed in *Latimer, Bedford,* and *Trinity Western* and the positive content such constructions entail in some way resemble how nonreligion is imagined in other social settings.

With these caveats in mind, I now wish to turn to a discussion of the theoretical and methodological underpinnings of my research. In this chapter, I first introduce readers to the theoretical presuppositions that underly my study and analysis. I then discuss my chosen method of analysis: discourse analysis. Finally, I outline the research design of this project to inform readers how I completed my research and analysis at a more practical level.

Theoretical Underpinnings

The Discursive Construction of Reality

I employ the use of a social constructionist approach to religion and nonreligion.[89] By this I mean that religion and nonreligion do not necessarily exist in and of themselves, *a-priori,* or independent, of the social world. Drawing on the ideas of James Beckford (2003), I suggest that religion and nonreligion are socially constructed (see also Berger and Luckmann 1991). These phenomena are a "form of cultural work", produced and constructed by institutions, people, texts,

[88] Legal discourse about physician-assisted dying imagines physician-assisted dying as something very different from medical discourse about physician-assisted dying. For example, legal discourse and medical discourse use different phrasing to refer to the same thing. Legal discourse prefers the term "physician-assisted dying," whereas medical discourse uses the phrasing of "medical assistance in dying". The difference in phrasing is not merely superficial and significantly impacts the way in which physician-assisted dying is conceptualized and perceived. See Beaman and Steele (2018).

[89] I draw specifically on Beckford's (2003) approach to the social construction of religion. Beckford proposes an approach which seeks to nuance the more radical discursive approaches to the social construction of reality. On one hand, radical approaches to social constructionism posit that reality does not exist outside of discourse. On the other hand, other social theorists argue that reality is the result of social interaction. Reality therefore does not exist outside human experience. Beckford, however, proposes an approach that calls on researchers to explore the multitude of ways and processes through which the categories of religion and nonreligion are constructed in the social world by social actors. According to Beckford, the goal of the social scientist is to explore how the "boundary between [religion and nonreligion] is staked out, defended, deployed, attacked, smudged, re-defined or even dissolved. It is a boundary zone that is heavily, perhaps essentially, contested" (2003, 4). Importantly, Beckford's "version of social constructionism leaves entirely open the question of whether human beings, universally or selectively, experience religion in forms that are not pre-constructed by human culture" (2003, 3).

practices, and ideas (Orsi 2003, 172).[90] Religion and nonreligion do not necessarily have a functional role in society (e.g., Durkheim), nor are they to always be defined according to specific set of characteristics (e.g., Weber). Instead, religion and nonreligion are products of discourse and given meaning through "human knowing, feeling, acting and relating" (Beckford 2003, 4; Von Stuckrad 2013).[91]

To position religion and nonreligion as social constructs is not to entirely dismiss the idea that these social phenomena can exist independent from human culture. Much like James Beckford (2003), I do not wish to rule out the possibility that there could be something that exists as religion and/or nonreligion that is independent of the social world. Many individuals, for example, view religion as something very real and meaningful and argue that it exists in this world as something beyond the realm of the social. I do not want to outrightly deny this sentiment. But, as Beckford points out, there is little empirical evidence to support the argument that religion and nonreligion naturally exist in this world independent from society (Beckford 2003; see also Smith 1998; Arnal and McCutcheon 2013).

The claim that both religion and nonreligion are the products of discourse rests on the assumption that discourse is itself productive. Titus Hjelm argues, for example, that "discourse is constitutive—that is, it constructs social reality and relationships" (2011, 135). But not only is discourse constructive, it is also has function. Discourse also contributes to "the reproduction of society and to social change" (Hjelm 2011, 135).[92]

But what is discourse? The meaning of discourse and what it constitutes, like many of the terms and concepts addressed in the previous chapter, is debated. The term has been used to refer to a variety of different things—both inside and outside academia (Taira 2013; Carabine 2001; Hjelm 2011; Cotter 2020; Blommaert 2005).[93] Consequently, discourse has become somewhat of

[90] I focus on how nonreligion and religion are lived experiences rather than some organized, neatly confined, and institutionally defined phenomena (Orsi 2003; McGuire 2008; Beyer 2015; Trzebiatowska 2018).
[91] For more on the discursive construction of religion, see Von Stuckrad (2013).
[92] Titus Hjelm notes that "Michel Foucault […] saw the study of discourse as central to the study of how society is constituted in social interaction" (2011, 136).
[93] The definition of discourse differs across academic disciplines (see Jørgensen and Phillips 2002; Taira 2013; Fairclough 1992; Taylor 2013). In linguistics, for example, discourse is often "treated as a general mode of semiosis, i.e. meaningful symbolic behaviour. Discourse is language-in-action […]" (Blommaert 2005, 2). In religious studies and sociology, discourse is often understood to refer collectively to a set of coherent statements about an individualizable thing (Taira 2013; Hjelm 2011; Carabine 2001).

a "fashionable term" that is woven through social scientific studies and used as an empty signifier (Jørgensen and Phillips 2002, 1). Discourse is used arbitrarily and often without definition (Jørgensen and Phillips 2002).[94]

I opt for a more general understanding of the term discourse and seek to avoid narrowly delimiting its boundaries. In particular, I avoid an overly technical understanding of the term discourse as is often found in the study of linguistics. Drawing on the work of Michel Foucault (2002, 90) and Jean Carabine (2001), I resist reducing the meaning of discourse to something specific with substantive qualities. I use discourse to refer to repeated and coherent statements about something specific. In other words, discourse refers to "an individualizable group of statements"[95] (Foucault 2002, 90).[96] This individualizable group of statements is precisely what constructs the phenomena that occupy and characterize the social world.[97] Discourses are "practices that systematically form the objects of which they speak" (Foucault 2002, 54). The collection or group of statements about sex work, for example, represent a particular discourse: a discourse about sex work. This discourse about sex work is thus ultimately what constructs what we know and understand as sex work in society. Discourse therefore does not simply describe the world in which we live: it produces the "social reality that we experience as solid and real" (Phillips and Hardy 2002, 1-2). In sum, discourse constructs, legitimizes, and normalizes our social reality at a specific moment in time (Wetherell 2001, 392; von Stuckrad 2013, 15; Carabine 2001, 268; Taira 2013).[98]

Discourse, however, does not only encompass written forms of communication. The broad definition of discourse above is inclusive of both *verbal* and *non-verbal* modes of communication

[94] Jørgensen and Phillip argue that "The concept [discourse] has become vague, either meaning almost nothing, or being used with more precise, but rather different, meanings in different context" (2013, 1).
[95] "Statements" is used very loosely here to refer to all forms of verbal and nonverbal communication that contribute knowledge about the topic of the discourse.
[96] Foucault defined discourse as: "sometimes […] the general domain of all statements, sometimes as an individualizable group of statements, and sometimes as a regulated practice that accounts for a number of statements" (2002, 90). Carabine similarly argues that that "the idea of discourse [… consists] of groups of related statements which cohere in some way to produce both meanings and effects in the real world, i.e. the idea of discourse as having force, as being productive" (2001, 268).
[97] It is important to point out that discourses do not simply exist in isolation. Discourses contribute to one another (Fairclough 2010).
[98] For more on the meaning of discourse, see Fairclough (1992, 3); Foucault (2002); Carabine (2001); Von Stuckrad (2013); Taira (2013); Hjelm (20111); Philips and Hardy (2002); and Berger (2016).

(Taira 2013, 28).[99] "Speech, text, writing and practice" all contribute to the construction of the social world (Carabine 2001, 268).[100] Verbal and nonverbal forms of communication "cohere […] to build up a picture or representation of the issue or topic" (Carabine 2001, 268).

In this study, I explore how three specific legal discourses shape (or construct) religion and nonreligion. These discourses are those belonging to *Latimer, Bedford,* and *Trinity Western* which are about mercy killings and end-of-life care; sex work; and LGBTQ+ rights respectively. I identify these topics as discourses precisely because they are each comprised of repeated, coherent, and individualizable statements that construct each respective topic. As will become clear, nonreligion is one element that can be found as comprising these specific discourses. Discourse about nonreligion (and religion) is embedded within discourse about mercy killings and end-of-life care; sex work; and LGBTQ+ rights. Discourse about nonreligion is given meaning by, and gives meaning to, the legal discourse about these three social issues. In the analysis that follows, nonreligion (and religion) is in some capacity a sub-discourse of the larger discourses I analyze. These larger discourses ultimately dictate what is "truth" and what is not "truth" for religion and nonreligion in the contexts explored (Carabine 2001, 268).

Theorizing Religion and Nonreligion

The above discussion has drawn attention to the socially constructed nature of religion and nonreligion that I rely on in this thesis, and the constructive power of discourse. While I argue that religion and nonreligion are both socially constructed, I do, however, use these categories in somewhat different ways. I use religion as both a first-order concept and a second-order concept. As a first-order concept, religion is drawn on quite explicitly by the Supreme Court of Canada and the various social actors involved in *Latimer, Bedford,* and *Trinity Western* to describe certain phenomena and aspects of their everyday life that they consider religious. Religion is a concept

[99] Burr points argues that discourse can include metaphors, images, and texts, all of which produce and contribute to our understanding of reality (2003, 64).

[100] The term discourse also refers to the ways in which text and other forms of communication are presented. How a text or message, for example, is arranged in an advertisement impacts the way something is constructed and perceived in the social world. Jan Blommaert, for example, argues that "a typical newspaper advertisement nowadays contains written text in various shapes and formats, ranging from headlines to small print, with differences in shape or colour that are meaningful […] None of the components of the advertisement is arbitrary, but none of them is meaningful in itself: the object we call 'discourse' here is the total layout of the advertisement, the total set of features […]" (2005, 3).

used by those involved in the three cases. As a second-order concept, religion is used to denote phenomena that are similar to what is constructed as religion by the social actors involved *Latimer, Bedford,* and *Trinity Western.* In other words, I use religion as a second-order concept to refer to: (1) things said by the religious social actors in these cases that aren't overtly religious, but closely resemble things these social actors use the term religion to describe; and (2), things often informed by, and characterized as, religion or religious in broader academic debates about conservative and Evangelical Christianity. As a second-order concept religion is the creation of the scholar (me). My imposing of the label of religion on things is not entirely without cause, especially given that what I refer to as religion is often reflected as such in other academic debates (see Beckford 2003). In sum, religion is not only something used by the social actors in *Latimer, Bedford,* and *Trinity Western,* religion is also my scholarly invention used for analytical purposes.[101]

I use nonreligion somewhat differently than religion. Unlike religion, nonreligion is a word not used by the social actors involved in the selected cases. Rather, it is a signifier applied to social phenomena by me for analytical purposes. In my analysis, nonreligion is used exclusively as a second-order concept.[102] My use of nonreligion as an analytical category follows that of the relational approaches proposed by Lois Lee (2015) and Johannes Quack (2014; see also Quack et al. 2020). I resist the urge to use nonreligion as a catchall category to refer to all social phenomena that are not overtly imagined as religious. Instead, I use nonreligion quite specifically to denote phenomena that are related to, but distinct from social constructions of religion (Lee 2015). I conceptualized nonreligion as occupying a third conceptual space between phenomena that are understood as religious and phenomena that have no relation to religion and are therefore straightforwardly not religious (Quack et al. 2020).[103] The following figure (Figure 1) attempts to provide some clarity by illustrating what I mean:

[101] See Smith (1998).
[102] There is debate among sociologists and scholars concerning the use and validity of second-order concepts, particularly in the field of anthropology. In sociology, however, second order concepts are understood to be useful analytical tools to draw conclusions about phenomena that have shared characteristics (Quack 2014; Beckford 2003; Lee 2015).
[103] Quack et al. (2020) use the idea of nonreligion as a "third-space" to nuance the binary approach to religion and not religion. The third-space encompasses phenomena that are differentiated from religion. These phenomena are not to be thought of as substitutes to religion (Quack et al. 2020, 2, 29).

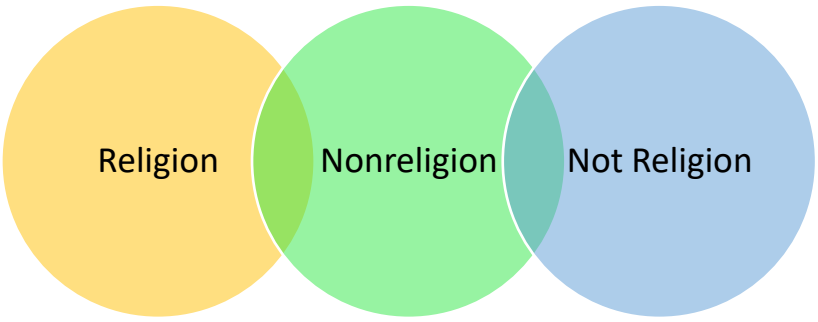

Figure 1

The overlapping space between religion and nonreligion in Figure 1 represents what Quack (2014) refers to as the relationship a phenomenon has with religion (see also Quack et al. 2020). This overlapping space draws attention to the ways in which a phenomenon is related to, but distinct from, religion (Quack 2014; Lee 2015).[104] Phenomena that overlap with, or are related to, religion are considered nonreligion. Conceptualizing nonreligion in this way promotes a more thorough exploration of the relationships that can exist between nonreligion and religion (Quack 2014). Most importantly, however, this way of thinking about nonreligion draws attention to the more substantive elements which constitutes nonreligion beyond the rejection of God, it emphasizes the meaningful relationships a phenomenon might have with religion (Quack et al. 2020).[105]

Not only does the above conceptualization of nonreligion allow for the exploration of the relationships that exist between nonreligion and religion, but so too does it provide for an analysis of the relationships that differentiate nonreligion from what might be understood as not religion. Nonreligion as a third conceptual space thus allows for the exploration of the meaningful relationships phenomena have with things that are overtly not religious (Quack 2014; Quack et al. 2020).

[104] For a more thorough discussion of this third conceptual space, see Quack et al. (2020). For Quack et al., the "third space" represents something that is neither religious or not religious (or the opposite of religion, irreligion, etc.) (2020, 29, 108).
[105] The rejection of God is only one way in which a nonreligious phenomenon might be related to religion. Indifference and hostility are two other ways something might be related to religion.

Thinking about nonreligion as the third conceptual space between that of religion and not religion allows one to narrow the analytical scope of nonreligion. Traditional uses of nonreligion as a catchall category risk, as mentioned previously,[106] overrepresenting the presence of nonreligion in society. Everything and anything that is not overtly religious is labeled as nonreligion. By narrowing what counts as nonreligion (i.e., phenomena that are understood in contradistinction to religion) space is provided for the existence of social phenomena that are unrelated to religion (Quack 2014; Quack et al. 2020). In other words, nonreligion, as conceptualized in this thesis, allows for the existence of the possibility of a social sphere that simply has no relation to religion.

Having said this, my approach to the social construction of nonreligion does not eliminate the risk of overrepresenting what might be considered nonreligion. Anything that has some meaningful relationship with religion could be identified as nonreligion. Further, the relational approach to nonreligion that I use in this thesis is entirely dependent on how religion is defined. Because there are numerous ways in which religion can be defined (see Chapter One), there also exist an endless number of ways in which nonreligion can be defined. Broader definitions of religion thus risk overrepresenting constructions of nonreligion, while very narrow and specific definitions of religion risk underrepresenting constructions of nonreligion. One must therefore be reflexive in how religion is identified and the implications this has for the imagining of nonreligion. Nonetheless, the relational approach to nonreligion described above aims to add nuance to the traditional categories of religion and not religion.

I must also note that I use the transcendent and immanent to distinguish between religion and nonreligion respectively. Following the observations of Beaman and Steele (2018), religion is often associated with the transcendent and nonreligion with immanence in Canadian law. The transcendent and transcendence are used to refer to the possible existence of an other world, a realm that exists independent of the social world and its constructions. Religious social actors very frequently draw on this other world in their arguments (Beaman and Steele 2018). The immanent and immanence are used to denote the social, or material world—the here and now. Religion, however, is not exclusively to be thought of as restricted to the realm of the transcendent, nor is nonreligion to be confined to the immanent world. The boundaries between the transcendent and

[106] See Chapter One.

the immanent are often blurred. At times religion is quite firmly rooted in immanence, and nonreligion often draws on the transcendent. In the cases I examine, however, religion is usually rooted in the transcendent and nonreligion is most often grounded in the immanent world. In a way this distinction is like that of the sacred-profane dichotomy proposed by Durkheim, where the sacred represents those "things set apart and forbidden—beliefs and practices which unite into one single moral community called a Church, all those who adhere to them" and the profane being all that is not sacred—the mundane of this world (Durkheim 1995, 44). I hesitate to call my approach Durkheimian, however, as my concern with these terms is purely analytical. They serve as a useful way to help differentiate between religion and nonreligion and also help draw attention to the meaningful attributes of these phenomena in Canadian law. I am not concerned, as was Durkheim, with how the sacred (or transcendent) serves to unite individuals into a moral community. I am not interested in the function of religion (and nonreligion).

I also acknowledge that the category of religion is used quite narrowly in this thesis to primarily refer to conservative and Evangelical forms of Christianity. This use of religion follows the way it is used by the social actors themselves in *Latimer, Bedford,* and *Trinity Western* and how it is conventionally used in the sociology of religion (Beckford 2003). The narrow use of religion by the social actors involved is the result of three factors: First, the law, like many other social institutions, erects barriers that naturally limit who can participate within the institution itself (Smart 1989; McAdam 2018; Richardson 2015; Beaman 2020). Consequently, only those religious groups (and other social actors) who are familiar with navigating these barriers find themselves contributing to discussions and debates within the realm of law (Smart 1989; Fokas 2018). In Canada, conservative and Evangelical Christian advocacy groups are most familiar with navigating the limits of law.

Second, many religious groups, particularly minority religious groups, are hesitant to pursue litigation to protect their rights.[107] The position a religious group occupies in the "national religious order" determines a group's likelihood to pursue legal opportunities to protect their rights (Fokas 2018, 33). Groups that occupy a lower position in the "national religious order" are less likely to participate in the formal legal sphere (Fokas 2018).[108] These smaller religious groups

[107] For more on minority religious groups and litigation, see Richardson (2015).
[108] Effie Fokas notes that "Certain [religious] groups are more likely to seek out legal opportunities to pursue their rights, whilst others are rather focused on political lobbying" (2018, 34).

refrain from participating in the formal legal sphere out of "fear of being perceived as confrontational" (2018, 34).[109] In sum, smaller religious groups do not want to be seen as challenging the status quo and attempting to change a society for their benefit. These groups therefore remain largely absent from the formal legal arena, though there are always exceptions.

Third, the law forces people to articulate their arguments in a language compatible with law.[110] As Carol Smart argues, in law "non-legal knowledge is […] suspect and/or secondary. Everyday experiences are of little interest in terms of their meaning for individuals. Rather these experiences must be translated into another form in order to become 'legal' issues and before they can be processed through the legal system" (1989, 11).[111] The translation of religious ideas about mercy killings and end-of-life care (*Latimer*); sex work (*Bedford*); and LGBTQ+ rights (*Trinity Western*) into something compatible with Canadian law flattens the nuance that characterize the multitude of ways in which these social topics are discussed in society. A religious (read: Christian) approach to these three social issues is unfairly painted as uniform and homogenous.

Combined, barriers to legal participation; a hesitancy for smaller religious groups to avoid participation in the formal legal sphere, particularly as interveners;[112] and the need to translate religious arguments into the language of law results in an overrepresentation of conservative evangelical Christian groups and their beliefs, values, and practices in Canadian law. It is far less common for non-Christian and liberal Christian groups to intervene before the Supreme Court of Canada unless the issue before the Court is one that directly affects their community.[113] Thus, the diversity that religion usually entails in society is not represented proportionately in Canadian law. The lack of religious diversity in law therefore has implications for the analysis that follows: my analysis frames nonreligion primarily in relation to conservative notions of Christianity. This rendering of nonreligion unfortunately is unable to capture the nuances that exist among other

[109] Fokas points out that "litigation is considered a particularly confrontational route to pursuing a group's claims […Muslim's] emphasize the importance of the public image of Islam as non-confrontational religion, particularly in the context of the political polarization around Islam-related issues" (2018, 34).
[110] For more on the translation of religious ideas into ones comprehendible in the public sphere, see Habermas (2006).
[111] See also Sullivan (1994).
[112] This is not to say that minority religious groups do not appeal to the Supreme Court of Canada. There are numerous cases that have been appealed to the Court that are not about Christianity. But, there is a relative lack of minority religious groups that intervener in SCC decisions and thus the representation of these smaller religious groups is often missing in many legal cases.
[113] See, for example, *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 S.C.R. 567.

religious traditions and how they frame the social issues addressed by the Supreme Court and my analysis.

Finally, I wish to clarify my theoretical use of the terms religious and nonreligious and how these are used to categorize the social actors, or groups, involved in the three cases (i.e., the interveners – see below). Like religion and nonreligion, I use the terms religious and nonreligious as first- and second-order concepts. These terms are used as markers of identity. On one hand, I categorized the social actors in *Latimer, Bedford,* and *Trinity Western* as religious if: (1) a social actor explicitly identified as religious; and/or (2) if a social actor submitted a joint submission/argument (or factum) with an explicitly religious social actor. On the other hand, I categorized social actors as nonreligious if they made no statements of faith in their submissions and if their organizational websites (if available) also lacked similar statements of faith. This means of categorization is by no means perfect, but it nonetheless allowed me to organize the social actors in the three cases in such a way to explore their imagining of religion and nonreligion. Note too that my categorization is about the social actors, or interveners, as *groups* or *organizations* as a whole and not the individuals who comprise these groups. My decision to categorize a group as nonreligious is not to suggest that this group's membership lacks religious individuals. My thesis is concerned with how these groups construct nonreligion in their legal discourse and not the social diversity of each group. How an individual member imagines religion and nonreligion might differ from how the organization to which this person belongs constructs these phenomena in legal discourse.

In sum, religion and nonreligion are theorized in this work as social constructs and thus the products of discourse and social interaction. Religion is used as: (1) a first-order concept to refer to what social actors identify as religion; and (2), as a second-order concept to delineate things that resemble religion as described by the religious social actors. Nonreligion is used as a second-order concept to refer to phenomena that are understood in contradistinction to religion as defined above (Lee 2015). In this light, both religion and nonreligion are socially constructed.

Method

Assuming that discourse itself is constructive, this thesis relies on the use of discourse analysis, specifically Critical Discourse Analysis (CDA), to analyze how religion and nonreligion are

constructed in the Supreme Court of Canada's *Latimer, Bedford, and Trinity Western* cases.[114] The meaning of discourse analysis, and what it constitutes, however, is contested. Discourse analysis has been defined and used in a variety of ways (Cotter 2020; Hjelm 2011; Taira 2013; Von Stuckrad 2013; Blommaert 2005; Fairclough 1992; Taylor 2001).

On one hand, linguists often provide precise definitions of discourse analysis. Norman Fairclough, for example, defines discourse analysis quite specifically as "the analysis of dialectical relations between discourse and other objects, elements or moments, as well as analysis of the 'internal relations' of discourse" (2010, 4).[115] Moreover, in linguistics, discourse analysis often refers to a specific method of analysis (von Stuckrad 2013, 14). On the other hand, social scientists in disciplines outside of linguistics often opt for broader and more flexible approaches to discourse analysis. Titus Hjelm, for example, defines discourse analysis simply as "the study of how to do things with words" (2011, 134). Outside of linguistics, discourse analysis is used more generally to refer to "all theoretical and methodological approaches employing discourse as a key concept" (Taira 2013, 26).

Differences aside, underlying all approaches to discourse analysis is the assumption that discourse analysis itself is more than the study of language. This method goes beyond the analysis of the literal meaning of words and instead explores how language, words, social and textual cues, and actions are used to construct the social world (Blommaert 2005; Fairclough 1995; Wodak 2001). Social theory and the social construction of society are precisely what guide methods based on discourse analysis (Blommaert 2005). Moreover, what underlies all approaches to CDA is an emphasis on power and inequality and how these are reproduced in society through discourse (Blommaert 2005, 24; Fairclough 2010; Hjelm 2011; van Dijk 1995).

My approach to CDA is methodologically flexible. I refrain from using CDA to describe a specific *research* method (as in linguistics) and instead use it to describe a theoretical and methodological position that utilizes discourse as an analytical concept. I therefore define CDA as the study of how both verbal and non-verbal discourse construct and create meaning in society.[116]

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[114] Social theory and social constructionist approaches to reality are central to discourse analysis, which assumes that the world and "knowledge [are] produced through human interaction and communication" (Granholm 2013, 47).
[115] Fairclough notes that "dialectical relations are relations between objects which are different from one another but not what I shall call 'discrete', not fully separate in the sense that one excludes the other" (2010, 4).
[116] I refer to this definition of discourse analysis as methodologically flexible because I purposely avoid strictly delimiting discourse analysis to allow for flexibility in the research design phase and subsequent analysis.

Like Fairclough, I am interested in the relationships between discourse and other objects and moments in the social world, along with the "internal relations" of discourse itself (2010, 4).

My approach to discourse analysis is also one that is *critical.* It is critical for two reasons. First, I suggest that discourse analysis is not only an analysis of what is included in discourse—what is *excluded* also matters. As Beaman argues, "[w]hen one analyzes the discursive process, that which is *excluded* from the bounds of the possible must be attended to as thoroughly as that which is included" (2008, 36; emphasis). Second, and key to any approach to CDA, is that my use of discourse analysis is one that focuses on power/knowledge[117] and how this duo contributes to the construction of the social world (Carabine 2001, 268; Hjelm 2011; Taira 2013; Blommaert 2005; Wodak 2001).[118] I draw here specifically on Jean Carabine's (2001) Foucauldian approach to discourse analysis to investigate the ways in which discourses produce, and are the products of, power/knowledge networks in society. Carabine, for example, argues that:

> Discourses can be powerful because they specify what is and what is not. Not all discourses have the same force. Some discourses are more powerful than others and have more authority or validity […] To understand discourse we have to see it as intermeshed with power/knowledge where knowledge both constitutes and is constituted through discourse as an effect of power. (2001, 275)

I am not particularly concerned with the power/knowledge networks themselves and what makes one discourse more valid than another, or what networks are specifically found in the cases I explore. It is not my primary intention to discuss or necessarily identify the power/knowledge networks in *Latimer, Bedford,* and *Trinity Western* and the validity of these networks. Like Carabine, I am most interested in the power/knowledge found within these cases for more analytical reasons (Carabine 2001, 268). I am interested in how discourse about mercy killings and end-of-life care; sex work; and LGBTQ+ rights and the power/knowledge networks found within these discourses contribute to the construction of what we might understand as religion and nonreligion. To use the words of Carabine, I am interested in how these discourses produce "what is" and "what is not" religion and nonreligion (Carabine 2001, 275).

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[117] For more on power/knowledge see Foucault (1995) and Foucault and Gordon (1980).

[118] Taira notes that "A discursive study, at least its critical version, studies power in discourse, and power over discourse. It often reflects how certain discourses become hegemonic (i.e., established, persuasive, powerful and more effective than others), the consequences of using hegemonic discourses, and how it might be possible to change and challenge the hegemonic discourses if they are limiting people's opportunities or are considered to be unjust and unethical" (2013, 29).

Importantly, Carabine's critical approach to discourse analysis also emphasizes the need to consider social context.[119] Carabine suggests that:

> If our study of discourse is to be more than a study of language, *it must look also at the social context and social relations within which power and knowledge occur and are distributed*. (2001, 275; emphasis added)

Social context plays a significant role in shaping what is acceptable and unacceptable knowledge at a specific moment in time (Fairclough 1992; Hjelm 2011; Carabine 2001). As social context changes so too do discourses and the power/knowledge within them. What once was unacceptable becomes acceptable.[120]

In summary, a critical approach to discourse analysis emphasizes power and social context and therefore provides for a more rounded analysis of the debates about mercy killings and end-of-life care; sex work; and LGBTQ+ rights. The use of CDA thus proves useful in the exploration of how both religion and nonreligion are conceptualized across a variety of social contexts.[121] More specifically, a critical approach to discourse analysis allows for the exploration of how nonreligion is "operationalized and supported institutionally, professionally, socially, legally and economically" (Carabine 2001, 276).

Research Design

Kocku von Stuckrad notes that "*discourse analysis is not itself a method […instead,]* many theorists agree that discourse analysis is a *research perspective* or *research style* that applies a spectrum of possible methods in order to answer its guiding research question" (2013, 14; emphasis original). In other words, discourse analysis is not a universal set of steps and procedures that apply equally to all qualitative discursive studies.[122] In fact, as Hjelm points out, "*every*

[119] Titus Hjelm also draws attention to the importance of social and political context to critical discourse analysis (2011, 141).

[120] For example, as Canada has become less religious we see changes in the discourse about physician-assisted dying and how it is conceptualized (see Beaman and Steele 2018). Changes in levels of (non)religiosity in Canada have made space for different power/knowledge networks. Moreover, how nonreligion is discursively produced depends entirely on the social context within which it is being explored. Nonreligion in Canada and Europe, for example, is very different than nonreligion in India (Quack et al. 2020).

[121] Hjelm argues that "Discourse analysis has proved to be a powerful tool for analyzing qualitative data, and there is no reason why it couldn't or shouldn't be used in the study of religion" (2011, 143).

[122] Jean Carabine posits that "there are no 'hard and fast' rules which set out, step by step, what a genealogical [discourse] analysis is" (Carabine 2001, 268). Foucault famously resisted outlining a step-by-step guide to his approach to discourse (genealogical) analysis. See Foucault (2002). Discourse analysis is therefore not an "all-purpose technique" (Taira 2013, 27). As Christopher Cotter also argues that "Discourse Analysis is not a specific method, but 'follows certain steps and rules that have proven useful' within certain distinct schools of analysis" (2020, 67).

discourse-analytical study needs to be designed individually" (2011, 142; emphasis original).[123] CDA as applied in my research is no exception to the arguments of von Stuckrad and Hjelm. I developed a method designed specifically for my research and the contexts it considers.

The method developed for this thesis builds on Jean Carabine's (2001) Foucauldian genealogical critical discourse analysis. Carabine outlines eleven (11) steps to her method, which I drew on to help develop the method of analysis used in this thesis. [124] I first began by selecting the topics for my research. I am particularly interested in the intersection of religion, nonreligion, and law, especially at the level of the Supreme Court of Canada. Limiting my area of interest to cases heard by the Supreme Court of Canada naturally reduced the available Canadian legal cases that were suitable as case studies for my research. Further, I am particularly interested in how the Court navigates social issues and the indirect ways in which religion, nonreligion, and law intersect in these decisions. I am not so much interested in cases that directly address questions of religion and nonreligion. I find legal decisions about social issues that indirectly call into question matters of (non)religiosity much more fascinating because of how they force one to think more creatively about religion and nonreligion. My previous research, for example, has focused on how social issues, like physician-assisted dying, call into question concerns about religion and nonreligion. Physician-assisted dying is not explicitly about religion, but legal debates about it evoke responses from religious and nonreligious individuals in the Canadian legal sphere. These responses are fruitful grounds to study the more nuanced and often subtle ways in which religion and nonreligion are constructed and operate in the Canadian legal landscape.

In keeping with my research interests and my desire to explore nonreligion in the context of controversial social issues, I initially selected the *Latimer, Whatcott,*[125] and *Trinity Western* decisions as case studies. As already discussed in the introduction to this thesis, *Latimer* addresses questions concerning mercy killings and end-of-life care and *Trinity Western* is largely focused on

[123] "While quite popular in other areas of social scientific and humanistic research, religious studies or the study of religion in a broader sense has not adopted discourse analysis as a method in any systematic way, despite the fact that in recent years discourse has emerged as a potential key concept in the field" (Hjelm 2011, 134)
[124] The eleven steps to Carabine's Foucauldian genealogical discourse analysis are as follows: (1) selecting the topic; (2) knowing the available data; (3) identifying themes; (4) looking for inter-relationships between discourses; (5) identifying discursive strategies; (6) highlight absences and silences in the data; (7) look for counter-discourses; (8) identify effects of the discourse(s); (9) provide background context; (10) contextualize the discourse in the power/knowledge of the specific period; and (11), identify limitations of the data/research (2001, 281).
[125] *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, [2013] 1 S.C.R. 467.

LGBTQ+ rights. Not previously discussed is the *Whatcott* decision. *Whatcott* was decided by the Supreme Court in 2013 and considered the constitutionality of certain provisions in the *Saskatchewan Human Rights Code* concerning hate speech. The case is particularly interesting and provides the potential for a rich analysis of nonreligion, but because of certain administrative issues with the collection of data related to the case I decided to replace it with *Bedford*.[126]

While *Latimer, Bedford,* and *Trinity Western* are cases that I personally find interesting these cases were not selected only because of my interest in them. These cases were selected strategically. My intent in this thesis is to demonstrate how the law acts as a medium through which we can see the positive content of constructions of nonreligion. The unique nature of each decision allows for one to investigate the similarities and differences in how nonreligion is conceptualized in these three very different contexts. This in turn allows for some generalized conclusions about nonreligion and its positive content to be made.

Moreover, *Latimer* and *Bedford* were selected precisely because they are not about religion. As noted in the introduction chapter, this allowed me to consider how nonreligion is imagined in heated social debates that are not necessarily about religion and/or nonreligion.[127] *Trinity Western* was selected because it is about religion (and by extension, nonreligion). The differences in nature between *Latimer and Bedford* on one hand and *Trinity Western* on the other hand provide for further analytical nuance. *Trinity Western* more directly and explicitly draws attention to how the Court and social actors construct religion and nonreligion in law, while *Latimer* and *Bedford* add nuance to this by revealing the more subtle ways in which nonreligion is conceptualized when it is a topic of secondary concern. Exploring the direct and indirect ways in which religion and nonreligion are conceptualized provides for more well-rounded conclusions to be made about these phenomena.

After identifying the topics and corresponding case studies for my research, I then familiarized myself with the available data. The Supreme Court decisions themselves served as one of my primary sources of data. I began my research by first reading the *Latimer, Bedford,* and

[126] Certain files that were key to my analysis were unavailable from the Court.
[127] *Latimer and Bedford* are not about religion or freedom of religion. Religion is an extraneous variable in these cases used by legal interveners. In these decisions, the Court is not actively engaged in positioning itself as religious or "not religious". Further, these cases are not about arguments related to freedom of religion as one might find in a case specifically about religion like *Trinity Western*.

Trinity Western decisions. The *Latimer* decision is a total of 42 pages in length; *Bedford* is 67 pages; and *Trinity Western* is 160 pages. Each decision details the opinion of the Court along with any partially concurring or dissenting opinions.[128] Each decision also outlines the facts the case, prior judicial history (i.e., decisions of the lower courts before the case was heard by the Supreme Court of Canada), and any legal precedent relevant to the case.

Another significant source of data came from the submissions of social actors, or interveners, granted leave to intervene in the cases. Interveners are parties, or individuals, "not originally a party to judicial review proceedings who by order of the court [are] given status to participate in the proceedings either as a full party or with more limited rights" (Mullan 2001, 544). Note, however, that interveners are not automatically granted leave, they must apply for it. And, not all interveners who apply for leave are granted it. It is at the discretion of the Court which interveners, if any, are granted leave (permission) to intervene in the case. Those who are granted leave to intervene in the case present written arguments (factum) and (often, but not always) oral arguments to the Court outlining their position concerning the topic before the Court. In many cases, interveners with similar interests will opt to submit a combined factum. Thus, the number of factums in a case may not necessarily be equal to the number of interveners granted leave to intervene in the case.

In *Latimer,* there were 14 interveners and 9 factums submitted.[129] In *Bedford*, there were 24 interveners and 16 factums submitted.[130] In *Trinity Western*, there were 25 interveners and 21

[128] In *Trinity Western,* there were four reasons given: (1) the decision of the majority of the Court (Justice Abella, Justice Moldaver, Justice Karakatsanis, Justice Wagner, and Justice Gascon); (2) the concurring reasons of Chief Justice McLachlin; (3) reasons concurring in the result (Justice Rowe); and the joint dissenting reasons of Justice Côté and Justice Brown.

[129] The interveners in *Latimer* were: (1) the Attorney General of Canada; (2) the Attorney General for Ontario; (3) the Canadian Civil Liberties Association; (4) the Canadian AIDS Society; (5) the Council of Canadians with Disabilities; (6) the Saskatchewan Voice of People with Disabilities; (7) the Canadian Association for Community Living; (8) People in Equal Participation Inc.; (9) DAWN Canada: DisAbled Women's Network of Canada; (10) People First of Canada; (11) the Catholic Group for Health, Justice and Life; (12) The Evangelical Fellowship of Canada; (13) the Christian Medical and Dental Society; and (14) Physicians for Life.

[130] The interveners in *Bedford* were: (1) Attorney General of Quebec; (2) Pivot Legal Society; (3) Downtown Eastside Sex Workers United Against Violence Society; (4) PACE Society; (5) Secretariat of the Joint United Nations Programme on HIV/AIDS; (6) British Columbia Civil Liberties Association; (7) The Evangelical Fellowship of Canada; (8) Canadian HIV/AIDS Legal Network; (9) British Columbia Centre for Excellence in HIV/AIDS; (10) HIV & AIDS Legal Clinic Ontario; (11) Canadian Association of Sexual Assault Centres; (12) Native Women's Association of Canada; (13) Canadian Association of Elizabeth Fry Societies; (14) Action ontarienne contre la violence faite aux femmes; (15) Concertation des luttes contre l'exploitation sexuelle; (16) Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel; (17) Vancouver Rape Relief Society; (18) Christian Legal Fellowship; (19) Catholic Civil Rights League; (20) REAL Women of Canada; (21) David Asper

factums submitted.[131] In all three cases there was a mixture of religious and nonreligious interveners. Combined, the decisions of the Court and respective intervener factums provided for several hundred pages of raw data.

Upon identifying sources of data, I began a close reading of all source material to establish familiarity with the cases and legal arguments. I started my initial reading with the Court's decisions to understand who was involved in the case; why the case had been brought before the Supreme Court of Canada; what lower courts ruled on concerning the case; and what the Court's decision was. This initial reading was to establish context and understand social and legal facts relevant to the case. Once I had completed my reading of the Court's decisions, I proceeded to read the factums submitted by the interveners in the cases. Much like the initial reading of the Court's decisions, this preliminary reading of the intervener factums was to establish familiarity with the material: how did the interveners position themselves concerning the debates in each case? Were they supportive of proposed legal changes? Did they present any resistance, etc.? Following the close reading of the Court's decisions and the intervener factums I then re-read the material a second time and coded for explicitly *religious* language. This allowed me to trace the ways in which religion was woven through the cases and associated material and provided a way to compare how nonreligious social actors spoke of similar issues using language which was not religious.

Next, I began a more thorough read through of all the source material. The purpose of this read through was to again establish familiarity with the source material, but also to think more abstractly about the arguments of the Court and the interveners. How, for example, were the interveners and Court's thinking about each social issue being debated? Were there other aspects of life they were drawing into discussion about mercy killings and end-of-life care, sex work, and

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Centre for Constitutional Rights; (22) Simone de Beauvoir Institute; (23) AWCEP Asian Women for Equality Society, operating as Asian Women Coalition Ending Prostitution; and (24) Aboriginal Legal Services of Toronto Inc.

[131] The interveners in *Trinity Western* were: (1) Lawyers' Rights Watch Canada; (2) National Coalition of Catholic School Trustees' Associations; (3) International Coalition of Professors of Law; (5) Christian Legal Fellowship; (6) Canadian Bar Association; (7) Advocates' Society; (8) Association for Reformed Political Action (ARPA) Canada; (9) Canadian Council of Christian Charities; (10) Canadian Conference of Catholic Bishops; (11) Canadian Association of University Teachers; (12) Law Students' Society of Ontario; (13) Seventh-day Adventist Church in Canada; (14) BC LGBTQ Coalition; (15) The Evangelical Fellowship of Canada; (16) Christian Higher Education Canada; (17) British Columbia Humanist Association; (18) Egale Canada Human Rights Trust; (19) Faith, Fealty & Creed Society; (20) Roman Catholic Archdiocese of Vancouver; (21) Catholic Civil Rights League; (22) Faith and Freedom Alliance; (23) Canadian Secular Alliance; (24) West Coast Women's Legal Education and Action Fund; (25) World Sikh Organization of Canada.

LGBTQ+ rights? How did these discussions and arguments fit within the broader social world? In short, this read through was undertaken to identify themes and concepts used in the legal framing of mercy killings and end-of-life care, sex work, and LGBTQ+ rights. It was during this read through that I identified key reoccurring concepts drawn on in the legal discourse about each respective case.[132] Some of the concepts discussed were found across all three cases, whereas others were unique to the context of a specific case.

Once I had identified recurring themes and concepts in the Supreme Court decisions and the intervener submissions, I began another read through of the source material to code for these themes and concepts. My initial attempt at coding the source material was completed using the qualitative data analysis software NVivo.[133] NVivo was useful at first, but due to several technological issues with the source material, it proved inefficient in the coding and analysis process.[134] I thus opted not to complete my coding and analysis with NVivo. What's more, during the coding process I felt removed, as a researcher, from the source material itself. While NVivo was useful for organizing and analyzing large sets of data, the ease at which it enabled this left me feeling less involved with my material. The analysis I conducted with the help of NVivo was not a waste as elements of this initial stage of coding made their way into this thesis. I simply felt disconnected from my data and unable to fully appreciate the nuances and contours contained within my research material.[135]

It was at this point I opted to restart the coding of my data, this time using a manual approach not assisted by qualitative data analysis software. Coding of all source material was completed by hand using colored highlighting and coloured geometric shapes (primarily boxes) in both Microsoft Word and Adobe Acrobat DC. I assigned each theme/concept a corresponding colour. Strings of text representing these themes/concepts were then highlighted, or had a coloured

[132] See below for more on the concepts and themes identified.
[133] NVivo is a qualitative data analysis program used by many researchers in the social sciences and humanities. It allows for the easy organization of coded themes and concepts across multiple documents. It is an excellent tool for organizing and collating large sets of data. For more, see https://www.qsrinternational.com/nvivo-qualitative-data-analysis-software/home.
[134] Several documents obtained from the Supreme Court had large portions of text that were not recognizable by any computer software. As a result, these texts could not be accurately coded using a third-party coding and analysis tool (like that of NVivo). Manual coding techniques were required to code this data.
[135] Hjelm points out that "although some of the programs (e.g. NVivo […]) can be helpful in organizing large amounts of data, the final analysis is very much hands-on work" (Hjelm 2011, 146)

box placed around them.[136] Each theme was assigned a unique highlighting colour or coloured box.

In *Latimer,* I identified 19 concepts/themes. Some of these concepts include dignity; suffering/harm; sanctity of life; autonomy; human rights; the transcendent; equality; and science. In *Bedford,* 29 concepts/themes were identified. These include: dignity; autonomy; diversity; history; human rights; family; discrimination; and community. And, in *Trinity Western,* 26 concepts/themes were identified, including human rights; tolerance; autonomy; sex; separation of church and state; and persecution. A complete list of all concepts identified in each case can be found in Appendix A. Other themes and concepts, which are not found in the concept tables in Appendix A, were identified in the data but the occurrence of these additional themes and concepts was too infrequent to provide benefit to the analysis.

Once all the source material had been coded, I then moved on to the discursive analysis of the identified concepts. To move beyond a simple content analysis of the material—that is, to explore more than what is simply being said in the data[137]—I questioned the role of power/knowledge in constituting the frameworks within which mercy killings and end-of-life care; sex work; and LGBTQ+ rights were understood. How, for example, were various social actors invoking certain concepts to construct what we understand as sex work? What strategies are used to construct these concepts? Where are the resistances and points of agreement when discussing something like mercy killings? Who, if there is someone clearly identifiable, controls the power/knowledge networks concerning LGBTQ+ rights? Are certain social actors more influential than others? And, of course, of relevance to this thesis, how is religion and/or nonreligion deployed or imagined in these discussions? My questioning here was intended to reveal the consequences specific legal discourses and associated power/knowledge networks have on the construction of nonreligion.

[136] The choice to highlight or place a coloured box around a particular theme was arbitrary. Microsoft Word limits the available colours one can use to highlight text. As I ran out of colours to use I then switched to using coloured boxes.
[137] Chad Nelson and Robert H. Woods, Jr. point out that content analysis is a type of textual analysis which seeks to explore the "characteristics of messages embedded in mass mediated and public texts" (2011, 110). Krippendorff defined content analysis as "research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use'" (2004, 18). Content analysis is similar on the surface to discourse analysis. However, the focus on the role of power/knowledge in discourse analysis renders it quite different than content analysis.

As part of my analysis, I also sought to explore what was *missing* from the data. As Carabine (2001) and Beaman (2008) both point out, the absences in discourse are just as meaningful as what is present.[138] What, for example, was missing in the discourse about sex work as presented by nonreligious social actors compared to religious social actors? Similarly, what was missing in the factums of the religious interveners that was present in the factums of the nonreligious interveners? Were there points of resistance in the data that could explain these absences? Further, what did the Court omit in its decisions that were present in the submissions made by interveners? Were the discursive absences intentional? Or were these absences the result of the confines of law and/or other power/knowledge networks? How did these absences contribute to the overall legal discourse about mercy killings and end-of-life care; sex work; and LGBTQ+ rights and consequently nonreligion?

More precisely, my analysis consisted of comparing the religious interveners' construction of certain concepts and themes with the nonreligious interveners' framing of the same concepts and themes. In other words, the nonreligious interveners' constructions of various concepts were understood in contradistinction to the religious interveners' constructions of these same concepts.[139] In considering and comparing both narratives of the same concept, I was able to explore what specifically was of meaning and value in the submissions of the religious and nonreligious interveners. Importantly, this comparison allowed me to identify what values the religious and nonreligious shared in their factums and what values were different and specific to each group in their constructions of the concepts I explored. My analysis allowed me to point to what was of meaning and value in both narratives about mercy killings and end-of-life care; sex work; and LGBTQ+ rights. The values that I identified as belonging to the nonreligious narrative are what I argue represent the positive content of nonreligion in the legal contexts considered in this thesis.

[138] Hjelm argues that "In addition to what is said in discourse, it is equally important for critical discourse analysis to study what is not said, that is, what we take for granted" (2011, 141).

[139] I used the religious interveners' constructions of various concepts as the foundation from which to explore the same concepts as imagined by the nonreligious interveners because Protestant and Catholic assumptions about social issues have often acted as guiding principles for Canadian courts and legislators. As Beaman argues, "[Canadian] courts interpret claims to religious freedom against a backdrop of religious normalcy that is rooted in mainstream Protestant [and Catholic…] hegemony" (2003, 321).

To be absolutely clear, my analysis reveals what is constructed as having meaning in the arguments of the religious and nonreligious interveners. Asking these interveners what they value may yield very different results and conclusions. There are quite possibly things which were not intended to have the meaning I have ascribed to them, or things that I have omitted that were also of meaning—such is the nature of discourse analysis that does not also draw on ethnographic fieldwork.

As a methodological note, discourse analysis involves decision making that can be subjective in nature. Qualitative methods and means of analyses bring with them various limitations and raise valid questions regarding the criteria of trustworthiness, particularly concerning objectivity, validity, dependability, and transferability. Discourse analysis, for example, is frequently critiqued as lacking objectivity because of its interpretative nature (Toolan 1997). But discourse analyses have proven to be trustworthy precisely because of their systematic nature and their ability to draw attention to "language-related practices" which are generalizable to wider social contexts (Taylor 2013, 75). I did not code my data looking for specific themes and concepts. Rather, the codes and themes I identified emerged from a systematic and objective analysis: codes were noted as they appeared in the data. The fact that certain codes appeared across the three cases I explored served as a test to validate the nature of these codes.

As will become clear, the results of my analysis are transferable and generalizable to the broader literature about nonreligion and nonreligious individuals. My methodology also yields similar results in other legal contexts, particularly that of physician-assisted dying (Steele 2018) and same-sex marriage.[140] In other words, my methodological approach and resulting conclusions are transferable to contexts beyond what I explore in this thesis. Moreover, my methodology is also dependable. The systematic nature of my analysis addresses dependability in that similar results could be produced if other researchers were to employ my methodology.[141] I have designed my methodology keeping in mind the critiques and limitations of discourse analysis in order to ensure a high degree of trustworthiness.

[140] My methodology and research design were created in conversation with team members of the Nonreligion in a Complex Future's law team. I have successfully applied my research design to work the team has done on same-sex marriage in Canada and other geographic contexts.

[141] Members of the Nonreligion in a Complex Future's law team have applied methodologies similar to my own to explore same-sex marriage and reproductive rights. These team members and their analyses have yielded similar results to my own.

Conclusion

This chapter has drawn attention to the theoretical and methodological presuppositions that underly my analysis of the *Latimer, Bedford,* and *Trinity Western* decisions. Key to my analysis is the assumption that discourse both constructs and is constructed by the social world in which we live. While the meaning of discourse is contested, I have defined it as referring to a collective, coherent, set of statements which produce an individualizable thing (Foucault 2002). Discourses are thus "variable ways of 'speaking of' an issue which cohere or come together to produce the object of which they speak" (Carabine 2001, 273). In this light, repeated and coherent statements (both verbal and nonverbal) construct what we understand as nonreligion in the social world. This thesis therefore employs the use of discourse analysis to explore how nonreligion is "spoken of" in legal discourse about mercy killings and end-of-life care; sex work; and LGBTQ+ rights.[142] I explore how constructions of religion and nonreligion are woven through the various themes and concepts that were used in the legal discourse about these social issues.

In the chapters that follow, I analyze the concepts of human rights, morality, and dignity. I have structured the remaining chapters the same to ensure stylistic consistency throughout my analysis. I begin each chapter with an overview of the concept the chapter is about. I then outline how the concept under review is constructed in the arguments of the religious interveners in the three cases and then I explore how the same concept is constructed in the arguments of the nonreligious social actors. As noted above, it is through this comparison that the social construction of nonreligion becomes visible and so too does the positive content and the meaningful beliefs, values, and practices of this increasingly visible social phenomenon.

[142] As previously mentioned, this thesis is no different from other discourse-analytical studies: my method was developed specifically for this project and, as a result, may not be suitable for other discursive qualitative studies.

Chapter Three: Thinking about Human Rights and Other Legal Rights

> *The [Canadian] Charter protects the rights and freedoms that are essential to our identity as Canadians. It allows us to express ourselves as individuals and to celebrate our differences, while bringing us closer as a country.* – Justin Trudeau[143]

Introduction

In this chapter, I explore the concept of human rights in the factums of the interveners and the decisions of the Supreme Court of Canada in *Latimer, Bedford, and Trinity Western*. I investigate how discussion about human rights might contribute to how religion and nonreligion are imagined in these cases—particularly concerning the positive content of nonreligion. In what follows, I suggest that the religious and nonreligious interveners present a different picture concerning the nature of human rights. For the religious interveners, human rights are grounded in the transcendent, while for the nonreligious interveners human rights are framed as legal constructs.

I also consider how human rights are used by both groups of social actors in their discussions about mercy killings and end-of-life care; sex work; and LGBTQ+ rights. Again, the utilization of human rights differs between the two groups. The difference here, however, is in *degree*. Both groups utilize human rights: the religious interveners often emphasize dignity and other values derived from human rights instead of human rights themselves, while the nonreligious interveners emphasize specific human rights. In short, the nonreligious interveners more explicitly and directly utilize human rights than their religious counterparts.

My exploration of human rights is not intended to suggest that a nonreligious approach to human rights is more favorable or better than a religious approach to human rights (and vice-versa). One approach is no more meaningful or legitimate than the other. This analysis is simply intended to show how the social actors involved in *Latimer, Bedford,* and *Trinity Western* value and place meaning on different (and sometimes similar) things when thinking about human rights.

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[143] See https://pm.gc.ca/en/news/statements/2017/04/17/statement-prime-minister-canada-35th-anniversary-canadian-charter-rights.

Thinking about Human Rights

What are human rights? The language of human rights is deployed throughout much of the contemporary world. [144] There are both large national and international groups along with smaller more localized community groups, organizations, and associations dedicated to promoting, upholding, and protecting human rights. [145] Likewise, there are countless human rights codes, declarations, and other pieces of legislation that aim to protect various rights and societal values (Cmiel 2004; Quataert and Wildenthal 2020a). Human rights are an inescapable reality in our contemporary world (Quataert and Wildenthal 2020a; Edmundson 2012; Cmiel 2004).

The persistent and pervasive reference to human rights in contemporary society notwithstanding, very rarely is one presented with a clear and concise definition of what human rights are. Certainly, NGOs, states, and other organizations are clearer in their use of the term—they *usually* operate according to some mandate with a clearly delimited approach to human rights and what these rights entail. Individuals, however, are less clear when invoking the language of human rights and thus often conflate human rights with other legal rights guaranteed by states and their charters, constitutions, declarations, and other pieces of legislation (Edmundson 2012; Clapham 2007). All of this is to say that there exists some confusion as to what constitutes human rights, especially when one is reminded that not all rights are human rights (Edmundson 2012).

Despite this confusion, there exists somewhat of an international consensus as to what human rights are. Human rights are generally believed to be special rights that protect an individual's most basic interests (Edmundson 2012, 158).[146] More specifically, the international authoritative source on human rights, the United Nations (UN), defines human rights as:

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[144] Kenneth Cmiel notes that "Prior to the 1940s, the term ['human rights'] was rarely used. There was no sustained international movement in its name. There were no non-governmental organizations with a global reach to defend its principles" (2004, 117). Prior to the drafting of the Universal Declaration of Human Rights and the establishment of large international non-governmental organizations (NGOs), "there was no international law crafted to protect our human rights" (Cmiel 2004, 117). The history of human rights and other personal legal freedoms prescribed by law is a complex, convoluted, and often debated history. This history is beyond the scope of this thesis. For more, see Quataert and Wildenthal (2020a, 2020b); Ferrone (2017); Clapham (2007); and Cmiel (2004).

[145] Some of these groups include: "the International Commission of Jurists, Amnesty International, and Human Rights Watch [… and] NATO prosecuted a war in the name of 'human rights'. Less well known to Europeans and North Americans were the hundreds of NGOs outside Europe and the United States defining themselves as human rights agencies, almost all of them with birth dates no earlier than 1985" (Cmiel 2004, 117).

[146] Edmundson writes: "human rights recognize *extraordinarily* special, basic interests" (2012, 158; emphasis in original).

> rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination. (United Nations 2022a)[147]

The United Nation's Office of the High Commissioner for Human Rights (OHCHR) points out that human rights are universal;[148] inalienable;[149] and indivisible and interdependent.[150] In sum, human rights are a set of rights that are universally applicable to all human beings and are intended to protect an individual's most basic interests, values, and beliefs.[151]

International Human Rights Law

Two documents form the foundation of international human rights law: the Charter of the United Nations, which was enacted in 1945;[152] and the Universal Declaration of Human rights (UDHR), which was enacted in 1948.[153] These foundational documents where supplemented over the years by other UN treaties, declarations, and covenants which expand human rights law to "encompass specific standards for women, children, persons with disabilities, minorities and other vulnerable groups" (United Nations 2022a). The UDHR along with the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) are known as the International Bill of Human Rights (IBHR), which is what ultimately governs international human rights law (United Nations 2022b).[154] The majority of states

[147] For more on the United Nations' definition of human rights, see: https://www.un.org/en/global-issues/human-rights.

[148] "The principle of universality of human rights is the cornerstone of international human rights law. This means that we are all equally entitled to our human rights. This principle, as first emphasized in the UDHR, is repeated in many international human rights conventions, declarations, and resolutions." (https://www.ohchr.org/en/what-are-human-rights)

[149] "Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law." (https://www.ohchr.org/en/what-are-human-rights)

[150] "All human rights are indivisible and interdependent. This means that one set of rights cannot be enjoyed fully without the other. For example, making progress in civil and political rights makes it easier to exercise economic, social and cultural rights. Similarly, violating economic, social and cultural rights can negatively affect many other rights." (https://www.ohchr.org/en/what-are-human-rights)

[151] There is great debate concerning cultural relativism and universalism when it comes to questions about human rights. For debates about the universality of human rights and whether rights can be universal, see Brown (2008) and Donnelly (1984). These debates are beyond the scope of this thesis.

[152] For the UN's Charter, see: https://www.un.org/en/about-us/un-charter.

[153] For the UN's UDHR, see: https://www.un.org/en/about-us/universal-declaration-of-human-rights.

[154] Not all states, however, are bound by the protections set out by the United Nations. States are required to ratify the UN's human rights treaties for these treaties to be legally binding. States may sign a treaty with an intent to ratify the treaty at a later date, but until the process of ratification takes place the state is not bound by the treaty. Treaty signatures do "not establish the consent to be bound. However, it is a means of authentication and expresses the

throughout the contemporary world are party to the human rights protections established by the United Nations.

Despite the existence and acceptance of international and national human right laws, individuals throughout much of the contemporary world are still subject to human rights violations (Beaman 2020; Fokas 2018; Richardson 2015; Sullivan 2005). Not all states that have ratified UN treaties respect the rights of those who these laws are intended to protect (Quataert and Wildenthal 2020a). Whether or not a state respects the rights outlined in these laws is unfortunately a question beyond the scope of this thesis.[155] The above discussion was simply intended to familiarize readers with contemporary human rights and their international scope.

Human Rights in Canada

The Canadian human rights context is not unlike many other Western counties. Canada voted in favor of adopting the UDHR at the United Nations' General Assembly in 1948. Canada also supports the International Bill of Human Rights—it has both signed and ratified the ICESCR and the ICCPR (Office of the High Commissioner 2023). In fact, Canada has signed and ratified 13 out of 18 United Nations treaties on human rights.[156]

The Canadian state also has its own human rights legislation tailored more specifically to the Canadian context. Human rights codes exist at both the federal and provincial levels in Canada. Human rights codes at the federal level include: the *Canadian Bill of Rights*; the *Canadian Human Rights Act;* and the *Canadian Charter of Rights and Freedoms* (*Charter*). The *Canadian Bill of Rights* came into effect in 1960. This bill protects things such as one's freedom of religion; freedom of speech; and freedom of the press.[157] The *Bill of Rights*, however, only applies to the federal government (Government of Canada 2022). The *Canadian Human Rights Act* (1985) prohibits

willingness of the signatory state to continue the treaty-making process" (United Nations 2022c). States that do sign treaties are, however, expected to refrain from contravening the intent of the treaty until ratification (United Nations 2022c).

[155] See Amnesty International's 2021/2022 report, "The state of the world's human rights": https://www.amnesty.org/en/documents/pol10/4870/2022/en/.

[156] Canada has not signed or rectified the following: the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Optional Protocol to the Convention on the Rights of the Child on a communications procedure; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and the International Convention for the Protection of all Persons from Enforced Disappearance. See Office of the High Commissioner (2023).

[157] See https://laws-lois.justice.gc.ca/eng/acts/C-12.3/page-1.html.

discrimination based on specific grounds such as age and sexuality.[158] Like the *Bill of Rights,* the *Canadian Human Rights Act* applies only to the federal government. Perhaps the most important development concerning the protection of human rights at the federal level in Canada was the enacting of Part I of the *Constitution Act 1982*, more commonly known as the *Canadian Charter of Rights and Freedoms*. The *Charter* was enacted in 1982 and protects many of the rights contained within the *Bill of Rights,* along with additional rights such as equality rights, language rights, education rights, and mobility rights, for example (Government of Canada 2022). The *Charter* is "considered essential to preserving Canada as a free and democratic country" (Government of Canada 2022).[159] Unlike the *Bill of Rights* and the *Canadian Human Rights Acts,* however, the *Charter* applies to all levels of governments in Canada.[160]

Provincial human rights codes often protect many of the same rights and freedoms protected by the *Charter*.[161] All Canadian provinces and territories have their own human rights codes and laws (Ontario Human Rights Commission 2013a). Unlike international human rights codes, the federal and provincial human rights acts protect both universal human rights (as we see in the declarations and treaties of the United Nations) plus rights that "are based on the particular circumstances of Canadian history" (Russell 1983, 43). In sum, Canada has developed an extensive legal framework, both at the federal and provincial levels, to uphold and protect the human rights and fundamental freedoms of Canadians.[162]

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[158] The purpose of the *Canadian Human Rights Act* (1985) "is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered." See https://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html#h-256795.

[159] For more on the *Charter,* see Ryder (2005).

[160] The *Charter* only applies to the conduct of the Canadian state. The *Charter* does not apply to the actions of private non-state actors. The *Charter*, for example, cannot be used to settle disputes between private parties. This is where provincial human rights codes become important.

[161] "On June 15, 1962, Ontario became the first jurisdiction in Canada to formally recognize the moral, social and economic consequences of discrimination by enacting a Human Rights Code and establishing a human rights commission" (Ontario Human Rights Commission 2013a).

[162] Despite the protections offered by federal and provincial human rights acts and codes, the rights of Canadians are frequently infringed by the state and private actors. The Canadian state is not free of rights violations. Indigenous populations in Canada are quite often subject to *Charter* violations: see the Supreme Court of Canada's *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, [2017] 2 S.C.R. 386. See also Borrows (2019). Moreover, the *Charter* allows the state to knowingly violate select rights so long as the infringement is justifiable in a "free and democratic" society.

The Nature of Human Rights

The ambiguous meaning of human rights, combined with the complex web of international and national human rights codes makes the story of human rights a rather complicated one (Quataert and Wildenthal 2020b). This story is further complicated when one considers the various philosophical, religious, and moral claims found in many of the debates concerning the very nature of the rights humans (Clapham 2007; Cmiel 2004; Freeman 2004; Donnelly 1984; Edmundson 2012; Quataert and Wildenthal 2020a; Ferrone 2017). On one hand there are those scholars and theorists who presuppose that human rights and other legal rights are social constructs. These rights, though applied universally, are ultimately the products of the social world and the contexts within which power struggles take place (Stammers 1999; Quataert and Wildenthal 2020b, 2). In this light, human rights did not develop in a linear, evolutionary, inevitable fashion but are instead shaped by various social, cultural, and geographic factors (Quataert and Wildenthal 2020b). Understood as a product of the social world, human rights do not pass "like a torch from generation to generation, that is, remain stable in content over time and across place" (Quataert and Wildenthal 2020b, 1). The changing nature of power struggles means that new rights can be created, and others taken away.[163]

On the other hand, human rights are framed as the products of something beyond the social world (Freeman 2004, 2022; Quataert and Wildenthal 2020a, 2020b). Such an approach to rights is often rooted in religious moral and philosophical claims, which propose that humans, at least in Western Christian majority countries, are made in the image of God. This presupposition posits that human rights and other rights, in the form of natural rights, are handed down by God to protect his creation (see Freeman 2022).[164] Human rights are to some people thus grounded in the laws of God and indebted to Christianity and the transcendent (see Shah and Hertzke 2016; Harper 2016; Patel 2005; Moyn 2015). The rights expressed by early Enlightenment thinkers, for example, are quite explicitly rooted in a divinely inspired natural law.[165] Samuel Moyn points out that "without

[163] Quataert and Wildenthal argue that "rights, after all, can be won and they can be lost; the cause of right alone cannot assure a just and fair outcome" (2020b, 1). What's more, many human rights have been reformulated as the result of colonialism (2020b, 5).

[164] The early natural law works of Thomas Aquinas and John Locke, for example, are both understood to be grounded in Christian theological concerns (Freeman 2004).

[165] Freeman argues that there is a "religious character [to] Locke's conception of natural rights" (2004, 387). Moreover, Freeman draws attention to the religious foundations of human rights, arguing that "the concept of human rights emerged in the West, to an important extent, as a *religious* response to a set of problems that was both religious and

Christianity, our commitment to the moral equality of human beings is unlikely to have come about" (2015, 6). Moyn also suggests that it was "Christians who did much and perhaps most to welcome and define the idea of human rights in the 1940s, as well as some of its core notions such as the importance of human dignity, which nobody else was yet making central…" (2015, 7-8). For those who posit that human rights are synonymous with religion (read: Christianity), humans are thought to be the recipients of certain rights simply because they are human (Freeman 2004; George 2008). In short, for some people, the rights humans enjoy are said to be divinely inspired and a rooted in a natural law[166] (Heyman 2021; Freeman 2004, 387; Harper 2016).

In sum, while human rights themselves are viewed by most of the international community as universally applying to all individuals,[167] the very nature of these rights is greatly debated. I draw attention to the debates about the nature of human rights not because I intend to contribute to them in this thesis, but rather to highlight how human rights are conceptualized in broader academic debates. [168] The highlighting of these debates is important as they are found in discussions about human rights analyzed in this chapter.

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political at a time when religion and politics were inseparable" (2004, 386). There is a "hidden god" in human rights (2004, 387).

[166] Jacob Kohlhaas argues from a Catholic perspective that "Broadly understood, natural law refers to a range of moral theories that rely on rational discernment of the natural order as a means of telling good from evil […] Despite its robust history within Christianity, natural law morality was initially developed by the Greek Stoic philosophers. Their commitment to living reasonably within nature's designs produced a universally accessible moral theory based upon the ordinary human powers of observation and rational reflection. Christians appropriated natural law reasoning through the premise that observations of creation ought to reveal aspects of God the Creator's will. In other words, what is natural is what God intends" (2018, 49). For more on natural law and human rights, see Finnis (2011). Theoretical debates about natural law are quite extensive. For more on the philosophy and moral claims of natural law and its critiques of positive law, see George (2008).

[167] There exist individuals who argue that the idea of universal human rights is fundamentally flawed. Radical cultural relativists, for example, argue that *culture* dictates which rights one is to enjoy. Cultural relativists, in the most radical sense, argue that "culture is the sole source of the validity of a moral right or rule" (Donnelly 1984, 400; see also Brown 2008). To radical cultural relativists, human rights cannot be universally applying across all cultures (Donnelly 1984). To these individuals, each culture constitutes "a social world that reproduces itself through enculturation, the process by which values, emotional dispositions, and embodied behaviors are transmitted from one generation to the next" (Brown 2008, 364). Most of the international community are, however, universalists who hold that culture has little bearing on the "validity of moral rights and rules, which are universally valid" (Donnelly 1984, 400). Radical universalists argue that culture is completely irrelevant when assessing the validity of rights, whereas more modest universalists recognize that culture, to some degree, affects the way in which human rights are perceived, utilized, and applied in different geographic, social, and political contexts throughout the world. For more on cultural relativism, universalism, and human rights, see Brown (2008) and Donnelly (1984).

[168] Of course, other more nuanced framings of human rights exist beyond what are presented here. Discussion of these positions, however, opens the door to moral and philosophical debates that offer little analytical insight to the analyses in this thesis. These debates are therefore best left to theorists of human of rights and natural law. For more, see Quataert and Wildenthal (2020a, 2020b), Finnis (2011), and George (2008).

Before I begin my analysis, I must note that I explore the notion of human rights in its broadest sense. I am not exclusively concerned with rights as they relate to universal human rights. Rather, I focus on all rights, both universal human rights as identified in international law and in Canadian law, along with the specific legal rights granted to Canadians by the Canadian state. I therefore use the term human rights to collectively refer to (1) universal human rights recognized by international and Canadian law; and (2) all other legal rights granted to Canadians.[169] It is to the use of human rights in *Latimer, Bedford, and Trinity Western* that I now turn.

Religious Interveners and Human Rights

A Transcendental Approach to Human Rights

In the submissions of the religious interveners, particularly in *Latimer,* there is an emphasis on the transcendent nature of human rights. The Evangelical Fellowship of Canada et al. in *Latimer*, for example, made this clear, when they said:

> The Preamble states that the principles upon which Canada is founded in turn recognize two seminal principles: ***the 'Supremacy of God'*** and the 'rule of law'. By identifying two sources from which we must draw the legal principles on which our political order rests, the Preamble to the *Charter* signals that any effort to understand the meaning of civil rights by reason alone ignores the limits of human reason, ***the contingency of man and the supremacy of God***. As a result, legal principles, especially those relating to the 'being' or status of a person, must be discerned and interpreted with a humility stemming from man's 'creatureliness', as well as with the objective of ensuring that all human beings enjoy fundamental legal protection for their human dignity as creatures. ***In this way the 'supremacy of God' mandates that all humans be treated in accordance with the 'rule of law'*** […] Use of the Preamble in such a way recognizes the historical reality that a simple reliance on positive law to answer existential questions of status often results in the wrong answer. (at paras. 8-9; emphasis added)

And,

[169] Most, if not all, rights found in declarations, treaties, constitutions, and legislation like the Canadian *Charter* are human rights. Not all rights, however, extended to humans are themselves human rights. There exists a distinction between human rights (what some also refer to as fundamental rights) and the rights humans may have (Clapham 2007, 4). Human rights are rights that protect "extraordinarily special, basic interests" (Edmundson 2012, 158). These rights are separate from other rights. Moral rights, for example, are often excluded from the domain of human rights. Edmundson argues that "we have a moral right to expect others to keep their promises. We have that right because we have an important interest in being able to plan and structure our lives. But one would hesitate to call this a human right, or to call the breaking of a promise a human rights violation per se" (2012, 158). This distinction draws into question moral and philosophical concerns, both of which are beyond the scope of this chapter. It is worth noting, however, that this distinction does exist (Edmundson 2012; Clapham 2007).

> The *Charter* purports to articulate certain ***universal principles*** and import them into Canadian law – for example, the right to life, and equality before the law. By pointing to certain universal freedoms which positive law is required to protect, the *Charter* draws on sources which lie outside of positive law […] ***Theology*** and philosophy are those other sources. (at para. 10; emphasis added)

In *Bedford* too, The Evangelical Fellowship of Canada also hinted at the transcendent/religious nature of the *Charter,* though perhaps less explicitly. In *Bedford,* this intervener argued that:

> ***Charter values and rights***, and how they inform Parliament's jurisdiction over criminal law ***must be understood within the context of Canada's moral and philosophical past and present***. (*Bedford,* The Evangelical Fellowship of Canada, at para. 16; emphasis added)

While The Evangelical Fellowship of Canada does not draw explicitly on the use of the transcendent or religion in the above statement, one must remember the religious history that characterizes the Canadian context. "Canada's moral and philosophical past and present" are unequivocally religious—and specifically Christian. One might therefore interpret The Evangelical Fellowship of Canada's statement as implying that the values and rights that the *Charter* protects necessarily derive from ecclesiastical law or certain Christian moral assumptions that have traditionally guided Canadian law. This assumption is perhaps justified given that this same intervener said in *Bedford* that:

> the legalization of prostitution or decriminalization as proposed by the respondents would negatively impact and change the culture of Canada: ***a nation founded on Judeo-Christian principles,*** whose tenets of faith decries the corruption and exploitative profiteering inherent in a legalized sex market" (at para. 14; emphasis added)

And that,

> Canadian law has its foundation in morality, interconnected to its ***history of religious principles***. Respect for human life, and its inherent worth, is an underlying theme. It is well established that criminal laws are enacted to protect societal values, ***and have a historical basis in religious principles***. (*Bedford,* The Evangelical Fellowship of Canada, at para. 15; emphasis added)

The Evangelical Fellowship of Canada portrays human rights, and the rights more broadly protected by the *Charter,* as rooted in the transcendent. Positive law may be responsible for the upholding of the protections afforded by the *Charter,* but the rights and values of the *Charter* are divinely inspired. Modern human rights protections have an historical basis in religion. For this

intervener, positive law is insufficient in providing answers to existential questions involving human rights.

A transcendental approach to human rights is also evidenced by the Catholic Group for Health, Justice and Life in *Latimer*. This intervener said:

> ***The transcendent nature of this Charter right was acknowledged by this Court in Rodriguez***. Even in the case of a terminally ill competent adult who desired and sought death, this Court held that the active participation by another person in her death would be intrinsically, morally and legally wrong… (*Latimer,* Catholic Group for Health, Justice and Life, at para. 15; emphasis added)

In the discussions of this intervener, and others like it, the *Charter* is portrayed as having been inspired by something beyond that of the social world. It was rooted in in the transcendent.

Similar sentiment is found in the arguments of other religious interveners. Although these other religious interveners drew less clearly on religion and the transcendent in their framing of the foundations of the *Charter*, they reject the idea that the *Charter* and the rights and values that stem from it were based on positive law and/or legal moralism. The Christian Legal Fellowship et al., for example, argued that:

> Parliament has held the view that prostitution is immoral since Confederation. This moral view is not based on mere prudish sensibilities nor is it legal moralism: it is a common and fundamental ***social value*** rooted in other constitutional values such as promoting gender equality, preventing the exploitation of vulnerable persons and protecting human dignity (*Bedford,* Christian Legal Fellowship et al., at para. 2; emphasis added)

Like the above comments of The Evangelical Fellowship of Canada, the Christian Legal Fellowship et al.'s rejection of legal moralism and emphasis on a common and fundamental social value and its relation to other constitutional values must also be considered against the backdrop of Canada's religious history. With this history in mind, it is not unreasonable to assume that the social values that have "for decades" guided Canadian lawmakers are ingrained with Christian moral assumptions (*Bedford,* Christian Legal Fellowship et al., at para. 51; see also Beaman 2008). The Christian Legal Fellowship et al. did not elaborate on the nature of the social value referenced above, but one might conclude that religion and/or the transcendent played some part in the formation of this social value, particularly given the religious affiliation of these interveners and

the argument presented above that the principles and values that have guided Canadian law have an "historical basis in religious principles".[170]

Beyond broad claims about the nature of the *Charter* itself, the religious interveners also called into question the transcendent nature of individual rights protected by the *Charter*. These claims echoed the natural rights, or natural law, type argument discussed in the introduction to this chapter. Again, The Evangelical Fellowship of Canada hinted at the sacredness of human life, when it argued that:

> ***All human life has inestimable worth***. This proposition is the bedrock of civilized nations, and of Canada's constitutional order. While this appeal deals with Canada's laws in regard to prostitution, at its heart are questions concerning the charter value of the dignity of human life and Parliament's actions to prohibit behaviour that is regarded as opposed to human dignity, that is morally unacceptable and thus criminal." (*Bedford,* The Evangelical Fellowship of Canada, at para. 1; emphasis added)

To the Evangelical Fellowship of Canada, human life has "inestimable worth" precisely because it is sacred. This intervener argued that:

> Perhaps the most fundamental value is ***the sanctity of human life***. This value was articulated forcefully in Rodriguez, the Canadian touchstone for the principle (*Bedford*, The Evangelical Fellowship of Canada, at para. 6; emphasis added)

Humans, according to this intervener and others like it, are created in the image of God, or by "a divine being" (*Latimer,* The Evangelical Fellowship of Canada et al., at para. 11).[171] One's life, and thus the right to life, is cast as a gift from God.

The Catholic Group for Health, Justice and Life, again, echoed this sentiment when it argued that:

> Linking a convicted murderer's minimum punishment to the condition of his victim through the defence of necessity, constitutional exemption, or surrogate suicide, ***rather than to the transcendent nature of the victim's right to life*** and security of the person would implicitly acknowledge the *Charter* right to life and security of the person for some

[170] The data does not necessarily support the conclusion that religion and/or the transcendent necessarily ground this intervener's interpretation of the nature of *Charter* and the constitutional values and rights it enshrines. What is plausible, however, is that there exists a correlation, not causation, between this intervener's religious affiliation and its position concerning legal moralism and the legal grounding of the *Charter*.

[171] "Tracy Latimer must be regarded as a person who possessed the same qualities and dignity as any other human being because she was made in the *image of God*" (*Latimer,* The Evangelical Fellowship of Canada et al., at para. 13; emphasis added).

> in society, particularly the disabled, need not be taken as seriously or protected to the same degree by the state or the Courts, as others. (*Latimer*, Catholic Group for Health, Justice and Life, at para. 17; emphasis added)

This same intervener also went on to say that:

> In a free and democratic society, the right to life and security of the person would be meaningless unless the state provided protection for this right through penal sanctions that appropriately ***reflected the transcendent nature of the right***. (*Latimer*, Catholic Group for Health, Justice and Life, at para. 14; emphasis added)

For the religious interveners, life itself, and the right someone has to life (i.e., through section 7 of the *Charter*) was unequivocally rooted in the transcendent. Human life as it relates to section 7 of the *Charter* was therefore framed as something sacred, granted by some other worldly, transcendent figure.[172] In this light, the right itself was God-given—a common proposition by those who posit that human rights are indebted to Christianity (Patel 2005; Moyn 2015).

What is particularly interesting to note is that this sentiment concerning the sacredness of human life was not only employed by religious social actors: a nonreligious state actor also drew on this argument. In *Latimer,* for example, the Attorney General for Ontario argued that:

> It is respectfully submitted that everyone has a right to life. Everyone enjoys a fundamental right to personal autonomy and bodily integrity. ***Human life is sacred and inviolable and everyone's life is of equal value.*** (*Latimer*, Attorney General for Ontario, at para. 16)

And,

> It is respectfully submitted that the mandatory minimum sentence for second degree murder serves a similar purpose. Its mandatory nature protects all Canadians equally***. It represents a symbolic collective statement of the importance of the principles of the sanctity of life, personal autonomy and bodily integrity.*** It keeps the floodgates shut and avoids any slide down the slippery slope of relative worth. (*Latimer*, Attorney General for Ontario, at para. 17)

The Attorney General for Ontario's position regarding the nature of human life, and therefore one's constitutionally protected right to life, is perhaps not surprising, given, again, Canada's religious history and the influence Christian moral assumptions have had on Canadian law and

[172] An individual is entitled to enjoy the right to life, according to these interveners, precisely because they are human and thus made in the image of God. For these interveners, many of the rights in the *Charter* are to be only extended to humans—non-human animals are excluded. In *Trinity Western,* the Faith, Fealty and Creed Society argued that "It seems clear that the framers intended by use of this language to make some rights available only to human beings" (*Trinity Western*, Faith, Fealty and Creed Society, at para. 10).

politics (O'Toole 2000; Seljak 2012). The Canadian state is, after all, "residually Christian" (Seljak 2012). What is interesting, however, is how explicitly religious this argument is. There was seemingly no effort made by this state actor to formulate this in a way more palatable for law as is the case in other Supreme Court decisions. State actors refrain from such explicit religious arguments in the *Bedford* and *Trinity Western* decisions.[173]

It was not, however, only the right to life, liberty, and security of the person, that was linked to the transcendent. The Roman Catholic Archdiocese of Vancouver et al. argued that they sought to "promote a ***Gospel-inspired conception of freedom of religion, conscience and expression,*** under constitutional and human rights legislation across the country" (*Trinity Western,* Roman Catholic Archdiocese of Vancouver et al., at para. 8; emphasis added). While these interveners suggested that it was ultimately the law that was responsible for upholding the legal rights and values of the *Charter* such as diversity, pluralism, and multiculturalism,[174] such rights were themselves not solely the products of law: they were divinely inspired.

In *Latimer, Bedford,* and *Trinity Western* the arguments of the religious interveners point toward an understanding of various rights (including the entirety of the *Charter)* as being grounded in natural divine law—or the transcendent. The Canadian state and law are portrayed as being the arbiters of the rights enjoyed by Canadians, but these rights themselves did not originate with the state and law. These arguments suggest that the *Charter,* and some of the rights and values it encompasses, are formal legal articulations of a natural law—a law inspired and handed down by the transcendent.[175] The transcendent nature of these rights is further accentuated by the fact that one intervener, the Christian Legal Fellowship, linked the entirety of the practice of law to the

[173] In the Supreme Court of Canada's 2015 *Carter* decision, which decriminalized physician-assisted dying, the Court and other nonreligious social actors appropriated religious language and arguments (Steele and Beaman 2018; Steele 2018). These appropriated arguments were, however, reformulated to speak to those individuals who live a life without God. Both the religious and nonreligious could thus find meaning in the arguments presented to the Court. The argument presented above by the Attorney General for Ontario in *Latimer* is different as it is a direct reflection of the arguments put forth by the religious social actors in the case. This argument may only speak to the religious.

[174] The Roman Catholic Archdiocese of Vancouver et al. argued, for example, that "the value of pluralism is not expressed explicitly in the Charter, but developed through jurisprudence. Authentic pluralism is a foundational principle which underpins our democratic society" (*Trinity Western,* Roman Catholic Archdiocese of Vancouver et al., at para. 11).

[175] My framing of natural law here is greatly indebted to the conversations I have had with members of the Nonreligion in a Complex Future Project's law group (see www.nonreligionproject.ca). The law group has had countless discussions about the nature of natural law and its impact on constitutional. Thank you to all members of the group who have helped me think about natural law and its implications for law.

transcendent, when it claimed that the practice of law "is a vocational calling from God" (*Trinity Western*, Christian Legal Fellowship, at para. 21).

The Utilization of Human Rights by the Religious Interveners

The utilization of human rights, especially freedom of religion, by religious social actors is well documented (Richardson 2015; Mayrl 2018; Fokas 2017, 2018; Sullivan 2005; Berger 2015; Beaman 2008, 2020). Religious social actors are quite active in pursuing rights-based claims before courts. In particular, the Jehovah's Witnesses are one of the most active religious groups in bringing human rights claims before various levels of courts (Richardson 2015; Fokas 2018). The Jehovah's Witnesses have "over 30 victories" before the European Court of Human Rights and over 50 victories before the U.S. Supreme Court (Richardson 2015, 7). The success of the Jehovah's Witnesses has prompted other religious groups, primarily minority religious groups, throughout North America, Central, and Eastern Europe to bring human rights claims before courts (Richardson 2015, 9; Richardson and Bélanger 2014). As discussed in Chapter One, however, not all religious groups pursue litigation when it comes to human rights infringements. Effie Fokas (2018) points out that some minority religious groups are reluctant to bring their human rights claims before national courts like the EctHR out of fear of being perceived as betraying one's nation.[176]

Those religious groups that do bring claims before courts do not restrict themselves to religious freedom claims either. Religious groups pursue rights-based claims related to things such as a person's legal status and property rights, for example (Fokas 2018, 30-32). In Canada, religious groups and individuals have been involved in rights-based claims before courts concerning issues such as religious freedom (*Trinity Western*), hate speech,[177] mercy-killings (*Latimer*), and same-sex marriage, to name just a few.[178]

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[176] Fokas argues that "the lengths to which a group is willing to go to resolve these grievances also depends on the extent of the group's resources, as well as their culture and values. Certain groups are more likely to seek out legal opportunities to pursue their rights, whilst others are rather focused on political lobbying. Amongst the former, some groups systematically employ legal advisors; such are, logically and, as the research conducted confirms, more likely to be aware of ECtHR case law and to seek to use it in their own struggles to secure new rights" (2018, 34).

[177] See *R. v. Keegstra*, [1990] 3 S.C.R. 697.

[178] See *Halpern v Canada (AG),* [2003] O.J. No. 2268 and *Reference re Same-Sex Marriage,* [2004] 3 S.C.R. 698, 2004 SCC 79.

The use of human rights by the religious interveners in *Latimer, Bedford,* and *Trinity Western* is, however, quite intriguing. In *Latimer,* for example, there is a relative *lack* of utilization of human rights language by the religious interveners involved in the case when compared to their nonreligious counterparts. Granted, the sample size of religious interveners in *Latimer* is quite small, but within the data available from these interveners, human rights are seldom explicitly drawn on. Discussions that often start by referencing one's right to life, liberty, and security of the person or the rights for vulnerable persons lead to discussions concerning other things like the soul, for example. The Evangelical Fellowship of Canada et al., for instance, argued:

> The Constitution has been described as 'a mirror reflecting the national soul'. What does it say of the Canadian soul when one of its courts observes that a father was 'compelled' to kill his daughter? To grant this appeal will harden the Canadian soul, will foster an encourage a culture of death in our country, and will say to the disabled that they are lesser beings who do not enjoy the full protection of Canadian law. (*Latimer*, The Evangelical Fellowship of Canada et al., at para. 3)

To be fair, The Evangelical Fellowship of Canada et al. and other religious interveners do explicitly draw attention to sections 7 and 15 of the *Charter,* but again this discussion is brief and acts as a segue into discussions about dignity (*Latimer,* The Evangelical Fellowship of Canada et al., at para. 20) and the nature of personhood (*Latimer,* The Evangelical Fellowship of Canada et al., at para. 14). The Catholic Group for Health, Justice and Life similarly devotes little focus to rights specifically, and again focuses on other aspects of certain rights, namely the transcendental nature of these rights (at paras. 12-15). In *Latimer,* the religious interveners focus less on human rights themselves and the application of human rights and instead on the nature of such rights, their historical grounding, and the relation of these rights to other values and human qualities. The religious interveners in *Latimer* do draw on human rights, but minimally so (at least relative to the nonreligious interveners, which I discuss below). Human rights are used as an entry point for discussions about larger moral, philosophical, and theological debates.

The relative lack of explicit use of the language of human rights by the religious interveners is also evident in *Bedford.* Here discussion about human rights is grounded in larger conversations about things such as morality, harm, and society. The Christian Legal Fellowship et al., for example, argued that "any infringement by the impugned provisions on the respondents' liberty or security of the person is justified given the laws' ***moral objectives***" (*Bedford,* Christian Legal

Fellowship et al., at para. 38; emphasis added). Moreover, The Evangelical Fellowship of Canada argued that:

> Attempts to legalize prostitution have shown that the promised benefits are illusory. Three years after the decriminalization of prostitution related activities, the German government issued a report stating that the change in the law had failed to deliver any tangible benefit to workers in the sex industry. Crimes against prostitutes did not appear to have decreased […] (*Bedford,* The Evangelical Fellowship of Canada, at para. 28)

In short, there is a lack of explicit utilization of human rights-based claims made by the religious interveners in *Bedford*. Again, this does not mean that these interveners cared less about human rights than their nonreligious counterparts. My observation here simply means that when articulating their position about sex work the religious interveners less frequently presented their argument in language explicitly about human rights. The religious interveners found different language and ways to articulate their positions.

The religious interveners' use of rights-based language in *Trinity Western* is quite different than in *Latimer* and *Bedford.* Recall, *Trinity Western* is about religion and the rights of religious individuals and whether religious organizations have rights. In *Trinity Western,* religious groups present freedom of religion arguments to the Supreme Court. Questions about freedom of religion and equality are thus very explicit in the arguments of the religious interveners. Rather than focusing on moral, philosophical, or theological arguments concerning things like the soul and morality, the religious interveners in these cases reference and discuss specific *Charter* rights in greater detail.[179] The Association for Reformed Political Action Canada, for example, elaborated on freedom of religion as protected under the *Charter,* arguing:

> When religious rights are implicated in a legal struggle between citizens and their civil government, the natural inclination is to look to the express protection of religious freedom in section 2(a) of the Canadian Charter of Rights and Freedoms ("Charter"), which protects from State interference the "fundamental" "freedom of conscience and religion". The bulk of jurisprudence on religious freedom lies there. But as legal scholar Iain Benson observes, "it has been startling to see how, for example, one aspect of an equality right, such as 'sexual orientation,' is hived off and played against a Section 2(a) right without any

[179] This is drastically different than *Latimer* and *Beford*. These differences, however, are complimentary. *Latimer* and *Beford* draw attention to the ways in which religious interveners use human rights in debates not about religion and Trinity Western highlights how religious interveners speak more directly to questions about section 2(a) of the *Charter* in debates about religion. The combination of these cases presents a more rounded portrayal of how religious interveners might think about and use human rights in their arguments.

> realization that there is also a corresponding equality right touching on religion within Section 15 itself. (*Trinity Western,* Association for Reformed Political Action Canada, at para. 4)

This more explicit reference to human rights was also evidenced by other religious interveners in *Trinity Western.* The Canadian Conference of Catholic Bishops argued that "any decision made by this Court in relation to the nature and scope of the Charter right to religious freedom […] will not only have a profound impact on TWU but on Catholic and other faith based religious education as well as Catholic health care and other faith based care facilities across the country" (*Trinity Western,* Canadian Conference of Catholic Bishops, at para. 2).[180] The National Coalition of Catholic School Trustees' Associations also drew on the explicit use of human rights when articulating its position concerning the placing of some *Charter* rights above others. This intervener said that "Not privileging one Charter right over another encourages the protection of all rights as society changes and we experience shifting social attitudes" (*Trinity Western,* National Coalition of Catholic School Trustees' Associations, at para. 19). The Roman Catholic Archdiocese of Vancouver et al. were also quite explicit in their position concerning a potential "hierarchy" of *Charter* rights, noting that no right should be given "superior status" over others (*Trinity Western,* Roman Catholic Archdiocese of Vancouver, at para. 16). In *Trinity Western*, as compared to *Latimer* and *Beford,* the religious interveners more concretely draw on freedom of religion. Again, this is perhaps unsurprising because the case was about religion and the rights of religious individuals.

What is particularly interesting about the religious interveners' use of human rights in *Trinity Western* is that these interveners seem to exclusively reference one specific right: freedom of religion—section 2(a) of the *Charter*. While discussion about freedom of expression and equality, for example, are found in the arguments of the religious interveners, such discussion is almost always used to supplement arguments about freedom of religion. The Canadian Conference of Catholic Bishops, for example, draws on discussion of equality rights to bolster its argument concerning the supposed establishment of a hierarchy of rights that holds a "diminished view of the right to religious freedom" (*Trinity Western,* Canadian Conference of Catholic Bishops, at para.

[180] The Evangelical Fellowship of Canada et al., drawing on the explicit use of freedom of religion, argued that "This coercive imposition of the majority view [i.e., excluding members of a religiously informed education community from state-controlled accreditation] is a straightforward breach of freedom of religion" (*Trinity Western*, The Evangelical Fellowship of Canada et al., at para. 3).

41). And, the Seventh Day Adventist Church in Canada, introduced freedom of association in relation to freedom of religion when it said that "by way of section 2(d) of the Charter [freedom of association], Parliament created a wall to defend religious freedom and this Court has always defended that wall" (*Trinity* Western, Seventh Day Adventist Church in Canada, at para. 6). This is to say that the religious interveners are fixated on freedom of religion in their arguments. This emphasis on freedom of religion in *Trinity Western* is perhaps unsurprising given that it is central to the case and the arguments of the religious interveners. That other rights are largely absent from the arguments of these interveners is, however, intriguing when questions about equality, expression, and discrimination are all also important aspects of *Trinity Western*—all of which feature in the arguments of the nonreligious interveners to which I now turn.

Nonreligious Interveners and Human Rights

An Immanent Foundation of Human Rights

In contrast to the framing of human rights by the religious interveners, the nonreligious interveners present a somewhat different account concerning the nature of human rights. The nonreligious interveners similarly constructed human rights as universal, that is, they are afforded to all individuals precisely because they are human, but these rights were not grounded in the transcendent. Human rights were grounded in "this-worldly" immanent law (see also Salonen 2018).

The Council of Canadians with Disabilities et al. in *Latimer,* for example, brought to the fore the legal grounding of human rights. These interveners highlighted the importance of the "legal traditions" that grounded the human rights enjoyed by Canadians, specifically those living with disabilities (*Latimer,* Council of Canadians with Disabilities et al., at para. 11). Moreover, for these interveners, the Supreme Court "should not be swayed by public sentiment, particularly when considering the rights of a minority group" (*Latimer,* Council of Canadians with Disabilities et al., at para. 75). It is unclear whether this notion of "public sentiment" includes social factors such as religion and the transcendent. Whether public sentiment to these interveners does include religion is, however, irrelevant: for these interveners human rights were clearly grounded in law.

The Canadian/HIVAIDS et al. also claimed that:

> Canada has ratified a number of international conventions creating binding legal obligations that must guide the interpretation and analysis of domestic law in this case. (*Bedford*, Canadian HIV/AIDS Legal Network et al., at para. 21)

Likewise, the Joint United Nations Programme on HIV/AIDS:

> ***Canada has committed itself to international human rights obligations***, which play an important role in the interpretation of the Charter. UNAIDS' recommendations provide normative guidance to support Canada and other UN Member States in realizing their international human rights obligations in the context of HIV, including vis-à-vis sex workers. (*Bedford*, Joint United Nations Programme on HIV/AIDS, at para. 5; emphasis added)

And, The Advocates' Society in *Trinity Western* said that:

> The LSUC performed its obligation as a public interest regulator, turning its mind to the ***fundamental values enshrined in the Charter and other provincial human rights legislation***. (*Trinity Western*, The Advocates' Society, at para. 23; emphasis added)

What emerges in submissions of the nonreligious interveners is a focus on the legal aspect of human rights and the other constitutional obligations of the Canadian state. Law, specifically the Constitution (and therefore the *Charter*), is considered the highest authority in Canada (*Bedford*, David Asper Centre for Constitutional Rights, at para. 16).[181] There exists nothing above the law. In this light, human rights are grounded in the "this-worldly" affairs of the immanent world (Salonen 2018).

The nonreligious interveners also often linked the legal basis of human rights with other "this-worldly" things like autonomy, self-determination, medicine, and health care to name a few. In *Bedford,* for example, the Joint United Nations Programme on HIV/AIDS linked human rights to health, when it said that:

> A critical component of an effective and comprehensive response to HIV is a supportive legal environment that is protective of human rights. (*Bedford*, Joint United Nations Programme on HIV/AIDS, at para. 21)[182]

[181] The David Asper Centre for Constitutional Rights argued that "This Court has acknowledged that common law rules must give way to the Constitution" (*Bedford*, David Asper Centre for Constitutional Rights, at para. 16).

[182] The Joint United Nations Programme on HIV/AIDS further linked health, human rights, and law when it pointed out that "In the context of sex work, an evidence-informed response to HIV, which seeks to protect human rights and the public health, is based on three pillars: (i) access to HIV services; (ii) supportive environments that facilitate access; and (iii) action to address structural issues related to HIV and sex work" (*Bedford*, Joint United Nations Programme on HIV/AIDS, at para. 6). This intervener also argued "Like all human beings, sex workers benefit from human rights. The human rights of sex workers include the rights to non-discrimination; security of person and

The Canadian HIV/AIDS Legal Network et al. similarly argued that:

> Forcing sex workers to work in isolation, whether indoors or on the street, undermines their ***health and infringes their right to security of the person*** by, *inter alia,* significantly interfering with ***their ability to practice safer sex***. (*Bedford,* Canadian HIV/AIDS Legal Network et al., at para. 13; emphasis added)[183]

Moreover, the Court in *Bedford* held that the prohibitions on bawdy houses interfered with the "provision of health checks and preventive health measures" which thus has implications for one's right to life, liberty, and security of the person (*Bedford,* at para. 64).

A similar entanglement occurs between the immanent, legal grounding of human rights and dignity in the discussions of the nonreligious interveners. The Canadian Civil Liberties Association, for example, stated that:

> Its major objectives are to promote the ***legal protection of the freedom and dignity of the individual*** against unreasonable invasion by public authority and the promotion of fair procedures for the determination of each ***individual's legal rights and obligations***" (*Latimer*, Canadian Civil Liberties Association, at para. 2; emphasis added)[184]

This is again demonstrated by the Canadian Bar Association in *Trinity Western* when it not only grounded its understanding of freedom of religion (section 2(a) of the *Charter*) in what it refers to as the "secular", but also when relating the protection of freedom of religion to the upholding of dignity, diversity, and equality. This intervener said that:

> The contours of freedom of religion remain delineated by the context in which this freedom is exercised: that of "***a secular, multicultural and democratic society*** with a strong interest in protecting dignity and diversity, promoting equality, and ensuring the vitality of a common belief in human rights." (*Trinity Western*, Canadian Bar Association, at para. 20; emphasis added; emphasis added)

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privacy; recognition and equality before the law; due process of law; the highest attainable standard of health; employment, and just and favourable conditions of employment; peaceful assembly and association; freedom from arbitrary arrest and detention, and from cruel and inhumane treatment; and protection from violence" (*Bedford*, Joint United Nations Programme on HIV/AIDS, at para. 15).

[183] The Canadian HIV/AIDS Legal Network et al. also said that "The HIV Coalition respectfully submits that a concern for the health and welfare of sex workers is profoundly inconsistent with the criminalization of prostitution, which stigmatizes sex workers and gravely threatens their health and safety" (*Bedford,* Canadian HIV/AIDS Legal Network et al., at para. 26).

[184] The Council of Canadians with Disabilities et al. said "It is essential that this appeal be resolved in a fashion which clearly and strongly affirms the *rights of the many disabled Canadians whose dignity* and security have been put in jeopardy by the arguments advanced on behalf of the Appellant" (*Latimer*, Council of Canadians with Disabilities et al., at para. 1; emphasis added).

For the nonreligious interveners, rights-based arguments rooted in "this-worldly" law was linked in some fashion to dignity. Like human rights, dignity was grounded in the immanent world—it was not granted by some transcendent figure, but instead was dependent on one's self-determination and autonomy (a point I explore in Chapter Six) (*Bedford,* West Coast Women's Legal Education and Action Fund, at para. 14).

The Court too, in all three cases, echoes the nonreligious interveners' approach to human rights. The Court does not draw on religion or the transcendent in its framing of human rights. The sanctity of life argument, for example, is not found in the written decisions of the Court. In *Latimer,* for instance, there is a strong emphasis on jurisprudence and legal tests in determining the scope and nature of various rights—such discussions are *legal* in nature and focus on tests grounded in immanent facts (at para. 36-42). The Court concludes in *Latimer* that Robert Latimer's actions resulted in "the most serious of all possible consequences, namely, the death of the victim, Tracy Latimer" but it stops short of drawing on the sanctity of life arguments used by some of the interveners above in describing why the killing of another person is society's most serious crime (*Latimer,* at para. 81).

The legal nature of human rights is perhaps best articulated by the Court in its *Bedford* decision. In *Bedford,* the Supreme Court is clear that other courts in general are required to "follow and apply authoritative precedents. Indeed, this is the foundational principle upon which the common law relies" (at para. 38). To the Court, it is precedent, specifically *legal precedent* (not religious precedent) from which the law and what stems from it is based, not the transcendent. The Court also recognized that rights themselves are not pre-determined, set-in-stone, or handed down in a linear fashion from one generation to the next.[185] Rights were framed as dependent on social context and constantly changing. In fact, the Court explicitly acknowledged that the basic values and principles of fundamental justice, and thus by extension *Charter* rights, addressed in *Bedford* had only developed in the 20 years leading up to the case (at para. 45) and that *law* had "given shape to the content of [the] basic values [… of] arbitrariness, overbreadth, and gross disproportionality" (*Bedford*, at para. 96). These "basic values", which are grounded in law, are what ultimately delimit the scope of the individual rights protected by the *Charter*.

[185] For more on the changing nature of rights, see Quataert and Wildenthal (2020b).

Likewise, in *Trinity Western,* Chief Justice McLachlin ruled that it was the responsibility of the courts to ensure *Charter* rights were interpreted consistently (at para. 116). Case law had defined "the protection of s. 2(a) as extending to the freedom of individuals to believe in whatever they choose and to manifest those beliefs" (at para. 22). The rights in the *Charter*, as held by Chief Justice McLachlin, are thus rooted in, and governed by, "this-worldly" law, not the transcendent.

Despite the absence of a transcendental element, human rights were still of critical importance to the nonreligious interveners. Just as the right to life was framed as one of society's most important human rights for the religious interveners, the nonreligious interveners also presented this same right as extremely important. The British Columbia Civil Liberties Association, for example, argued in *Trinity Western* that:

> In the context of the *Charter*, s. 7 serves as the trunk of that metaphorical tree. It protects "the most basic interests of human beings – life, liberty and security. The right to life is of course an ***indispensible*** [sic] prerequisite to the enjoyment of the remaining guaranteed rights […] ***Indeed, of all the substantive Charter rights, s. 7 has doubtless had the most profound effect on the Canadian legal landscape thus far***. (*Bedford*, British Columbia Civil Liberties Association, at para. 8)

Thus, the immanent, rather than the transcendent, nature of human rights as understood by the nonreligious interveners in no way constructed human rights as any less meaningful than human rights as understood by the religious interveners (or vice-versa). My drawing attention to the immanent nature of human rights in the intervener factums is to suggest that the narratives of the nonreligious and religious interveners present human rights differently. In one narrative human rights are rooted in something outer-worldly, while in the other narrative human rights are rooted in the immanent social world.

What I must note, however, is that we see a rather interesting shift in Canadian law take place in the time between *Latimer* and *Trinity Western*. The transcendental understanding of human rights found in the arguments of the religious interveners in *Latimer* was, as indicated above, quite explicit. But in *Bedford* and *Trinity Western* what is noticeable is that the transcendental nature of human rights is found less frequently in submissions of the religious interveners. In *Trinity Western,* the religious interveners are less concerned with the nature of human rights and more centred on the interpretation, application, and applicability of human rights in contemporary society. When the religious interveners do concern themselves with the nature of

the rights protected under the *Charter* they show signs of interpreting the nature of these rights as somewhat immanent. The Canadian Conference of Catholic Bishops in *Trinity Western*, for example noted that:

> The Court of Appeal's analysis, with respect, reflects a very impoverished view of religious freedom that is out of step ***with the expansive nature of that freedom as articulated by this Court in Loyola, the Same-Sex Marriage Reference and many other cases***." (*Trinity Western,* Canadian Conference of Catholic Bishops, at para. 38; emphasis added)

The Canadian Conference of Catholic Bishops here is less concerned with the potential transcendent nature of one's freedom of religion and instead more concerned about the legal basis of one's right to freedom of religion as formulated by legal precedent. There exists here a curious shift that emphasizes a legal framing of freedom of religion rather than a transcendental one.

Likewise, in its discussion of diversity and multiculturalism (section 27 of the *Charter*), the Seventh Day Adventist Church in Canada quoted Prime Minister Laurier, when it argued that "the bedrock fact of Canadian history is diversity among its citizens." (as quoted in *Trinity Western,* Seventh Day Adventist Church in Canada, at para. 14). Canadian history here is not necessarily rooted in religious history, as was the case with the religious interveners in *Latimer,* but instead in an immanent history characterized by diversity and pluralism. The Seventh Day Adventist navigates discussion about section 27 of the *Charter* without the use of religious language and/or references to the transcendent. The religious interveners draw on the transcendental and/or religious grounding of human rights in *Bedford* and *Trinity Western,* but these interveners also approach human rights in ways similar to the nonreligious interveners. This observation notwithstanding, there exists a discernable difference in how human rights are navigated in the arguments of the religious and nonreligious interveners in *Latimer, Bedford,* and *Trinity Western.*

The Utilization of Human Rights by the Nonreligious Interveners

The utilization of human rights by nonreligious individuals is, like it is with religious individuals, well documented (Beaman 2015, 2020; McAdam 2018; Wexler 2019; Dabby 2021; Schmidt 2016; Payne 2013; Strumos 2022). Like religious individuals, nonreligious individuals are active in pursuing rights-based claims in the legal environment and have been involved in countless cases

brought before courts concerning various human rights related issues. Compared to the religious interveners, however, there are qualitative differences in how human rights are used by the nonreligious interveners in *Latimer, Bedford,* and *Trinity Western.*

The nonreligious interveners draw more explicitly and concretely on human rights in discussions about the social issues brought before the Court. Much of the rights-based discussion employed by the nonreligious interveners, particularly in *Latimer* and *Beford,* concerned section 7 of the *Charter*: one's the right to life, liberty and security of the person. The Canadian Aids society in *Latimer,* for example, draws extensively on section 7 of the *Charter*, particularly when advocating that individuals with HIV and AIDS are to maintain control over decisions concerning medical treatment. This intervener argued that control over treatment is a "constitutional right" and that:

> the Charter section 7 right includes the right to consent or withhold consent to medical treatment. This right extends to a person who gives instructions while competent, but who subsequently becomes incompetent mentally, even if their instructions appear to be contrary to their best interests. (*Latimer,* Canadian Aids Society, at para. 26)

Somewhat similarly, the Council of Canadians with Disabilities et al. explicitly referenced section 7 of the *Charter* when arguing for the rights of Canadians with disabilities (at paras 28-29). These interveners also drew on a child's right to life, as referenced in the U.N *Convention on the Rights of the Child*, arguing that "every child has the inherent right to life and that mentally and physically disabled children should enjoy a full and decent life" (*Latimer,* Council of Canadians with Disabilities et al., at para. 35).

In *Bedford,* several of the nonreligious interveners also drew on the right to life, liberty and security when considering the prohibitions in place regarding sex work. The Canadian HIV/AIDS Legal Network et al. not only explicitly referenced one's right to life as protected by the *Charter,* but they also drew on international human rights codes which also referenced one's right to life, liberty and security of the person:

> The *International Covenant on Civil and Political Rights* ("ICCPR") legally obliges ***Canada to guarantee sex workers' rights to life (Article 6), liberty and security of the person (Article 9)*** […] (*Bedford,* Canadian HIV/AIDS Legal Network et al., at para. 21; emphasis added)

The nonreligious interveners who drew on international human rights codes did so to bolster their arguments concerning the need to protect the lives and security of Canadian sex workers. [186] These arguments implied that the Canadian state was not only responsible for upholding the rights of sex workers because of Canadian legislation mandated it to do so, but also because of commitments Canada had made to the international community.[187]

Similarly, the Canadian Association of Sexual Assault Centres et al. drew on the right to life, liberty and security when considering the prohibitions on sex work:

> the laws that *criminalize* johns, brothel owners, pimps and profiteers, in any location, do not cause men's violence against women and do not violate prostituted ***women's security of the person***. The extraordinary level of danger that women in prostitution face comes from johns, brothel owners, pimps and profiteers who enforce and demand male sexual access to women's bodies in a commercially exploitative industry**. *The decriminalization of these men would violate women's security of the person.*** (*Bedford,* Canadian Association of Sexual Assault Centres et al., at para. 13; emphasis added)

What is particularly interesting here is that the Canadian Association of Sexual Assault Centres et al. introduces a gendered element to the right to life and security of the person. While other nonreligious interveners considered how the prohibitions on sex work impacted a woman's right to life, liberty and security,[188] these interveners, along with the intervener Asian Women Coalition Ending Prostitution, devoted considerably more attention to the effects the prohibitions on sex work had on women specifically and their rights. The focus on gender highlighted how women, particularly female sex workers belonging to marginalized and racialized groups,[189] are disproportionately impacted by sex work laws compared to men (*Bedford,* Asian Women Coalition Ending Prostitution, at para. 21-22). The gendered analysis of one's right to life, liberty, and security conducted by these interveners was not evidenced in as much detail elsewhere. In this light, the nonreligious interveners not only drew extensively on human rights, but also showed

[186] See also Asian Women Coalition Ending Prostitution, at para. 13; and the Joint United Nations Programme on HIV/AIDS, at para. 15.

[187] "Criminalizing johns, brothel owners, pimps and profiteers is consistent with principles of fundamental justice. The criminalization of men who buy, sell and profit off women in prostitution is neither overbroad nor grossly disproportionate. It is consistent with Canada's *domestic and international commitments* to protect prostituted women and to interfere with their exploitation. There is no constitutional right of men to buy sex in any location" (*Bedford*, Canadian Association of Sexual Assault Centres et al., at para. 25; emphasis added).

[188] See, for example, the Canadian HIV/AIDS Legal Network et al. at para. 22.

[189] The Asian Women Coalition Ending Prostitution argued that "the commercial sexualization of *racial subordination* is one form of denial of access to the full protection of the *Canadian Charter of Rights and Freedoms*" (*Bedford,* at para. 2).

greater concern for gender and other immanent social factors and the implications these factors have for human rights.

The right to life, liberty, and security of the person was not the only human right found in the arguments of the nonreligious interveners. The more explicit rights-based approach to the issues addressed in *Latimer* and *Bedford* meant that a variety of human rights were referenced throughout the cases by the nonreligious interveners. In *Latimer,* for example, *all* rights relevant to disabled persons were called into question. The Council of Canadians with Disabilities et al. argued that the Court's decision in *Latimer* should be "a result which defends and confirms ***the rights of disabled persons***" (*Latimer*, Council of Canadians with Disabilities et al., at para. 30; emphasis added). The Council of Canadians with Disabilities et al. expanded this broad approach to human rights in *Latimer* when they argued that "everyone, disabled or non-disabled, must ***enjoy equal protection of the law***" (*Latimer*, Council of Canadians with Disabilities et al., at para. 54).[190] Similarly, the Canadian Civil Liberties Association in *Latimer,* along with numerous other interveners, explicitly referenced section 12 of the *Charter,*[191] the right to not be subjected to cruel and unusual treatment or punishment.[192] The Canadian HIV/AIDS Legal Network et al. introduced in *Bedford* freedom of expression,[193] and the Joint United Nations Programme on HIV/AIDS in *Bedford* also referred to the "social, health, and financial services" rights of sex workers (at para. 8). The nonreligious interveners therefore very clearly utilized a variety of human rights in their submissions.

[190] See Heather Heavin's (2001) analysis of the arguments presented by nonreligious disability advocacy groups in *Latimer* for a breakdown of all the rights drawn on.
[191] Section 12 of the *Charter* reads "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment." See https://laws-lois.justice.gc.ca/eng/const/page-12.html#h-40.
[192] The Canadian Civil Liberties Association argued that the mandatory minimum sentence for second degree murder would "impose an injustice and an unconstitutional form of cruel and unusual punishment on Mr. Latimer" (*Latimer*, Canadian Civil Liberties Association, at para. 49).
[193] The Canadian HIV/AIDS Legal Network et al. said: "Because the impugned provisions impede sex workers' ability to reduce their risks of harm, there is, inter alia, a breach of their s. 7 Charter rights. In addition, the prohibition on "communicating" in s. 213(1)(c) also breaches sex workers' freedom of expression, as guaranteed by s. 2(b) of the Charter" (*Bedford*, Canadian HIV/AIDS Legal Network et al., at para. 4).

Perhaps unsurprisingly, the nonreligious interveners in *Trinity Western* also explicitly discussed a number of other rights, including academic freedom;[194] freedom of religion;[195] LGBTQ+ rights;[196] equality rights; reproductive rights;[197] and non-discrimination and privacy rights.[198] Thus, despite *Trinity Western* being primarily about *religion,* the nonreligious interveners found a multitude of other human rights protections beyond that of freedom of religion to articulate their positions concerning Trinity Western University's proposed law school and its mandatory community covenant.

What is particularly intriguing about the utilization of human rights in the submissions of the nonreligious interveners in *Trinity Western* is that unlike in *Latimer* and *Bedford,* these submissions also addressed the balancing of competing rights. The BC LGBTQ Coalition, for example, argued that:

> When exercising discretion an administrative decision maker is required to take *Charter* rights and the values they reflect into proper account, ***and to balance the Charter guarantees with applicable statutory objectives.*** (*Trinity Western,* BC LGBTQ Coalition, at para. 9)

Both the nonreligious and religious interveners were adamant about not creating a hierarchy of rights. But, the religious interveners almost always implied that freedom of religion was primary—it was placed above other rights. The nonreligious, however, did not seem to suggest that one right

[194] "Academic freedom is a right that attaches to every university teacher and professor, regardless of religious belief, field of study, or affiliation. Academic freedom does not belong to an institution such as Trinity Western University. It belongs to the individual faculty member and is not subject to restriction on the grounds of institutional autonomy" (*Trinity Western*, Canadian Association of University Teachers, at para. 1).

[195] "A facet of state neutrality entails recognition that the exercise of freedom of religion must account for the diverse and potentially competing rights of others. Where the exercise of a religious right may harm another's fundamental freedoms, it is possible for that religious right to itself be restrained.24 Law societies must remain conscious of this imperative when making decisions that have the potential to affect religious practice and expression" (*Trinity Western*, Canadian Bar Association, at para. 21).

[196] "The discriminatory effects of the Covenant cannot be wholly appreciated, nor can a truly proportionate balance be achieved, unless the rights, interests and experiences of LGBTQ — including trans — students who do wish to attend TWU are fully measured and carefully weighed" (*Trinity Western*, EGALE Human Rights Trust, at para. 27).

[197] "The focus of West Coast LEAF's intervention is on the substantive equality analysis and the effect of the Covenant on women's equality rights, with a particular focus on women's reproductive rights" (*Trinity Western*, West Coast Women's, at para. 2) .

[198] "Rights to equality and non-discrimination, privacy, belief, and freedom from coercion to adopt a belief are also guaranteed by the European Convention on Human Rights (ECHR), Articles 14.14 8, 9, and 14. While Canada is not a party to the ECHR, this Court has expressly found that international law jurisprudence 'must . . . be relevant and persuasive sources for the interpretation of the Charter's provisions,' and has on numerous occasions cited decisions of the European Court of Human Rights in interpreting the content and scope Charter rights" (*Trinity Western*, Lawyers' Rights Watch Canada, at para. 10).

stood above all others. [199] For these interveners, equality rights could, for example, be prioritized over freedom of religion and vice-versa. EGALE Human Rights Trust, for instance, argued that a proper balancing of rights could "only be achieved if all of the rights and interests at stake are recognized and taken into account in their full variety and complexity" (*Trinity Western,* EGALE Human Rights Trust, at para. 2).[200] What seemed of critical importance to the nonreligious interveners was that for whichever of the competing rights was to be limited, the right was to be "limited no more than necessary" (*Trinity Western,* Law Students' Society of Ontario, at para. 22). Despite many of the nonreligious interveners promoting one's right to equality over one's right to freedom of religion, they were not wedded to the idea, at least in the context of *Trinity Western*, that equality rights must be held in higher regard than one's freedom of religion.

Clearly, the arguments of the nonreligious placed greater emphasis on human rights as protected by the *Charter* and other legislation. These interveners did not discuss other values (like morality) derived from human rights to the same degree as their religious counterparts. This is not to say, however, that discussion about values derived from human rights were nonexistent in the submissions of the nonreligious interveners. These interveners did in some cases fold in discussion about dignity with human rights, as evidenced by the Council of Canadians with Disabilities et al.:

> The legal arguments being advanced by the Appellant in this appeal are damaging to ***the dignity, self-respect and security of persons with disabilities. They are a special threat to the rights and interests of children with disabilities and those persons with severe and multiple disabilities***. The physical challenges and/or communication barriers that these individuals face often require them to be dependent on, and trust in, their caregivers, educators and family. (*Latimer*, Council of Canadians with Disabilities et al., at para. 30; emphasis added)

Discussion about values derived from human rights, however, were not found in any significant manner in the submissions made by the nonreligious interveners—at least as compared to those of the religious interveners. This observation is not intended to dismiss the qualitative difference in

[199] Part I of the *Charter* provides for the limiting of the rights found within it. Part I reads: "*The Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

[200] The Canadian Bar Association similarly argued: "When equality rights come into conflict with another protected right or value, a complex, nuanced, fact-specific balancing exercise is required. However, the mere existence of a conflict does not imply that rights are being violated" (*Trinity Western*, Canadian Bar Association, at para. 19).

the use of human rights by the religious and nonreligious interveners. I make this observation simply to note that such discussion by nonreligious interveners does exist.

The Court also discusses the values derived from human rights, specifically dignity, though such discussion is quite limited. Dignity, for example, is referenced once in *Latimer* when the Court held that "In considering the defence of necessity, we must remain aware of the need to respect the life, ***dignity*** and equality of all the individuals affected by the act in question" (at para. 42; emphasis added). Likewise, the Court only referenced dignity once when it rejected the use of dignity as a means to justify the prohibitions placed on sex work and the infringing of the rights of sex workers (at para 138). The Court said:

> the Attorneys General of Canada and Ontario argue that the true objective of s. 212(1)(j) is to target the commercialization of prostitution, ***and to promote the values of dignity*** and equality. This characterization of the objective […] is not supported by the legislative record. ***It must be rejected.*** (*Bedford,* at para. 138; emphasis added).

Consequently, dignity is not used in much of a substantial and meaningful way by the Court in *Latimer* and *Bedford*. In *Trinity Western,* the Court references dignity more frequently to bolster the reasons given by the various justices in their opinions,[201] but the emphasis in *Trinity Western* is still very much on human rights themselves and not on values derived from these rights.[202]

In sum, there is a qualitative difference in how human rights were used by the nonreligious and religious interveners. Rather than emphasizing the values derived from a specific right, the nonreligious interveners focused on and utilized human rights as articulated in the *Charter* and other human rights legislation more explicitly. This is not to suggest that the use of human rights by the nonreligious and religious interveners are mutually exclusive. One does see instances of religious interveners directly and explicitly drawing on human rights in some of their arguments; likewise, the nonreligious do sometimes discuss the values derived from human rights. The Court itself mixes these two approaches as well. Nonetheless, there exists a difference in the way human rights are used by the religious and nonreligion interveners. This difference draws attention to the

[201] The majority decision of the Court, for example, held that "LGBTQ students enrolled at TWU's law school may suffer harm *to their dignity and self-worth, confidence and self-esteem, and may experience stigmatization and isolation*" (*Trinity Western*, at para. 98; emphasis added).

[202] Chief Justice McLachlin held that "The LSBC is under a duty to protect the public interest and *preserve and protect the rights and freedoms of everyone*, including LGBTQ people. As the collective face of a profession bound to respect the law and the values that underpin it, it is entitled to refuse to condone practices that treat certain groups as less worthy than others" (*Trinity Western,* at para. 140; emphasis added).

ways in which human rights are meaningful and valued in each respective narrative. To the religious interveners, emphasis is placed on the values that are derived from and underly human rights, whereas to the nonreligious interveners value is placed on legally codified rights themselves.

Conclusion

This chapter has demonstrated how human rights were conceptualized by the religious and nonreligious interveners in *Latimer, Bedford,* and *Trinity Western.* For the religious interveners, human rights were not constructed as the sole creation of law, but instead rooted in something beyond this immanent word. For these interveners, the law and the rights it protects and upholds "corresponds to principles which transcend positive law" (*Latimer,* The Evangelical Fellowship of Canada et al., at para. 9). Human rights were thought of as intending to protect God's 'creatures' (*Latimer,* The Evangelical Fellowship of Canada et al., at para. 8-9; *Latimer,* Catholic Group for Health, Justice and Life, at paras. 15-16).[203] For the nonreligious interveners, the philosophical, moral, and theological nature of human rights were seldom a topic of concern. For the nonreligious, human rights were framed as the product of Canadian "secular" law (*Trinity Western,* Canadian Secular Alliance, at para. 22) and thus rooted and grounded in the immanent. Human rights were often intertwined with immanent worldly affairs such as self-determination, medicine, equality, sexuality, gender, and health care.[204]

This chapter also explored the differences in how human rights were used by the religious and nonreligious interveners. The religious interveners directly and explicitly referenced human rights, but these interveners often emphasized values derived from human rights rather than specific human rights themselves—this was particularly so in *Latimer* and *Bedford* (*Bedford,* Christian Legal Fellowship et al., at para. 11). In contrast, the nonreligious interveners emphasized specific human rights in their arguments and how such rights applied in each case. Certainly,

[203] The Evangelical Fellowship of Canada et al. said that a "person is regarded as a creature, created by a divine being. As put in the first chapter of Genesis: 'God created human beings in his own image; in the image of God he created them; male and female he created them'" (*Latimer*, The Evangelical Fellowship of Canada et al., at para. 11).

[204] See, for example, EGALE Human Rights Trust's argument in which this intervener links discrimination, gender identity, and sexual orientation: "Discrimination on the basis of gender identity and expression can also intersect with discrimination on the basis of sexual orientation in various ways. For example, a student who arrives at TWU in an apparently heterosexual marriage but subsequently comes out as trans either has to deny their gender identity or risk being found to have breached the Covenant if they continue to engage in married sexual intimacy with their spouse" (*Trinity Western,* EGALE Human Rights Trust, at para. 25).

discussion about the values derived from human rights were found in the statements of the nonreligious interveners, but such discussion was not as prominent as in the arguments of the religious interveners. Moreover, the nonreligious interveners referenced a greater variety of human rights. These interveners did not always limit their arguments to freedom of religion and one's right to life, liberty and security of the person.

The above analysis of human rights reveals that there are qualitative differences in the way human rights are conceptualized and approached by the religious and nonreligious interveners in *Latimer, Bedford,* and *Trinity Western*. Most importantly, however, the differences that I have highlighted draw attention to what might be considered of value, or having meaning, for the religious and nonreligious interveners in discussions about human rights. For the purposes of my argument, immanence, the rule of law, and the constitutional rights afforded to Canadians by the *Charter* are of value and meaningful—these, as I argue later, are what I point to as representing some of the positive content of nonreligion as imagined in the contexts I have explored. [205]

[205] The debates of the religious interveners about human rights also presents some of these as meaningful. I limit my conclusion here to nonreligion because the focus of my conclusions is on the positive content of nonreligion.

Chapter Four: Morality and the Construction of Moral Worlds

Morality represents for everybody a thoroughly definite and ascertained idea: the idea of human conduct regulated in a certain manner. – Matthew Arnold

Introduction

Morality also serves as a useful lens through which to explore the intricacies of the social construction of religion and nonreligion. But, like most topics and concepts explored in this thesis thus far, morality is somewhat of a theoretical quagmire. What morality entails is debated, particularly among moral theorists (Hitlin and Vaisey 2010; Abbott 2020; Gert 2005; Gewirth 1978). The terms morality and morals are often used throughout much of the contemporary world without much thought as to what is meant by these terms (Gert 2005). In the data analyzed in this chapter, for example, not once are the terms morality and morals defined by the Supreme Court of Canada or the interveners involved in *Latimer, Bedford,* and *Trinity Western.* Despite failing to define morality and morals, however, it is clear, that these social actors use morality and morals to refer to what I argue is an "informal public system" of codes which dictate what one might consider good and just in this world (Gert 2005, 14).[206] In the cases that I explore, morality and morals are used to refer to what are generally considered acceptable social behaviours, attitudes, beliefs, and values. [207]

Moreover, the source of a person's morality often differs from society to society (Smith 2010; Abbott 2020). Many Western Eurocentric countries with a strong religious, specifically Christian, history have moral codes and worlds indebted to religion. This is particularly so in Canada. Religion, particularly Christianity, has had considerable influence on the moral codes that have traditionally dictated acceptable behaviour in Canadian society (Chambers 2011; Angus Reid Institute 2016). Christianity has shaped Canadian attitudes towards social issues such as physician-assisted dying, sex work, same-sex marriage, abortion, and many other controversial social issues

[206] Not defining morality is somewhat problematic given that there exist numerous ways in which this term can be defined (Hitlin and Vaisey 2010). Morality as used by the social actors in *Latimer, Bedford,* and *Trinity Western* somewhat reflects Bernard Gert's (2005) understanding of morality. Gert proposes that morality refers to "an informal public system" that governs the behaviour of individuals with the primary goal of lessening harm (Gert 2005, 14). This public system is one comprised of various rules and virtues that dictate what is permitted in a given society (2005, 15, 110).

[207] This rendering of morality echoes what one might consider the lived, everyday use of the term morality. See, for example, the everyday use of morality and morals by the Angus Reid Institute (2016) and Research Co. (2021). Of course, there are much more nuanced and complicated definitions of morality proposed by moral theorists and philosophers (Gert 2005; Abbott 2020).

(Chambers 2011; Angus Reid Institute 2016; Beaman and Steele 2018; Zuckerman et al. 2016). [208] Christian Smith quite rightly points out that for many people, their moral worlds and worldviews are governed primarily by philosophy and religion (2010, 8). In sum, religion has played, and continues to play, an important role in shaping the moral worlds of Canadians. One might argue that a *Christian* ethic is what has traditionally guided Canadian society.

Morality in Canada

A changing Canadian religious landscape, or the emergence of what Beaman (2017b) refers to as a "new diversity", has, however, begun to challenge the Christian moral assumptions embedded deep in Canadian society. The emergence of an ever-growing portion of the Canadian population that identifies as having no religion, along with an increase in those Canadians who identify as belonging to non-Christian religions such as Islam, Buddhism, and Hinduism, means that in Canadian society there are a variety of sources of morality beyond that of Christianity. No longer is Christianity, or religion for that matter, the only arbiter of Canadian values and moral assumptions (Clarke and Macdonald 2017, 234; Ontario Human Rights Commission 2013b). There are other meaningful sources of morality that inform the moral worlds of a sizeable portion of Canadian society.

Of particular importance to this thesis is the increasing visibility of a morality, or informal public system of codes of acceptable behaviour, that exists somewhat independent or outside of religion.[209] According to an Angus Reid Institute (2016) poll, a sizeable portion of the Canadian population no longer draws on religion when it comes to constructing their moral worlds. This poll revealed that 21% of the Canadian population were traditional absolutists;[210] 25% of Canadians

[208] The Canadian Aids Society discusses Christian moral approaches to suicide: "Christianity came to condemn suicide as a sin, and as so often occurred with other matters of Christian morality, such as sodomy, what had been recognized as sinful by the Church became recognized as a crime by the State in the Middle Ages" (*Latimer*, Canadian Aids Society, at para 29).

[209] This moral system that exists outside of religion is, I suggest, nothing new. It has existed for as long as there have been people who do not identify with religion (see Brown 2017; Zuckerman et al. 2016). What I argue here is that as more Canadians begin to distance themselves from religion what becomes more prominent in society is a moral world, or informal public system of codes, not necessarily rooted in religion.

[210] "Traditional Absolutists are defined by their strong belief in God and their hardline approach to questions of sexual morality. This group's responses most closely resemble those of Evangelical Christians. Indeed, fully half (50%) of the Evangelicals surveyed find themselves in this segment" (Angus Reid Institute 2016).

were religious moralists;[211] 37% of Canadians were non-religious moralists;[212] and 17% of Canadians were amoralists[213] (Angus Reid Institute 2016). The overwhelming majority of Canadians surveyed by the Angus Reid Institute did not cite religion (and/or God) as the source of their moral values. 37% Canadians cited reason/rational choice as the source of their morality; 30% of Canadians cited parents/close family as the source of their morality; 13% cited instinct/human nature as the source of their morality; 6% cited rules of society/culture as governing their morality; and only 13% explicitly cited religion/God as the source of their morality (Angus Reid Institute 2016).[214] These statistics are perhaps unsurprising given the percentage of Canadians who now identify as having no religion. This move away from religion by Canadians is suggestive of the existence and increasing visibility of moral worlds not necessarily rooted in religion. Indeed, religion is now only the "most important contributor to the moral compass of roughly one-in-seven Canadians" (Angus Reid Institute 2016).

The increasing social visibility of a system of morality not necessarily rooted in religion correlates with more recent data that suggests that Canadians are becoming more likely to view things that were once frowned upon by much of Canadian society, such as divorce, contraception, polygamy, infidelity, sex work, and physician-assisted dying, as morally acceptable (Research Co. 2021).[215] What is emerging in Canada, and many other Western countries for that matter, are moral worlds more open to a variety of behaviours and actions once considered immoral.

[211] "Religious Moralists share many of the same values held by the Traditional Absolutists. What sets them apart is their shared conviction that morality extends beyond so-called "ten commandments" issues. Unlike the Traditional Absolutists, many Religious Moralists see buying a fur coat (64%) or a gas-guzzling SUV (62%) as morally wrong" (Angus Reid Institute 2016).

[212] "Non-Religious Moralists take a more permissive approach to morality. While members of this group tend to agree with the Religious Moralists on societal and environmental issues, they diverge significantly on questions of sexual morality" (Angus Reid Institute 2016).

[213] "Amoralists are the group most likely to say each item on this list is "not a moral issue." Where they do have an opinion on the morality of a given issue, they're generally more likely to say things are acceptable rather than wrong" (Angus Reid Institute 2016).

[214] There are, of course, regional differences when it comes to the percentage of Canadians who cite religion/God as contributing to their moral values. In British Columbia, for example, only 10% of Canadians cite religion/God as contributing to one's moral values. In comparison, 25% of people in both Saskatchewan and Manitoba say religion/God informs their morality (Angus Reid Institute 2016).

[215] According to a poll conducted by Research Co. (2021), 77% of Canadians view divorce as morally acceptable; 65% view physician-assisted dying as acceptable; 57% think abortion is morally acceptable; 33% agree that sex work is morally acceptable; and 19% of Canadians view polygamy as morally acceptable.

Chapter Overview

Latimer, Bedford, and *Trinity Western* all draw attention to the complexities and changing conceptions of morality discussed above, especially the increasing visibility of a morality, or a moral world, not necessarily rooted in religion. These three cases highlight the different and frequently competing narratives of morality often found in debates concerning controversial social issues. This chapter seeks to explore these narratives of morality in the arguments of the interveners and Supreme Court of Canada in the three cases. Specifically, I seek to explore the similarities and differences in the ways in which morality is constructed in the factums of the religious interveners and nonreligious interveners and what this might suggest about the meaningful beliefs, values, and practices of nonreligion. I explore how discussions about morality might better help one understand the complexities of the construction nonreligion in a formal legal context.

My aim here is not to participate in philosophical debates about morality. I do not wish to contribute to theories of morality or debate the legitimacy of the various sources of morality that might be found in contemporary Canadian society. Nor do I wish, or purposely intend to, advocate for one specific approach to morality over others.[216] The purpose of this chapter is not to attempt to formulate or legitimize some grand theory and definition of morality. Here, I simply seek to present the ways in which the religious and nonreligious social actors in *Latimer, Bedford,* and *Trinity Western* draw on morality and morals in their arguments concerning mercy killings and end-of-life care; sex work; and LGBTQ+ rights. In other words, I'm only interested in the construction of morality in the submissions of the religious interveners, the nonreligious interveners, and in the Court's decisions.

In what follows I argue that in the submissions of the religious interveners, there is a reliance on the explicit use of the language of morality. These interveners frequently draw on the terms morality and morals to frame their arguments. Unsurprisingly, the moral worlds of the religious interveners are often framed as rooted in the transcendent. In short, the legal interventions of the religious interveners are portrayed as moral interventions.[217]

[216] Gert points out that despite various parties and individuals occupying different moral stances on certain controversial social issues, each person/side has a morally acceptable position (2005, 4). One position may not be more 'moral' than another – it depends on one's perspective and stance.

[217] Thank you to Lori Beaman for providing me with the language to articulate this point.

Nonreligious interveners approach morality rather differently. The explicit use of the language of morality is seldom found in the arguments of these social actors. These interveners thus conceptualize their moral worlds indirectly using concepts such as law, human rights, discrimination, and gender and sex. In this light, the interventions of the nonreligious interveners are not presented as moral interventions—they are legal interventions. Despite the differences in the ways in which the moral worlds of the religious and nonreligious are conceptualized, both parties appear to have their own moral worlds, or informal public codes, which dictate what is good and just. What is particularly interesting is that the moral worlds of the religious and nonreligious do not necessarily oppose one another and in many instances share similarities. It is to these moral worlds that I now turn.

Religious Interveners and Morality

Perhaps the most obvious observation concerning morality in *Latimer, Bedford,* and *Trinity Western* is the use of the term itself. Explicit reference to morality is something really only made by the religious interveners—at least in any *meaningful* sort of way. Consider, for example, the following statements made by the religious interveners in *Latimer*:

> The legalization of euthanasia is unacceptable to the Commission because it would indirectly condone murder, because it would be open to serious abuses, and because it appears to be ***morally unacceptable*** to the majority of Canadian people… (*Latimer*, Law Reform Commission of Canada as quoted by The Evangelical Fellowship of Canada et al., at para. 34; emphasis added)
>
> These Interveners adopt the thorough submissions made by the Respondent to refute the Appellant's argument that the defence of necessity should have been left to the jury because his actions constituted a ***morally*** involuntary act and that he had no 'reasonable alternative'. (*Latimer*, The Evangelical Fellowship of Canada et al., at para. 24; emphasis added)[218]
>
> Even in the case of a terminally ill competent adult who desired and sought death, this Court held that the active participation by another person in her death would be intrinsically, ***morally*** and legally wrong. (*Latimer*, Catholic Group for Health, Justice and Life, at para. 15; emphasis added)

[218] The Evangelical Fellowship of Canada et al. also quoted Professor David Novak who said: "What is it about the other person that I am to find attractive, which minimally entails that I refrain from harming him or her in any way? What is it about the other person that teaches me the most elementary *moral* law, which is the most basic human right: 'Do not harm me'"? (*Latimer*, David Novak as quoted by The Evangelical Fellowship of Canada et al., at para. 11; emphasis added).

The religious interveners in *Latimer* use the language of morality to frame many of their arguments. In *Bedford* the religious interveners use morality in a similar way:

> Parliament has held the view that prostitution is ***immoral*** since Confederation. (*Bedford*, Christian Legal Fellowship et al., at para. 2; emphasis added)
>
> At [*Bedford's*] heart are questions concerning the charter value of the dignity of human life and Parliament's actions to prohibit behaviour that is regarded as opposed to human dignity, that is ***morally unacceptable*** and thus criminal. (*Bedford*, The Evangelical Fellowship of Canada, at para. 1; emphasis added)
>
> For decades, Canadian lawmakers have sought to eradicate prostitution not only because of its harms but because it is ***morally wrong***. (*Bedford*, Christian Legal Fellowship et al., at para. 51; emphasis added)

Like the religious interveners in *Latimer,* the religious interveners in *Bedford* use the language of morality to make clear their moral positions. This is also evident in *Trinity Western*:

> The adoption of a ***moral code*** is done by all people […] (*Trinity Western*, Association for Reformed Political Action Canada, at para. 18[4]; emphasis added)
>
> Given the absence of an overriding state or public interest, the Law Society Benchers did not have the power […] to require TWU to comply with their personal beliefs or opinions on same-sex marriage or the ***morality*** of homosexual sexual conduct no matter how sincerely or strongly those beliefs or opinions might be held. (*Trinity Western*, Canadian Conference of Catholic Bishops, at para. 23; emphasis added)
>
> Grounded in ***man's physical and moral autonomy*** […] (*Trinity Western*, *R v Dyment* as quoted by the Seventh Day Adventist Church in Canada, at para. 19; emphasis added)

Morality was thus a topic of concern for many of the religious interveners in *Latimer, Bedford,* and *Trinity Western*. For these interveners, the issues brought before the Court in the three cases were necessarily *moral* issues and thus their interventions were constructed as moral interventions. The interventions of these interveners were portrayed as attempting to preserve a specific moral world or moral code.

The issues addressed by the Court in *Latimer, Bedford,* and *Trinity Western* quite frequently clashed with the moral worlds of the religious interveners, particularly the conservative Evangelical Christians. One finds repeated statements by the religious interveners in which the language of morality is explicitly used to establish moral disapproval of the issues being addressed. In *Bedford,* for example, the Christian Legal Fellowship et al. quite succinctly demonstrated their moral disapproval of sex work drawing on the language of morality, when they argued that:

> The purpose of the bawdy-house and avails provisions ***is the strong moral disapproval of brothels and living on someone else's sex-work.*** This fundamental conception of morality has the purpose of promoting gender equality, preventing the exploitation of vulnerable persons and protecting human dignity. (*Bedford,* Christian Legal Fellowship et al., at para. 11)

The Christian Legal Fellowship et al. make clear that to them sex work is immoral. But, what is particularly interesting about their use of morality here is that it also includes, or hints towards, a notion of stewardship—Christian stewardship. Morality for these interveners is not simply about what is right or wrong, or what is socially acceptable and unacceptable, morality is also about promoting a particular conceptualization of equality and upholding dignity. For these interveners, morality is used as a tool to call Christians to action to preserve and protect a particular view of what society should look like. It is a Christian approach to morality that is constructed as protecting society from immoral behaviour.

Similar instances of moral disapproval using the language of morality are also found throughout *Latimer* and *Trinity Western*.[219] Thus, many of the religious interveners found meaning in the language of morality. The language of morality provided a way through which these interveners were capable of clearly articulating their positions concerning the acceptability of the issues brought before the Court.

What is also particularly interesting is that morality was used by some of the religious interveners to construct Canadian law as a moral system itself. The Evangelical Fellowship of Canada et al. in *Latimer* and The Evangelical Fellowship of Canada in *Bedford,* for example, quoted the Law Reform Commission of Canada, which argued that:

> In truth the ***Criminal Law is fundamentally a moral system***. It may be crude, it may have faults, it may be rough and ready, but basically it is a system of applied morality and justice. It serves to underline ***those values necessary or important to society***. When acts occur that seriously transgress essential values, like the sanctity of life, society must speak out and reaffirm those values. This is the true role of criminal law. (*Latimer,* Law Reform

[219] Though not referencing morality explicitly, moral disapproval is evidenced by the Catholic Group for Health, Justice and Life in *Latimer:* "As a society, we must find additional ways to assist families like the Latimers; ways, however, that do not facilitate, condone, or excuse the murder of society's most vulnerable individuals" (at para. 59). Similarly, in *Trinity Western,* the Canadian Conference of Catholic Bishops reference the "immoral" nature of "homosexual sexual conduct" at para. 26.

Commission of Canada as quoted by The Evangelical Fellowship of Canada et al., at para. 20; emphasis added)[220]

The linking of morality and criminal law constructs a particular vision of Canadian law: one in which the foundations are informed by a specific moral code. This moral code is one that I argue is informed by Christian moral assumptions, especially given the religious affiliation of The Evangelical Fellowship of Canada et al.. Rachel Chagnon and François Gauthier speak to this point, noting that "Canadian criminal law maintains and actualizes interdictions formulated by the political actors who voted in the first version of the *Criminal Code* in 1892. These interdictions […] were founded on liberal principles impregnated with Christian notions relating to good and evil […]" (2013, 178). This argument about the moral basis of Canada's criminal law system is not an argument unique to The Evangelical Fellowship of Canada et al. in *Latimer*. Most of the religious interveners in the three cases presuppose that morality, or morals, and the Canadian legal system are in some way positively correlated. Criminal law is thus presented as a corollary of morality and the Canadian Christian moral system.

To clarify, law itself is considered by many, religious and nonreligious alike, to be a moral system. Laws are quite often drafted and implemented as the result of certain moral panics (Sullivan 1994; Smart 1989; Beaman 2008). The above suggestion concerning the construction of Canadian law as a moral system is thus not a novel claim. What is particularly interesting in *Latimer, Bedford,* and *Trinity Western*, however, is that the religious interveners use the language of morality to make clear the connection between morality and law. As will become clear later in this chapter, this is something largely missing from the arguments of the nonreligious interveners.[221]

Related to the explicit use of morality was the rather clear use of other ideological positions, values, and beliefs by the religious interveners. Not only was morality explicitly referenced by the religious interveners but so too were other stances often related to, and used interchangeably with, morality. Consider, for example, the following:

[220] See also *Bedford,* The Evangelical Fellowship of Canada, at para. 9.
[221] This is not to say that the nonreligious interveners do not think of law as a moral system, but simply to suggest that they do not explicitly construct law as a moral system in the contexts of the three cases analyzed.

> The legalization of prostitution or decriminalization as proposed by the respondents would negatively impact and change ***the culture of Canada***. *(Bedford,* The Evangelical Fellowship of Canada, at para. 14)
>
> […] The Decisions single out for exclusion only those who adopted an ***Evangelical sexual ethic*** (*Trinity Western*, Association for Reformed Political Action Canada, at para. 18[4]; emphasis added)

Similarly, the Canadian Conference of Catholic Bishops in its joint factum for the Catholic Group for Health, Justice and Life said that:

> The CCCB [Canadian Conference of Catholic Bishops] has been active in bringing a ***moral, philosophical and pastoral perspective*** to a number of critical public policy issues. In particular, it has been a strong and consistent advocate for the promotion of human dignity and the protection of human life from its beginning to natural end. (*Latimer*, Catholic Group for Health, Justice and Life, at para. 4; emphasis added)

The CCCB's argument has certain implications, namely that others, perhaps nonreligious others, do not necessarily bring a moral, philosophical, and/or pastoral perspective to the social issues addressed by Canadian courts. Concerning questions of morality, this particular intervener sets itself apart from other interveners as being morally superior.

The religious interveners were more likely to draw on what Anna Salonen (2018) refers to as, "rigid" ideological stances and positions in their arguments. The phrases "philosophical and pastoral perspective", "culture of Canada", and "sexual ethic" are used to imply a specific moral position and/or perspective. Morally laden, or suggestive, terms such as these often take the place of morality and morals throughout the factums of the religious interveners. Again, these terms contribute to the construction of a particular vision of morality—they are of value in constructing morality for the religious interveners.

Perhaps unsurprisingly, the use of morality was often accompanied by references to religion. As was the case in the previous chapter, morality was often constructed as rooted in religion—this was particularly so in *Trinity Western*. In *Trinity Western,* the Canadian Conference of Catholic Bishops said that:

> The Law Societies' "duty to protect the public interest" does not extend to approving or disapproving of ***religiously based moral beliefs*** especially when those beliefs have *Charter* protection and are original freedoms. This public interest mandate was meant to ensure the core values of the profession – competence, integrity and independence. (*Trinity Western*, Canadian Conference of Catholic Bishops, at para. 33; emphasis added)

The statement made by the Canadian Conference of Catholic Bishops is important for two reasons. First, it makes an important distinction by specifying "religiously based moral beliefs". This intervener implies that religiously based moral beliefs are distinct from moral beliefs not based on religion. It suggests that religiously based moral beliefs stand apart from other moral beliefs and are to be untouched by the immanent world, particularly law. In other words, the moral worlds informed by religious dogma were not to be altered by an immanent social institution—it was not for the Canadian state to alter the laws of God. Second, the Canadian Conference of Catholic Bishops' conceptualization of morality is clearly rooted in religiously based beliefs. This speaks to the argument above that for many religious interveners, morality and religion are inextricably bound (Smith 2010).

Some of the religious interveners were much more explicit in their imagining of morality as rooted in the transcendent and God. The Evangelical Fellowship of Canada et al. in *Latimer* drew attention to the transcendent framing of morality by quoting Dr. Martin Luther King Jr. who said:

> How does one determine when a law is just or unjust? A just law is a manmade code that squares with the ***moral law or the law of God***. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of Saint Thomas Aquinas, ***an unjust law is a human law that is not rooted in eternal or natural law***. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. (*Latimer*, Dr. King as quoted by The Evangelical Fellowship of Canada et al., at para. 9; emphasis added)

For The Evangelical Fellowship of Canada et al., moral law was something not of this immanent world, but instead divinely inspired and ultimately a reflection of "the law of God". This approach to morality was not evidenced in all the factums submitted by the religious interveners.[222] Nonetheless the God-given nature of morality, as suggested by The Evangelical Fellowship of Canada et al., is important to make note of for it further bolsters the notion that morality is not necessarily the product of the social world (Moyn 2015).

[222] In *Latimer,* the Evangelical Fellowship et al. did imply a moral position that was suggestive of a transcendent foundation through reference to the soul: "To grant [the] appeal [of Robert Latimer] will harden the Canadian soul [and] will foster and encourage a culture of death in our country[…]" (*Latimer*, The Evangelical Fellowship of Canada et al., at para. 3).

What is particularly interesting is that this divine or transcendent nature of morality was invoked in the arguments of the Attorney General for Ontario in *Latimer,* a nonreligious state actor. The Attorney General for Ontario, referencing the work of Professor George Fletcher, said:

> killing another human being is not only a worldly deprivation; in the western conception of homicide, killing is an assault on the ***sacred***, ***natural order***. (*Latimer,* George Fletcher as quoted by the Attorney General for Ontario, at para. 12; emphasis added)

For this intervener, not only was mercy killing wrong because it represented the intentional taking of a human life, but it was also wrong, or immoral, because it represented an attack on something beyond this immanent world: the transcendent, or sacred, natural order. For this intervener, what underlies the Canadian legal and moral system is a certain sacredness that is not of this immanent world. In this light, prohibitions on the taking of another's life are not necessarily legally prescribed but are instead divinely inspired. The moral world constructed by the Attorney General for Ontario was therefore not completely devoid of religion.

Having said this, not all the religious interveners in *Latimer, Bedford,* and *Trinity Western* associated morality with the transcendent. It is worth noting, however, that the religious and transcendent nature of morality as described above is not uncommon among individuals who consider themselves religious, particularly those individuals who identify as Christian. The transcendent and sacred underlie many moral claims made by religious individuals (Fedler 2006; Angus Reid Institute 2016). To many Christians and other religious individuals, a moral life, or a life that is good and just, is one that is lived according to conduct prescribed by authoritative texts or religious officials (Weaver 2011, 31; Simmons 2016, 2). For some, religion and morality are inseparable and indistinguishable (Fedler 2006).

The absence of the link between morality and religion (and the transcendent) in the submissions of some of the religious interveners does not necessarily mean that religion and/or the transcendent does not, in some way, contribute to the construction of morality for these other religious interveners. As argued above, the social values many of these interveners draw on in their thinking about morality are themselves infused with religion. Having said this, I acknowledge that such a suggestion risks over representing the role and power of the transcendent. Not all religious individuals conceptualize morality in the same way as more conservative religious actors (like The

Evangelical Fellowship of Canada). I therefore leave open the possibility that for some religious interveners, religion is less of an important value in thinking about morality.

Morality was also constructed by the religious interveners as referring to collective values and the community. Quite often the explicit use of moral language was accompanied by phrases such as "society", "public morality", and "community". Consider, for example, the following:

> Since the defence of necessity results in an exoneration from criminal culpability, the circumstances which qualify for such exoneration must reflect objective standards of ***moral conduct agreed to by society as a whole*** […]. (*Latimer,* The Evangelical Fellowship of Canada et al., at para. 25)
>
> Canada's earliest prostitution legislation was transplanted to Canada from England. These laws criminalized "common bawdy houses" on the basis that brothels tended to ***endanger public peace and corrupt public morality***. (*Bedford,* Christian Legal Fellowship et al., at para. 16; emphasis added) [223]
>
> Cumulatively, the provisions reflect the unwillingness of ***Canada to facilitate prostitution***. While Parliament has chosen not to criminalize prostitution itself, this does not signify that all related acts are to be condoned or even accepted. They remain legitimately subject to criminal sanction. (*Bedford,* The Evangelical Fellowship of Canada, at para. 13)[224]
>
> TWU is a ***community of individuals who govern themselves according to Christian morals*** as they associate with each other and study together. (*Trinity Western,* Association for Reformed Political Canada, at para. 32)
>
> There are troubling implications which flow from refusing to accredit a religious law school because its ***communal moral rules*** are offensive to the majority. (*Trinity Western,* National Coalition of Catholic School Trustees' Associations, at para. 35; emphasis added)
>
> Professor JK Donlevy got it right when he observed that "***Canada is and should be a community of communities***." There is no expectation under the *Charter* of a "***moral melting pot.***" (*Trinity Western,* Professor JK Donlevy as quoted by Seventh Day Adventist Church in Canada, at para. 12; emphasis added)

[223] These interveners also claimed that the "intent underlying Canada's prostitution legislation, […] is to discourage or eradicate prostitution itself because it is *immoral and harmful to individuals and to society*" (*Bedford*, Christian Legal Fellowship et al., at para. 12; emphasis added). These interveners also argued: "To the extent the laws [concerning sex work] criminalize people providing services to prostitutes, there is nothing inconsistent between the laws and the purpose of *protecting public morality*" (*Bedford*, Christian Legal Fellowship et al., at para. 4[b]; emphasis added).

[224] The Evangelical Fellowship of Canada presented sex work as immoral: "While this appeal deals with Canada's laws in regard to prostitution, at its heart are questions concerning the charter value of the dignity of human life and Parliament's actions to prohibit behaviour that is regarded as opposed to human dignity, that is *morally unacceptable* and thus criminal" (*Bedford*, The Evangelical Fellowship of Canada, at para. 1; emphasis added).

For most of the religious interveners in *Latimer, Bedford,* and *Trinity Western,* morality was almost always understood collectively. For these social actors, morality was constructed as a communal and universally agreed upon set of values that sought to preserve the common good of Canadian society. The Christian Legal Fellowship et al. made this rather clear in *Bedford* when they argued that "lawmakers have the right to legislate on the basis of a '***fundamental conception of morality***' for the purpose of ***'safeguarding the values'*** that are ***'integral to a free and democratic society'***" (at para. 7). In this light, the communal nature of morality meant that the issues addressed in the three cases by the Court were not about the individual, but rather about the community, or Canadian society as a whole. For these interveners, it would be unacceptable, and to the detriment of the common good, to alter the law given the effects such changes could have on Canadian society. For the Christian Legal Fellowship et al. especially, "the protection of ***core social values should be afforded greater weight than individual moral choices***" (*Bedford,* Christian Legal Fellowship et al., at para. 4[c]; emphasis added). The religious interveners use morality as the "basis for group solidarity, bringing people together in ways that can lead to collective action and identification" (Hitlin and Vaisey 2010, 10; see also Mehta and Winship 2010). The way in which morality is used by the religious interveners here distinguishes between a moral community of believers, one devoted to safeguarding certain values and behaviour, and society more generally.

Reference to the community and the common good was not exclusively a characteristic of the arguments of the religious interveners. Although a rare occurrence, several nonreligious interveners drew on this language as well. The International Coalition of Professors of Law in *Trinity Western,* for example, argued that:

> This Court can do this by reaffirming that the Charter as well as international law protect the ability of Canadians to voluntarily join together in an ***educational community*** that reflects a distinctive religious character and seeks to participate in the ***common good***. (*Trinity Western,* International Coalition of Professors of Law, at para. 29; emphasis added)

What is different about the use of the common good and the community by the nonreligious interveners is that use of these terms was seldom done in explicit conjunction with the language of morality. Rather, these terms were used in such a way that merely *implied* a specific moral position—one that was communal in nature which sought to uphold the common good.

In sum, what is found in the submissions of the religious interveners is the use of the terms morality, morals, and even ethics to construct their moral worlds.[225] The use of these terms contribute to a rather particular rendering of morality: a moral world often rooted in the transcendent or other rigid ideological claims, communal in nature, and about protecting and preserving the common good.

Nonreligious Interveners and Morality

Compared to the religious interveners, the nonreligious interveners less frequently used the terms morality and morals in their submissions. The absence of the language of morality does not mean, however, that nothing can be learned from the submissions of the nonreligious interveners. As Lori Beaman (2008) points out, absences too can be revealing and thus informative. Just as the presence of the language of morality can tell one something about the religious interveners and the way in which they construct their moral worlds in relation to the social issues brought before the Court, so too can the absence of the language of morality tell us something about how morality is constructed by the nonreligious interveners.

The absence of the explicit use of the language of morality by the nonreligious interveners is not to suggest that the social issues brought before the Court in *Latimer, Bedford,* and *Trinity Western* are not moral issues for the interveners. The nonreligious interveners had qualms with and concerns about the issues brought before the Court. Some nonreligious interveners, particularly those who advocated for the protection of Canadians with disabilities, opposed the arguments of Robert Latimer in *Latimer*. *Latimer* draws attention to many complex debates about morality (Jenkins 2001). The Council of Canadians with Disabilities et al., for example, quite explicitly opposed the actions of Robert Latimer. These interveners stressed that:

> Stripped to its bare essentials, the Appellant's position is that a parent has the right to kill a disabled child if that parent decides the child's quality of life no longer warrants its continuation. ***That view threatens the lives of people with disabilities and is deeply offensive to both fundamental constitutional values and to legal traditions which***

[225] In *Trinity Western,* the Association for Reformed Political Action Canada argued, for example, "The discriminatory effect in the present case is that a qualified person, having completed an academically and professionally approved program is nevertheless effectively barred from practicing law in the province solely because she or he associated with a religious community that shares a *Christian ethic* on marriage and sexuality" (*Trinity Western*, Association for Reformed Political Action Canada, at para. 16; emphasis added).

> ***recognize that parents do not enjoy unfettered power with respect to the lives of their child.*** (*Latimer,* Council of Canadians with Disabilities et al., at para. 11; emphasis added).

It would thus be erroneous to assume that simply because the explicit use of the language of morality is largely absent from the submissions of the nonreligious interveners that these social actors all had no doubts concerning, and therefore stood in support of, the issues brought before the Court.

The nonreligious interveners addressed their moral concerns through the careful navigation of human rights and constitutional rights and how these should apply to Canadians, regardless of one's religious and cultural background. Unlike the religious interveners, the nonreligious interveners did not frame their interventions as moral interventions.[226] The Canadian HIV/AIDS Legal Network et al. in *Bedford*, for example, quite pointedly argued that "ideology and ***moral judgments*** about sex work should not be the basis for public policy" (at para. 26; emphasis added). For many of the nonreligious interveners, ideological discussion about morality was not the purpose of their intervention: their interventions were about human rights and the legal protections afforded to Canadians.

Not only was explicit reference to morality largely missing from the submissions of the nonreligious interveners, but so too was reference to religion and/or the transcendent in the framing of their positions. Explicit reference to other ideological stances that might take the place of morality were also missing from the conversations brought before the Court. Unlike the religious interveners, the nonreligious interveners did not use ethics, culture, and philosophy to express moral concern in their submissions.

My observations about morality as understood by the nonreligious interveners echo the findings of Salonen (2018). Salonen argues that nonreligion, and being nonreligious, is characterized by a move away from rigid ideological and moral claims (2018, 7). Nonreligious individuals are thus less likely to draw on explicit sources of morality, or to even reference morality, in their conceptualization of controversial social issues (Salonen 2018). The submissions of the nonreligious social actors in *Latimer, Bedford,* and *Trinity Western* all substantiate this claim: they show little concern for rigid ideological and moral claims. This does not mean,

[226] Thank you again to Lori Beaman for helping me articulate this observation more clearly.

however, that they are not ideological or do not have ideologies—there is a difference between drawing on and referencing ideological claims and being ideological.

It was the *language* of morality that was largely missing from most of the submissions of the nonreligious interveners. Moral concern and/or moral positions were still present in these submissions. The lack of reference to morality does not necessarily entail moral unconcern (Salonen 2018). As Salonen points out, "people—whether religious or not—are today as interested as ever in the surrounding world and give meanings to everyday incidents and perceptions of the wider whole in a way that makes reference to good and bad, or to right and wrong" (Salonen 2018, 10). This is to say that the nonreligious are concerned with questions about morality (Smith 2017). The nonreligious interveners in *Latimer, Bedford,* and *Trinity Western* thus expressed moral concern in their arguments. This concern, however, was expressed in arguments about things such things as law, human rights, discrimination, gender and sex—a point I return to later in this chapter.

To clarify, some of the nonreligious interveners did use the language of morality in their submissions. The Council of Canadians with Disabilities et al. in *Latimer,* for example, quoted Justice Sopinka's reasoning from the Supreme Court's *Rodriguez* decision, who ruled that:

> […] the active participation by one individual in the death of another is intrinsically ***morally and legally wrong,*** and second, there is no certainty that abuses can be prevent by anything less than a complete prohibition. (*Latimer,* as quoted by Council of Canadians with Disabilities et al., at para. 60; emphasis added)

The Council of Canadians with Disabilities et al. draws on Justice Sopinka's use of morality to further their argument. Similarly, the Attorney General for Ontario in *Latimer* argued that:

> So-called *"mercy killing"* remains a contentious issue and there does not exist a substantial consensus on its ***moral turpitude.*** The approach Parliament has taken towards sentencing murders is consistent with most western democracies which no longer engage in capital punishment. Moreover, only one state in the United States of America and only a few Western European democracies seems to have adopted regimes which treat *"mercy killing"* as a separate offence or as a partial justification or excuse… (*Latimer,* Attorney General for Ontario, at para. 20; emphasis added)[227]

[227] The Attorney General of Canada argued that "the Criminal Code draws *a moral distinction* between various forms of killing, eg. 'murder', 'manslaughter', 'assisted suicide', 'infanticide', but those distinctions are not based on motive" (*Latimer*, Attorney General of Canada, at para. 28; emphasis added). The use of morality by this intervener, however, was not substantial—it was used to reference Parliament's distinguishing between different categories of murder.

The explicit use of the language of morality by the Attorney General for Ontario is somewhat of an outlier in the data analyzed. However, given (1) the religious and cultural history of Canada; (2) the influence Christianity has on the Canadian state's political and legal system; and (3) this intervener's invocation of the sanctity of life argument referenced in the previous chapter, it may not come as much of a surprise that this specific intervener presented arguments concerning morality that resembled the arguments made by the religious interveners. Interestingly, morality is not used by other state interveners in *Bedford* or *Trinity Western.*

In *Trinity Western* other nonreligious interveners also use the language of morality. But, unlike the Attorney General for Ontario in *Latimer,* morality is not used by these interveners to make claims about their own moral positions. The Canadian Secular Alliance, for example, argued that:

> Trinity Western University ("TWU") seeks to open a law school that would, through a mandatory requirement to sign a Community Covenant (the "Covenant"), discriminate against students who are LGBTQ, women, and those who do not share ***evangelical Christian beliefs and ethics***. (*Trinity Western,* Canadian Secular Alliance, at para. 2)

The Canadian Secular Alliance draws here on a specific set of beliefs and ethics: evangelical Christian beliefs and ethics. This intervener is thus not referencing or arguing anything about its own morality and/or ethics, other than the fact that it does not subscribe to these particular beliefs and practices. Morality is used here to simply draw attention to the morality and ethics that underly Trinity Western's community covenant. Similarly, the BC LGBTQ Coalition said that:

> Contrary to the BC Court of Appeal's overly-narrow analysis, the issue is whether it is reasonable for the Law Society to decline to accredit a law school that bans LGBTQ persons on the basis that their sexual orientation is ***a moral failing deserving divine condemnation*** – that it is "vile", "against nature," and "unseemly". (*Trinity Western,* BC LGBTQ Coalition, at para. 13)

Again, one sees here that this particular intervener draws on the language of morality not to reinforce its own moral position, but to instead draw attention to the moral claims and position of Trinity Western University and its community covenant. This does not mean, however, that the use of the language of morality by the nonreligious interveners is inconsequential. While perhaps not of use in describing their own moral positions and concerns in much detail, this use of morality functions as a boundary marker to describe a moral world or moral space, usually one based on evangelical Christian beliefs and ethics, that is not their own. The use of morality by the

nonreligious interveners thus still contributes in some way to the construction of a particular moral world.

It seems too that the explicit use of the language of morality was largely absent from the decision of the Court. In *Latimer,* for example, the Court drew on the language of morality, but only in the context of determining criminal fault or moral blameworthiness. The Court ruled that:

> In considering the character of Mr. Latimer's actions, we are directed to an assessment of the criminal fault requirement or *mens rea* element of the offence rather than the offender's motive or general state of mind […] ***We attach a greater degree of criminal responsibility or moral blameworthiness to conduct where the accused knowingly broke the law*** […] In this case, the *mens rea* requirement for second degree murder is subjective foresight of death: ***the most serious level of moral blameworthiness***. (*Latimer,* at para. 82; emphasis added).

In the Court's *Latimer* decision, the language of morality is attached to legal tests and tools, and not necessarily used to make a specific moral claim.

In the various written decisions of the justices of the Court in *Trinity Western* morality is used in much the same way as the nonreligious interveners above: to draw attention to the moral claims and position of Trinity Western University and Evangelical Christians. Justice Côté and Justice Brown, in their joint dissenting reasons, for example, stated that:

> Pluralism, and the religious accommodation necessary to secure it, is inherently valuable. In a country whose people sometimes harbour ***conflicting moral values*** that cannot be reconciled to a single conception of how one should live life, there is wisdom in the idea that the public sphere is for all to share, even where beliefs differ. (*Trinity Western,* at para. 338; emphasis added) [228]

Again, morality is used here to simply draw attention to the beliefs, values, and practices of others and acts as a boundary marker to distinguish between different moral frameworks. Unlike *Latimer* and *Trinity Western,* morality is not referenced by the Court in *Bedford.*

The presence of the language of morality in the above example suggests that it would be an error to conclude that the nonreligious interveners, including the Court, did not draw on the language of morality at all. These actors do in some cases draw explicitly on the language of

[228] In the majority decision, the Court ruled that "Evangelical Christians believe in the authority of the Bible, the commitment to sharing the Christian message through evangelism, and sexual moral purity which requires sexual abstention outside marriage between a man and a woman" (*Trinity Western,* at para. 6).

morality. What distinguishes the use of morality by the nonreligious interveners from the religious interveners is that the nonreligious interveners use the language of morality to reference or critique the moral arguments and worlds of religious groups. In other words, the language of morality is used to distinguish between different moral worlds and frameworks. This particular use of morality does not, however, mean that the nonreligious interveners did not establish a moral position in their arguments. It is to the moral positions of the nonreligious interveners I now turn.

Alternative Ways of Constructing a Moral World

People quite often express their morality in ways other than using the language of morality (Hitlin and Vaisey 2010; Mehta and Winship 2010; Stets 2010). The lack of the explicit use of the terms morality and morals by the nonreligious interveners, is therefore not an indication that the nonreligious interveners, as well as the Court, did not take or establish a moral stance in *Latimer, Bedford,* and *Trinity Western.* All social actors involved in the cases established a moral position concerning the issues brought before the Court. Arguments concerning the acceptability of the different issues necessarily entail a moral position. The social actors in the three cases all have their own moral worlds, all of which are different and comprised of the "intersecting operation of multiple contradictory social systems" (Powell 2010, 54). To disagree, for example, with Trinity Western's community covenant on the grounds that it discriminates against an already marginalized group of people is to establish a moral position vis-à-vis the community covenant. The moral position here is the disapproval of discrimination.

The arguments of the nonreligious interveners and the Court draw attention to the more nuanced and subtle ways in which moral positions can be established without relying on the language of morality. Consider, for example, the use of the language of law and rights in the following statements made by several of the nonreligious interveners and the Court:

> ***Unfit and harsh sentences*** 'are more likely to inspire contempt and resentment than to foster compliance with ***the law'***. (*Latimer,* Canadian Civil Liberties Association, at para. 8; emphasis added)
>
> Mr. Latimer perceived his daughter and family to be in a difficult and trying situation. It is apparent from the evidence in this case that he faced challenges of the sort most Canadians can only imagine. His care of his daughter for many years was admirable. His decision to end his daughter's life was an ***error in judgment***. The taking of another life represents the ***most serious crime in our criminal law***. (*Latimer,* at para. 5; emphasis added)

> ***Criminalization***, on the other hand, ***contributes to the vulnerability of sex workers*** to human rights violations, as well as to HIV. (*Bedford*, Joint United Nations Programme on HIV/AIDS, at para. 21; emphasis added)
>
> ***However, prostitution itself is not illegal. It is not against the law to exchange sex for money.*** Under the existing regime, Parliament has confined lawful prostitution to two categories: street prostitution and "out-calls"—where the prostitute goes out and meets the client at a designated location, such as the client's home. This reflects a policy choice on Parliament's part. Parliament is not precluded from imposing limits on where and how prostitution may be conducted, as long as it does so in a way that does not infringe the constitutional rights of prostitutes. (*Bedford,* at para. 5; emphasis added)
>
> The Decisions did not impair or if at all, minimally TWU's rights to manifest its religious beliefs. On the other hand, ***the Decisions were necessary to prevent serious impairment of the rights to privacy, education, equality and non-discrimination, freedom of belief*** and the right to act on beliefs in private, of members of the LGBTQ community and others whose beliefs do not allow compliance with the Covenant. (*Trinity Western,* Lawyers' Rights Watch Canada, at para. 30; emphasis added)

Concealed in the language of law, these statements reflect certain moral positions and commitments. The Joint United Nations Programme on HIV/AIDS, for example, hints that the criminalization of sex work is wrong (perhaps immoral) because it necessary endangers the lives of sex workers. Similarly, Lawyers' Rights Watch Canada implies that it was acceptable (i.e., morally okay) to limit the rights of Trinity Western University in order to protect the rights of a much larger marginalized group of people. These interveners draw on legal discourse (e.g., criminalization) to construct their vision of what might be considered morally acceptable.

In *Bedford* specifically, the Court made clear its moral position concerning the nature of sex work through its navigating of law. It ruled, for example, that:

> Parliament has the power to regulate against nuisances, ***but not at the cost of the health, safety and lives of prostitutes. A law that prevents street prostitutes from resorting to a safe haven such as Grandma's House while a suspected serial killer prowls the streets, is a law that has lost sight of its purpose***.[229] (*Bedford,* at para. 136; emphasis added)

While the Court did not suggest or consider the nature of sex work as "bad", the above statement implies that the laws concerning sex work are unjust or inadequate precisely because they

[229] The purpose of the bawdy-house provision was to "prevent community harms in the nature of nuisance" (*Bedford*, at para. 131).

unnecessarily subject sex workers to danger. To endanger the lives of others is here described as unacceptable behaviour.

Discussion about human rights specifically also reveals something about the moral claims and positions of the nonreligious interveners. While I discussed the construction of human rights in Chapter Three, I argue here that moral assumptions and positions are quite often found in arguments about, for example, one's right to life liberty and security of the person (section 7 of the *Charter*). In *Latimer,* the Council of Canadians with Disabilities et al., argued that:

> The Coalition strongly believes that the arguments advanced on behalf of the Appellant in this case involve a ***threat to the lives and security of disabled people generally***, and to persons with cognitive disabilities in particular. (*Latimer,* Council of Canadians with Disabilities et al., at para. 79)

And in *Bedford,* the Canadian Association of Sexual Assault Centres et al., similarly said that:

> The Women's Coalition submits that the *criminalization of prostituted women* through the communicating and bawdy house laws undermines ***women's security of the person*** […]. (*Bedford*, Canadian Association of Sexual Assault Centres et al., at para. 12; emphasis added)[230]

The Downtown Eastside Sex Workers United Against Violence Society et al. in *Bedford* referenced harm and its correlation with the security of the person more specifically when they said:

> all three impugned *Criminal Code* provisions create real risks to the safety and lives of sex works […] the laws exacerbate a risk of ***"physical harm"*** in a way that "compromises personal integrity and autonomy and strikes at the core of the right to ***security of the person."*** (*Bedford,* Court of Appeal as quoted in Downtown Eastside Sex Workers United Against Violence Society et al., at para. 1; emphasis added)[231]

These same interveners also argued that:

> Assuming for the sake of argument that these touchstones are to be considered, it must be found both ***"abhorrent" and "intolerable"*** to sacrifice the ***lives and safety*** of already

[230] The Canadian Association of Sexual Assault Centres et al. also argued that "The Women's Coalition agrees with the Appellants that prostituted women's security is not violated by criminalizing the economic interest of third parties in profiting from prostitution. Pimping and profiteering does not protect prostituted women; it subjects them to additional pressure, risk, and abuse" (*Bedford*, Canadian Association of Sexual Assault Centres et al., at para. 27).
[231] The Downtown Eastside Sex Workers United Against Violence Society et al. also argued that "As a result [of the prohibitions on sex work], police are less able to protect sex workers or deter predators like Robert William Pickton" (*Bedford*, Downtown Eastside Sex Workers United Against Violence Society et al., at para. 14).

> marginalized individuals to keep the streets free of nuisance. (*Bedford,* Downtown Eastside Sex Workers United Against Violence Society et al., at para. 24)

Similar concerns about safety, life, physical harm, and security of the person were used by other nonreligious interveners in *Latimer* and *Bedford* to establish a moral position. Likewise, the construction of morality through discussions of safety, security, and harm was also evident in the decisions of the Court. Concerning the security of the person, specifically sex workers in *Bedford,* the Court ruled that:

> The prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further, by ***imposing dangerous conditions on prostitution***; they prevent people engaged in a risky — but legal — activity from taking steps to ***protect themselves from the risks***. (*Bedford,* at para. 60; emphasis added)[232]

Statements about human rights generally and harm and security of the person (section 7 of the *Charter*) all present rather specific moral positions. For the majority of the nonreligious interveners, harm and an individual's right to security of the person are used to express a specific stance concerning the social issues addressed in *Latimer* and *Bedford.* In *Latimer*, security of the person is often used to establish a moral position that opposes mercy killings—specifically as it applies to people with disabilities. In *Bedford,* discussions about security of the person imply a strong moral disapproval of the prohibitions on sex work.

Conversations about human rights, particularly that about the security of the person, are less frequently found in *Trinity Western,* primarily because of the nature of and the questions addressed in the case.[233] One still, however, finds statements about human rights, specifically discrimination, that imply a certain moral position and aides in the construction of a moral world. The BC LGBTQ Coalition, for example, argued that:

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[232] On risk and security, the Court also said ""It makes no difference that the conduct of pimps and johns is the immediate source of the harms suffered by prostitutes. The impugned laws deprive people engaged in a risky, but legal, activity of the means to protect themselves against those risks. The violence of a john does not diminish the role of the state in making a prostitute more vulnerable to that violence" (*Bedford*, at para. 89). And, on "bad" laws, the Court ruled that "The [section 7] analysis is concerned with capturing inherently bad laws: that is, laws that take away life, liberty, or security of the person in a way that runs afoul of our basic values" (*Bedford*, at para. 96).

[233] One instance of discussion about harm comes from the BC LGBTQ Coalition, who said: "TWU excludes sexual minorities from a law school on the basis of highly stigmatizing and prejudicial attitudes. This exacerbates the prejudice perpetuated by the act of exclusion, and is a proper aspect of the decision for a public body such as the Law Society to consider. *Religious motivations for exclusion do not reduce these harms. The harm is profound whether inspired by religion, politics, or plain bigotry*" (*Trinity Western*, BC LGBTQ Coalition, at para. 17; emphasis added).

> The ***hate and vilification of LGBTQ individuals*** articulated by a policy that prohibits same sex intimacy – which the history and contemporary context of this Covenant reveal to be its purpose – is of a substantially higher degree than a policy that denies "the validity of same-sex marriage". (*Trinity Western,* BC LGBTQ Coalition, at para. 21; emphasis added)[234]

This intervener establishes its moral position, a position disapproving of Trinity Western University's community covenant, using the language of discrimination: specifically language about the hate toward and the vilification of LGBTQ individuals. The BC LGBTQ Coalition was not alone in drawing on discrimination to imply a moral position. The Canadian Bar Association, for example, went as far as villainizing discrimination, describing it as evil and having no place in society:

> A law society does not properly fulfill its mandate by allowing what has been called direct discrimination to persist while waiting for evidence of its effects. ***Discrimination is an evil in itself.*** When faced with discrimination, it is no answer to tell those burdened by it that they can get equivalent services elsewhere, much less to oblige them to prove that they cannot get equivalent services elsewhere. The harm is in the discriminatory act itself, and does not require proof of the unavailability of alternative services. (*Trinity Western,* Canadian Bar Association, at para. 15)

And, the Law Students' Society of Ontario claimed that it:

> views TWU's Community Covenant Agreement (the Covenant) ***as discriminatory*** because it ***undermines diversity*** within the legal profession by discouraging LGBTQA individuals from accessing legal education at TWU. (*Trinity Western,* Law Students' Society of Ontario, at para. 2; emphasis added)

For the Law Students' Society of Ontario, diversity was understood as 'good'—standing in stark contrast to the 'evil' of discrimination described above.

In response to questions about diversity and discrimination, the British Columbia Humanist Association described a particular vision of the future, one in which society is fragmented because of discrimination and the resulting segregation of religious and other cultural groups:

> This leads to a society in which there are hospitals, schools and shops for Christians, others available only to Muslims, still others for atheists, and so on, and so forth. Such is anathema

[234] The BC LGBTQ Coalition also said that "These [LGBTQ] students will have to hide their sexual orientation to obtain (and maintain) a place at the law school, or risk being marginalized, or forced to reveal their sexual orientation" (*Trinity Western*, BC LGBTQ Coalition, at para. 18; emphasis).

> to the pluralistic and accepting Canadian society[...] (*Trinity Western,* British Columbia Human Association, at para. 23)[235]

To this intervener, societal fragmentation was something to be avoided because of its potential to further exacerbate social issues and not contribute to promoting equality (*Trinity Western,* British Columbia Humanist Association, at para. 24). This intervener implied that a just moral world was one in which all are welcomed (*Trinity Western,* British Columbia Human Association, at para. 23). Other nonreligious interveners also drew on the language or framework of discrimination to similarly construct their moral positions.[236] In the context of *Trinity Western,* discussion of discrimination (as used by the nonreligious) most often implied a strong disapproval of TWU's community covenant: a just moral world was constructed as *including* those from the LGBTQ+ community.

Reference to discrimination was primarily used by the nonreligious interveners, but it was not exclusively used by the nonreligious interveners. One finds discussion about discrimination scattered throughout some of the religious interveners' factums. In *Latimer,* for example, the Catholic Group for Health, Justice and Life said that:

> In accepting Mr. Latimer's argument on surrogate suicide, this Court would have to hold that, ***due to their condition, there are some children in society*** who do not have a *Charter* right to ***life and security of the person***. In other words, ***there are children who are nothing more than chattels owned by parents*** who can do what they want with them. (*Latimer,* Catholic Group for Health, Justice and Life, at para. 21; emphasis)

This intervener draws on the notions of age and physical condition and the implications these could have for the legal protections a person is entitled to in Canadian society. For this intervener, society and law should not discriminate against someone because of their age or physical (in)capacities—a point many nonreligious interveners also agree with (see the factum of the Council of Canadians with Disabilities et al. in *Latimer*).

As one might expect given the nature of *Trinity Western,* this case includes more discussion about discrimination. Like the nonreligious interveners in *Trinity Western,* this discussion also

[235] EGALE Human Rights Trust makes a similar point: "They [LGBTQ students] may also be barred from engaging in athletics, student government, and other extracurricular activities, and excluded, at least temporarily, from classes and events" (*Trinity Western*, EGALE Human Rights Trust, at para. 15).
[236] "Had the Law Societies accredited TWU, they would have sanctioned a discriminatory admissions policy" (*Trinity Western*, The Advocates' Society, at para. 21).

implies a certain moral position and aids in the construction of a moral world. Consider the following:

> In their efforts to stamp out TWU's belief in the religious institution of marriage the Law Societies have acted in a ***discriminatory manner while seriously breaching TWU's Charter rights*** and thus they have acted contrary to the public interest they seek to uphold. (*Trinity Western,* Canadian Conference of Catholic Bishops, at para. 45; emphasis added)[237]

> The decisions of the Law Societies regarding TWU ("Decisions") ***discriminate against TWU*** and are beyond the authority of the Law Societies […]" (*Trinity Western*, Seventh Day Adventist Church in Canada, at para. 3; emphasis added)

Discussion about discrimination is used by these religious interveners to suggest that the decisions of the law societies were unjust. Language of discrimination was not used to express moral objection regarding TWU's community covenant. In sum, the use of discussion about discrimination to construct moral positions was not exclusively the domain of the nonreligious interveners and the Court—its use, however, was found more predominantly in the factums of the nonreligious interveners.

Arguments about gender, sex, and race—something largely missing from the religious narrative of the social issues brought before the Court in all three cases—is also found in the submissions of the nonreligious interveners. These arguments also aid in the construction of moral positions, particularly in *Bedford* and *Trinity Western.* In *Bedford,* for example, the Asian Women Coalition Ending Prostitution said:

> ***Asian Women intervenes to build on the Ontario Court of Appeal's acknowledgement that one of the "primary sources of survival sex workers' marginalization" is race. Asian and other racialized women*** have distinct experiences of prostitution. Such distinct experience arises when characteristics, real or imagined, are used to demand and promote sexual services, and when individuals, communities, and public institutions make assumptions about ***relative value on the basis of race***. (*Bedford,* Asian Women Coalition Ending Prostitution, at para. 2; emphasis added)

And, In *Trinity Western* the West Coast Women's Legal Education and Action fund argued that:

[237] The Canadian Conference of Catholic Bishops also said that "by implicitly and peremptorily *stigmatizing TWU's graduates* of its proposed law school as intolerant of the LGBTQ community the LSUC's decision *will serve to undermine the public's confidence in those graduates* – thus their *discriminatory decisions are also contrary to their public interest mandate*" (*Trinity Western*, Canadian Conference of Catholic Bishops, at para. 34; emphasis added).

> ***The Covenant has a substantial impact on women by restricting their reproductive rights.*** Not only is this important to proper consideration of the issues in this appeal, but this issue has been raised before the LSBC and every level of court in this proceeding. The British Columbia courts' failure to consider this aspect of the discrimination is troubling, and it is crucial that this Court give due consideration to this ***significant sex discrimination issue***. (*Trinity Western,* West Coast Women's Legal Education and Action Fund, at para. 13)[238]

Discussions of gender, sex, and race by these interveners further draws attention to an implied moral position in each respective factum. The use of gendered based arguments by the Asian Women Coalition Ending Prostitution draw attention to some of the ways in which the prohibitions on sex work specifically impacted Asian and other racialized women.[239] The way in which this intervener highlighted the effects of the prohibitions on marginalized women necessarily implied a strong moral disapproval not of sex work itself, but of some of the prohibitions on sex work. Likewise, reference to gender by the West Coast Women's Legal Education and Action Fund's suggests a strong moral disapproval of TWU's community covenant because of the impact it would have on women specifically. In short, discussion about gender, sex, and race also establishes a moral position in the submissions of the nonreligious interveners.

The above discussion about the use of human rights-based arguments to establish a moral commitment assumes that human rights themselves are intrinsically moral claims. Such an assumption is reflected in broader academic debates about the sociology of morality (Hitlin and Vaisey 2010). Individuals need not draw on the explicit language of morality to articulate moral positions (Powell 2010). People establish moral positions and commitments in their daily lives despite not always drawing on the language of morality. In the context of law, human rights, justice, and moral philosophy are all deeply intertwined (Hegtvedt and Scheuerman 2010, 331). To suggest that someone has the legal right to do something (or not) is itself to proclaim that what someone has the right to do is "consistent with moral behavior" (Hegtvedt and Scheuerman 2010,

[238] Further, the West Coast Women's Legal Education and Action Fund said that: "The Covenant is discriminatory on the basis of *sex (pregnancy), sexual orientation and marital status*. It may also discriminate against individuals on these multiple intersecting grounds thereby compounding the discrimination" (*Trinity Western*, West Coast Women's Legal Education and Action Fund, at para. 2; emphasis added). Similarly, EGALE Human Rights Trust argued that Trinity Western University's "Covenant discriminates not only on the basis of sexual orientation but also on the basis of *gender identity and expression*" (*Trinity Western*, EGALE Human Rights Trust, at para. 2[b]; emphasis added).

[239] The Asian Women Coalition Ending Prostitution said "While Asian Women would, in an appropriate case, reach the conclusion via s. 15 of the Charter, it supports the argument that s. 210 of the Code as it relates to common bawdy-houses cannot constitutionally apply to prostituted persons. However, s. 210 does not infringe s. 7 insofar as it creates offences committed by persons, such as pimps and buyers, etc., other than prostituted persons" (*Bedford,* Asian Women Coalition Ending Prostitution, at para. 6).

331; see also Freeman 2004; Moka-Mubelo 2017). All of this is to say that human rights are moral positions and thus contribute to the construction of one's moral world.

In the analysis above I have demonstrated that despite the language of morality being largely absent from the arguments of the nonreligious interveners, these interveners still establish moral commitments and positions. For the nonreligious interveners and the Court, morality and moral positions are implied through statements about rights often related to law, discrimination, and gender, sex, and race. These statements often reveal whether a particular intervener (as well as the Court) generally approves or disapproves of the social issues considered in each case. Just as the use of explicit language about morality by the religious interveners clearly articulates one's moral position, so too does rights-based discussion reveal the otherwise hidden contours of one's moral position.

Conclusion

Morality is a complex and debated topic of scholarly inquiry (Gert 2005). What one person might consider moral quite often differs from what another person considers moral (Hitlin and Vaisey 2010). Moreover, the sources that inform one's moral world very often differ from person-to-person and even from society-to-society (Smith 2010; Hitlin and Vaisey 2010; Abbott 2020). Thus, questions about morality are often accompanied by theoretical and philosophical debates. This chapter has attempted to steer clear of these theoretical and philosophical debates. Instead, I have opted to explore how morality and the moral worlds of the social actors involved in *Latimer, Bedford,* and *Trinity Western* are constructed. It was not my intention to question the philosophical and/or religious justifications that characterize these constructions of morality.

In this chapter I have sought to demonstrate three things. First, the religious interveners construct their interventions as moral interventions. These interveners in all three cases drew quite explicitly and frequently on morality in framing their arguments presented to the Court. The religious interveners were often quite clear about their moral disapproval of the issues addressed in the three cases by using language like "morally wrong" and "immoral". Moreover, the moral world constructed by the religious interveners was largely grounded in religion—or the transcendent. This moral world was often rooted in an other-worldly being like God, or in religious belief more generally. To the religious interveners morality was not of "this-world". This is,

perhaps, not surprising given that to many religious individuals, particularly Christians, morality and religion are inseparable (Smith 2010; Angus Reid Institute 2016).

Morality as invoked by the religious interveners was also frequently associated with the broader Canadian community and the social good. When morality and morals were explicitly referenced in the factums of the religious interveners they were often conceptualized as communal in nature. Morality thus was understood by these interveners as referring to a shared, collective of values that promoted the common good and betterment of society. In this light, morality was understood not to be an enterprise of the individual, but instead characteristically communal—it was about what society, or the community thought was good and just and acceptable.

Second, this chapter has demonstrated that morality and moral claims are established slightly differently by the nonreligious interveners. The nonreligious interveners did not frequently employ the language of morality and their interventions were not necessarily framed as moral interventions. The nonreligious interveners very clearly had moral positions concerning the issues addressed by the Court, but these positions were indirectly constructed by discussions about concepts not necessarily about morality. In this chapter I explored how law, human rights, discrimination, and gender and sex all contributed to the construction of the moral claims and worlds of the nonreligious interveners.

Of note is that the transcendent did not feature in the submissions of the nonreligious interveners. In these submissions, there is a greater emphasis on the immanent "this-worldly affairs" (Salonen 2018). The nonreligious considered a wider array of social and economic factors in their framing of issues presented before the Court. While the religious interveners referenced concepts such as harm, human trafficking, public safety, human rights, and health care, these interveners less frequently emphasized such concepts in their arguments (see also Steele 2020).

Finally, this chapter has demonstrated that, despite not drawing explicitly on the language of morality, the nonreligious interveners are not deprived of morality—they are not immoral and incapable of contributing to the betterment of society. These interveners are moral beings (see also Zuckerman et al., 2016). This observation speaks to broader debates about the morality of nonreligious people. A nonreligious society and its moral world are not characterized by immorality or deprived of just values, beliefs, and behaviours (Smith and Halligan 2021; Zuckerman et al. 2016; Galen 2012; Frost and Edgell 2017). The nonreligious are often as moral

and as, if not more, pro-social than religious individuals (Galen 2012; Thiessen and Wilkins-Laflamme 2020).

As was the case in the previous chapter, the ways in which the religious and nonreligious approach questions of morality are not always different. There are similarities in the ways in which each group constructs their moral worlds. As Jesse Smith and Caitlin Halligan point out, nonreligious moral worlds and moral concerns are often constructed and addressed through engagement with "religious beliefs, claims, and people" (2021, 104; see also Blankholm 2022). There exist points of contention and agreement when comparing the morals worlds of the religious and nonreligious interveners. Importantly, one moral world is not necessarily *better* or more moral than the other, they are simply different and each reflective of various meaningful beliefs, values, and practices. I argue that what might be thought of as contributing to the positive content of nonreligion are the notions of immanence, law, and human rights—these were all meaningful in the establishing of the moral positions of the nonreligious interveners. Meaning was not necessarily found in rigid ideologies (Salonen 2018).

What I have also drawn attention to when it comes to questions about morality is not a change in kind, but rather a change in degree. The nonreligious conceptualization of morality is nothing new: it has always existed. What is new is that this moral world is becoming increasingly visible in law given the changing (non)religious demographic of Canadian society and the increase in the number of nonreligious legal interveners. Social institutions are thus more likely to fully consider a "way of being" that no longer prioritizes religion (Beaman 2017a, 2020).

Chapter Five: Exploring Dignity

Introduction

As with human rights and morality, the concept of dignity also provides an avenue through which to explore the imagining of nonreligion in *Latimer, Bedford,* and *Trinity Western*. Dignity, however, is also something of a quagmire. Despite dignity being a much-used word in the contemporary world, particularly in the domains of political theory and human rights theory, it is very rarely defined (Nordenfelt 2004; Herrman 2019; Shultziner 2003; Rosen 2012). [240] In the cases I explore, for example, dignity is referenced and discussed quite frequently by many of the interveners, but the term remains largely undefined and thus its meaning is implied and ambiguous. [241] In fact, in all of the discussions of dignity in my data, only once was it defined.[242]

Even when clearly defined, definitions of dignity are not themselves authoritative—there are many ways in which dignity can be defined (Rosen 2012; Nordenfeld 2004). Indeed, *human dignity* is often what is defined (at least when a definition is provided) in discussions about dignity. Lennart Nordenfelt (2004), for example, argues that while *human dignity* has captivated the gaze of contemporary society and scholars, there are other dignities that also warrant further exploration.[243] What's more, the very sources of dignity are themselves disputed. On one hand, dignity is often understood and constructed as originating from something otherworldly, or the transcendent (Herrman 2019).[244] In this light, dignity is often informed by religious, specifically Christian, values and beliefs—particularly in the Western world (see Rosen 2012). On the other hand, dignity is framed as a product of the social world, or the immanent, and is therefore constructed by the social actors and institutions which draw on the term (Shultziner 2003; Leung

[240] Michael Rosen argues that "Dignity is central to modern human rights discourse, the closest that we have to an internationally accepted framework for the normative regulation of political life, and it is embedded in numerous constitutions, international conventions, and declarations. It plays a vital role, for example, in two fundamental documents from the late 1940s, the United Nations' Universal Declaration of Human Rights (1948) and the Grundgesetz (Basic Law) of the Federal Republic of Germany (1949). This is apparent from its prominent position in each text" (2012, 1-2). Similarly, Lennart Nordenfelt points out that "the notion of dignity has gradually received a more central place in the philosophy of medicine and related areas […] As a result specialized governmental commissions in the bioethical field make substantial reference to the protection of human dignity" (2004, 70). Of note too is that the concepts of dignity and human rights do not belong to the Western state—they are not a "piece of liberal piety" (Rosen 2012, 2). See also Street and Kissane (2001).

[241] Charles Herrman refers to dignity as an "impractical notion" (2019, 104).

[242] The Evangelical Fellowship of Canada et al. defined dignity in *Latimer.*

[243] To Nordenfelt (2004) other dignities include: the dignity of merit; the dignity of moral stature; and the dignity of identity.

[244] Rosen notes that the concept of dignity is especially "prominent in Catholic thought" (2012, 3).

2007; Nordenfelt 2004; see also Rosen 2012).[245] All of this is to say that "dignity is many things" (Herrman 2019, 122).

The ambiguity of dignity has led some scholars to suggest that the concept is of little analytical use. German Philosopher Arthur Schopenhaur, for example, famously said that dignity is a "mere humbug—a pompous façade, flattering to our self-esteem but without any genuine substance behind it…" (as quoted by Rosen 2012, 1-2).[246] Like Schopenhaur, other scholars argue that dignity tells us little of the world in which we live, so much so that some have completely abandoned using the term (Hermann 2019).[247] To many scholars, however, dignity is a useful analytical tool, comprised of a genuine substance (Herrman 2019). To these individuals, dignity provides a fruitful way to explore the social world and the ways in which people create meaning and justify certain beliefs, values, and practices (Shultziner 2003; Rosen 2012).

Chapter Overview

In this chapter, I follow those scholars who consider dignity a useful analytical concept. I suggest that an analysis of the use of the concept of dignity in *Latimer, Bedford,* and *Trinity Western* provides a way to explore the positive content of nonreligion, or the meaningful beliefs, practices, and values of those individuals who do not affiliate with religion. The purpose of this chapter, like the previous chapters, is not to contribute to the philosophical and theoretical debates about dignity and its derivatives. I do not intend to concern myself with the debates about what might constitute dignity and the legitimacy of the various sources behind such understandings of dignity. I am instead concerned with *how* dignity is constructed and used by the various interveners and Supreme Court of Canada in *Latimer, Bedford,* and *Trinity Western* and what such constructions might mean for the social construction of nonreligion.

I want to also clarify that I use dignity as a first-order and second-order concept throughout this chapter. As a first-order concept, dignity refers to whatever the interveners and Supreme Court of Canada construct as dignity—i.e., how these social actors use the concept. As a second-order

[245] Nordenfelt suggests that some forms of dignity are "very much dependent upon the thoughts and deeds of the subject" (2004, 72) and also "tied to the integrity of the subject's body and mind" (2004, 80). Leung (2007) also draws attention to the socially constructed nature of dignity, particularly in the context of end-of-life care. See also Street and Kissane (2001).

[246] Schopenhauer's comment was in response to Kant's proposal of the "dignity of man" (Rosen 2012, 1).

[247] In many ways this argument is similar to the approach some scholars take to the term the "secular". See Beckford (2003).

concept, I use dignity to describe arguments that draw attention to an individual's sense of self-worth and/or value.[248] This definition of dignity tracks closely to how dignity is used (1) as a first-order concept by those involved in *Latimer, Bedford*, and *Trinity Western*; and (2) how it is used in academic literature (Nordenfelt 2004; Rosen 2012). The use of dignity as a first- and second-order concept thus allows me to best explore the nuances that contribute to the social construction of dignity and the implications this has for nonreligion.

In what follows, I argue that there are similarities and differences in the ways in which dignity is understood by the religious and nonreligious interveners. I suggest that the religious interveners understand dignity as something grounded in the transcendent and an inherent part of what it means to be human. As a result, the agency and autonomy afforded to an individual are necessarily limited to avoid demeaning/disrespecting his or her dignity. For the nonreligious interveners, dignity is a product of the immanent world, though also a natural part of the human condition. The nonreligious also suggest that an individual's dignity is closely related to the free exercise of personal autonomy and agency. Thus, allowing an individual to make decisions concerning his or her own choices related to end-of-life care, sex work, and LGBTQ rights necessarily provided for a greater sense of dignity, value, and worth.

In this chapter, I show that debates about dignity draw attention to the positive content of nonreligion. Importantly, I argue that the conceptualizations of dignity in *Latimer, Bedford,* and *Trinity Western* are not necessarily mutually exclusive and fundamentally opposed to one another. There are sites of overlap, cooperation, and agreement.

Religious Interveners and Dignity

Dignity as God Given and/or Religiously Inspired

As was the case in the previous chapters, the religious interveners often invoke the transcendent, the otherworldly, and/or the religious in their discussions about dignity. Consider, for example, the following statements:

[248] Shultziner refers to this as the "thick meaning" of dignity (2003, 16). See also Leung (2007).

> all human beings enjoy ***equal dignity in the face of this higher creative power***. (*Latimer,* The Evangelical Fellowship of Canada et al., at para. 12; emphasis added) [249]
>
> As a correlate to the ***sanctity of human life, human dignity inheres in a person simply by virtue of their membership in the human family***. (*Bedford*, The Evangelical Fellowship of Canada, at para. 8; emphasis added)
>
> Canadian law has its foundation in morality, interconnected to its ***history of religious principles***. ***Respect for human life, and its inherent worth, is an underlying theme***. It is well established that criminal laws are enacted to protect societal values, and have a ***historical basis in religious principles***. (*Bedford,* The Evangelical Fellowship of Canada, at para. 15; emphasis added)
>
> ***religious belief*** has the capacity to awake concepts of ***self-worth and human dignity*** (*Trinity Western*, Justice Albie Sachs as quoted by the Canadian Council of Christian Charities, at para. 26; emphasis added)

The above selected quotes clearly demonstrate that to some religious interveners dignity and the transcendent are inseparable. Dignity was framed as something not of this immanent world, but instead belonging to another world, something situated within the transcendent.

I recognize, however, that The Evangelical Fellowship of Canada is overrepresented in the above analysis of the transcendental nature of dignity. This overrepresentation is not intentional and can be explained. First, The Evangelical Fellowship of Canada intervened in all three cases. As such, this intervener's conceptualization of dignity is naturally found more frequently than the framings of dignity by other religious interveners, especially considering that the submissions of The Evangelical Fellowship of Canada represent half of the total number of submissions made by religious interveners in both *Latimer* and *Bedford.*[250] Having said this, two other religious interveners joined the factum submitted by The Evangelical Fellowship of Canada in *Latimer,* and one other religious intervener joined the factum submitted by The Evangelical Fellowship of Canada in *Trinity Western.* These additional interveners accepted the position concerning dignity put forth by The Evangelical Fellowship of Canada as their own for the purposes of the three cases. Second, the language of dignity was not explicitly, or frequently, used by many of the religious interveners in the three cases. Certainly, there were implied statements about one's sense of worth

[249] Recall, The Evangelical Fellowship of Canada et al. said that "When one considers the attributes of personhood from the perspective of the Jewish and Christian traditions which have informed Canadian law, *one sees that a person is regarded as a creature, created by a divine being* […]" (*Latimer*, The Evangelical Fellowship of Canada et al., at para. 11; emphasis added).
[250] In *Latimer* and *Bedford* there were only two factums submitted by religious interveners.

and the value of human life, but such discussions rarely drew on the explicit language of dignity. In other words, many of the discussions found in the submissions made by religious interveners did not use dignity as a first-order concept. In instances where dignity is used as a first-order concept, the transcendent and religion are often woven into these discussions.

Explicit reference to the transcendent and religion were not the only elements found in the submissions of the religious interveners to suggest that dignity had an otherworldly element. In relation to the protection of human life, the Catholic Group for Health, Justice and Life, for example, said that:

> The CCCB [Canadian Conference of Catholic Bishops] has been active in bringing a moral, philosophical and pastoral perspective to a number of critical public policy issues. In particular, it has been a strong and consistent advocate for the ***promotion of human dignity and the protection of human life from its beginning to natural end***. (*Latimer,* Catholic Group for Health, Justice and Life, at para. 4)

Remember, for this intervener, along with many others like it, human life is necessarily linked to the transcendent and thus requiring special protection. Thus, the coupling of the protection of human life argument and promotion of human dignity argument points to an understanding of dignity that perhaps encompasses a transcendental element. For the Catholic Group for Health, Justice and Life particularly, Canadian society places great value on the protection of one's right to life, liberty, and security of the person (section 7 of the *Charter*) precisely because of the transcendental nature of this right (at paras. 12-14). [251] By matter of extension, dignity here is indirectly constructed as incorporating a transcendental element because of its relation to the transcendent understanding of how a person's life is understood and to be protected. The transcendental nature of the *Charter,* according to the Catholic Group for Health, Justice and Life, posits that the rights and values derived from the *Charter* are themselves also transcendental in some capacity—dignity is one of these values.

[251] The Catholic Group for Health, Justice and Life also argued that "In a free and democratic society, the right to life and security of the person would be meaningless unless the state provided protection for this right through penal sanctions that appropriately reflected the transcendent nature of the right" (*Latimer,* Catholic Group for Health, Justice and Life, at para. 14).

In a similar light, other religious interveners who suggest that the rights and values that stem from the *Charter* are transcendental in nature also hint toward dignity incorporating a transcendental element. Consider the following:

> "Prostitution is a symptom of the victimization and subordination of women and of their economic disadvantage." It violates ***our most fundamental values: gender equality, the suppression of exploitation and human dignity***. For decades, Canadian lawmakers have sought to eradicate prostitution not only because of its harms but because it is morally wrong. The Court of Appeal's decision in this case incorrectly strips that history and that moral context from the impugned provisions, leading to the absurd result that brothels and pimping may be legalized notwithstanding our common disapprobation of prostitution itself. (*Bedford,* Christian Legal Fellowship et al., at para. 51; emphasis added)

> ***Human dignity and respect for human life are fundamental Canadian values*** […] The Evangelical Fellowship of Canada submits that any benefits awarded to the legalizations of prostitution are disproportionate to the harm of those involved in prostitution and to Canadians. (*Bedford*, The Evangelical Fellowship of Canada, at para. 34; emphasis added)

For these interveners, Canada's most fundamental values stem from the *Charter*, which is religiously and divinely inspired.[252] One might therefore conclude that for these social actors the very rights and values which stem from a divinely inspired *Charter* are also, to some degree anyways, transcendent in nature. In short, what I argue here is that the absence of the explicit language of transcendence, God, religion, etc. from the debates of the religious interveners about dignity does not necessarily point to an understanding of dignity rooted in this immanent world. The transcendent nature of dignity is implied by these interveners through their construction of the *Charter* as transcendent, from which the value of dignity stems.

Dignity as Inherent

Religious interveners also imagined dignity as an inherent human characteristic. This is to say that dignity is conceptualized by many of the religious interveners as something that humans possess precisely because they are human. The Evangelical Fellowship of Canada et al., for example, was quite clear about this. In *Latimer,* these interveners argued that:

> […] a person's human and legal rights stem from ***inalienable attributes of one's existence*** – his or her ***inherent human dignity***. Dignity may be defined as 'the quality or state of being worthy: intrinsic worth', or, the 'principle of the dignity of the human person: which holds that a human being must be treated as an end in himself or herself.' As such, ***dignity***

[252] For more on this, please refer to Chapter Three.

> ***is an attribute of every human being, and is a quality intrinsic to the existence of each person***. (*Latimer,* The Evangelical Fellowship of Canada et al., at para. 15; emphasis added)

And, in *Bedford* The Evangelical Fellowship of Canada said that:

> ***Human dignity is not 'earned'*** through an existentialist exercise of autonomous decisions or granted by the state. ***It exists regardless of one's capacities*** and has been recognized by the state. (*Bedford,* The Evangelical Fellowship of Canada, at para. 8; emphasis added)[253]

To The Evangelical Fellowship of Canada (and to those other interveners who joined the factums of The Evangelical Fellowship of Canada) dignity is not something 'earned'. An individual possesses dignity because he or she is human. This understanding of dignity stems directly from the notion that humans are created in the image of God:

> If we are all made 'in the image of God', then our personhood cannot be lessened by differences in our physical or mental attributes. Our humanness results from who [we] are, not from what we do. (*Latimer,* The Evangelical Fellowship of Canada et al., at para. 12)

Thus, dignity is for this intervener inalienable and inherent—a human is incapable of being without dignity and this dignity cannot be taken away. In this light, The Evangelical Fellowship of Canada et al. suggest that all humans have *equal* self-worth and value, regardless of social and cultural contexts and personal situations:

> Once Canadian law beings to accept that some persons are better off dead than alive, either through the way it deals with criminal culpability or with sentencing, then Canadian law will have reached a point where it regards different persons to be of different worth. These interveners submit that any notion that some people are better off dead than alive stands in direct opposition to the basic attributes of human personhood recognized by Canadian law and the ***equal dignity of all human beings***. (*Latimer,* The Evangelical Fellowship of Canada et al., at para. 7; emphasis added)

The Evangelical Fellowship of Canada et al. are, again, somewhat unique here in the sense that they were primarily the only religious interveners to make such explicit statements concerning the inherent nature of dignity. I therefore acknowledge that such arguments are not necessarily representative of how other religious interveners in *Latimer, Bedford,* and *Trinity Western*

[253] Recall, the Evangelical Fellowship of Canada argued that "*All human life has inestimable worth*. This proposition is the bedrock of civilized nations, and of Canada's constitutional order. While this appeal deals with Canada's laws in regard to prostitution, at its heart are questions concerning the charter value of the dignity of human life and Parliament's actions to prohibit behaviour that is regarded as opposed to human dignity, that is morally unacceptable and thus criminal" (*Bedford*, The Evangelical Fellowship of Canada, at para 1; emphasis added).

approached dignity. However, given that the factums of The Evangelical Fellowship of Canada account for half of the total number factums submitted by religious interveners in both *Latimer* and *Bedford*, the reliance on these interveners in the argument above is somewhat justified.

This is not to suggest that dignity and discussion about inherent worth were absent from the submissions of other religious interveners involved in *Latimer, Bedford,* and even *Trinity Western.* If dignity is used exclusively as a first-order concept, this might be the case. But, if dignity is employed as a second-order concept, one is made aware of an understanding of dignity that similarly posits that one's sense of worth and value are inherent and the result of being human. The Catholic Group for Health, for example, argued that:

> The thrust of Mr. Latimer's appeal is: those who commit 'compassionate homicide' deserve more lenient sentences than other killers. This approach is open to abuse and diminishes respect for human life by signaling that the life of a person who is old, infirm, chronically ill or disabled is of less value. (*Latimer,* Catholic Group for Health, Justice and Life, at para. 12)

This intervener goes on to say that:

> This theory must be grounded on the argument that his daughter's life, due to her pain and disability, was not worth living thereby giving him the right to decide she should die whether she desired death or not. This theory is doubly dangerous because of Mr. Latimer's firm belief he was right in killing his daughter – a belief, given the public reaction to his sentence, many others in society sympathize with. (*Latimer,* Catholic Group for Health, Justice and Life, at para. 19)

As a result, the Catholic Group for Health, Justice and Life concludes that:

> Although Tracy's life was marked by disability and pain, ***she was a human being***. (*Latimer,* Catholic Group for Health, Justice and Life, at para. 43)

For the Catholic Group for Health, Justice and Life, the mere fact that Tracy Latimer was a human being meant that her life was of value—her value as a human was inherent. For this intervener, human life has a universally respected value:

> The social objective of the mandatory sentencing provisions [for murder] is to uphold a ***universal respect for the value of human life*** by severely punishing all killers regardless of motive. (*Latimer,* Catholic Group for Health, Justice and Life, at para. 49)

Tracy's suffering, disability, and pain were framed by this intervener as extraneous variables which could not diminish the value of her wellbeing. Despite suffering, Tracy was portrayed as having a

life of value, regardless of what she or her father might have thought, precisely because she was human.

The Christian Legal Fellowship in *Trinity Western* expressed a similar understanding of dignity. It argued that one's dignity was not something students or members of TWU would be required to "disavow" by attending the proposed law school—one's value was in no way impacted by attending TWU or any other institution for that matter (*Trinity Western,* Christian Legal Fellowship, at para. 18). In fact, there was no mention by this intervener as to how someone could disavow their dignity even if he or she so wished. The argument presented here by the Christian Legal Fellowship resembles that presented above by the Catholic Group for Health, Justice and Life: a person inheres dignity simply because they are human and there is no way to rid one of his or her dignity. For the Christian Legal Fellowship, TWU's community covenant therefore did not offend human dignity (*Trinity Western,* Christian Legal Fellowship, at para. 26).

I must point out, however, that this same intervener in *Bedford* expressed a somewhat different articulation of dignity. While still implying that one's worth is inherent—or part of the human condition—this intervener did hint at the fact that external immanent factors can demean, or disrespect, one's dignity:

> ***Prostitution fundamentally demeans the dignity of the prostitute and the client***. It perpetuates a fundamentally offensive and abusive gender imbalance and it exposes prostitutes to physical and psychological harm. It degrades the community. In short, Canadians have good reason to abhor prostitution. They have every justification to discourage people from engaging in prostitution, either as prostitutes, johns, pimps and madams or as service-providers. (*Bedford,* Christian Legal Fellowship et al., at para. 3; emphasis added)

For the Christian Legal Fellowship et al. in *Bedford*, sex work disrespects one's sense of worth, but to be clear, does not take away one's dignity. While a person's dignity might be inherent because he or she is human, this dignity can be disrespected by engaging in behaviour that these interveners consider immoral. This observation suggests that how dignity is constructed by the religious interveners is in some cases quite ambiguous—this observation muddies the waters.

This contradiction in the construction of dignity in the submissions the Christian Legal Fellowship's factum in *Trinity Western* and the Christian Legal Fellowship et al.'s factum in *Bedford* suggests that a religious approach to dignity is not necessarily something clear cut, or

black and white. There exist nuances in the ways in which dignity is constructed by the religious interveners, particularly across social contexts. While dignity is predominantly framed by the religious interveners as transcendent and inherent in character and thus incapable of being diminished, these attributes are not always absolute. In some instances, dignity is capable of being influenced by the immanent world. As Abdolmohammad Kazemipur (2016) points out, the social world can often influence theology and the theological and vice-versa. What is found in many of the debates about dignity, however, is an objective understanding of dignity: a person has value simply because he or she is human and almost nothing can change the value one has. This objective understanding of dignity is not unique to the cases or interveners analyzed here. Lennart Nordenfelt, for example, draws attention to an objective approach to dignity in theoretical debates about the concept (2004, 71). To Nordenfelt, an objective dignity is one that "exists irrespective of the subject's or somebody else's awareness of it" (2004, 71). What I wish to point out here is that it is this *objective* portrayal of dignity that is generally found in the submissions of the religious interveners in *Latimer, Bedford,* and *Trinity Western.*

Dignity and its Relation to Agency and Autonomy

The above understanding of dignity coincides with a particular approach taken by the religious interveners concerning human agency and autonomy. I argue here that a transcendental construction of dignity that inheres in an individual simply because he or she is human somewhat aides in the construction of a rather limited conceptualization of agency and autonomy, at least in the legal contexts considered in this thesis. Because dignity is understood by many of the religious interveners in *Latimer, Bedford,* and *Trinity Western* as objective in nature, there is an unwillingness, or perhaps uneasiness, on the part of these interveners to allow for the free exercise of autonomy and agency in the context of the social issues being addressed in the three cases. In short, many religious interveners are unconvinced, for example, that deciding to end one's life because of pain and suffering could in anyway promote or bolster one's dignity.[254]

In *Latimer,* for example, the religious interveners do not seem to support the idea that pain and suffering associated with certain illnesses might detract from a person's dignity and self-worth. The Evangelical Fellowship of Canada et al. argued that:

[254] The same argument also applies to sex work and advocating for LGBTQ+ rights.

> [Robert Latimer] seeks to transform killing into a ***respectable way of dealing with the phenomena of human pain and disability. Pain and disability are common occurrences in human life*** […] the law specifically provides that [disabled] persons enjoy the equal protection and benefit of the laws. ***This reflects a commitment by Canadian society to recognize the dignity of those who are disabled.*** The task of Canadian law is to ameliorate the condition of the disabled, not to sanction the termination of their lives. (*Latimer,* The Evangelical Fellowship of Canada et al., at para. 27; emphasis added)

For these interveners, pain and disability do not detract from a person's dignity. The Evangelical Fellowship of Canada et al. maintain that an individual should not have the option to take his or her own life or another person's life as a remedy to end debilitating pain and suffering. The moral and legal debates concerning the act of non-voluntary and involuntary euthanasia aside, [255] the position of The Evangelical Fellowship of Canada et al. (and those other religious interveners who take a similar position)[256] concerning dignity, pain, and suffering effectively denies a person autonomy and agency over the course of his or her own life. To allow an individual to end his or her life, or the lives of others, would, to The Evangelical Fellowship of Canada et al., fail to uphold the inherent dignity one possesses and would result in the needless "killing" of society's most vulnerable people:

> These interveners submit that once the law embarks upon comparing the relative worth of human lives, under whatever guise, ***it rejects any commitment to protect the inherent dignity of all persons*** and absorbs into itself an insidious principle which will only result in the abuse and killing of the most vulnerable in society. (*Latimer,* The Evangelical Fellowship of Canada et al., at para. 26; emphasis added)

The position of the Evangelical Fellowship of Canada et al. is not unique. Such sentiment is echoed by other religious interveners. The Catholic Group for Health, Justice and Life similarly argued that it was the duty of its members to "promote human dignity, and the protection of human life at all its stages (*Latimer,* Catholic Group for Health, Justice and Life, at para. 8). This intervener also considered the ending of life to mitigate pain and suffering as unacceptable and that to endorse such an approach to pain management would pose a risk to all those who are vulnerable and suffering in society (*Latimer,* Catholic Group for Health, Justice and Life, at para. 45). To allow an individual to end his or her life because of pain and suffering would in no way respect this

[255] Non-voluntary euthanasia "involves an act done to an individual without the knowledge of his or her own wishes; and, involuntary euthanasia involves an act done to a mentally competent person against his or her wishes" (*Latimer,* Canadian Aids Society, at para. 6[e-g]).

[256] See also the factum of the Catholic Group for Health, Justice and Life in *Latimer* who also maintain that ending one's life, especially the life of a child, is not a solution to end pain and suffering.

person's dignity. In short, the Catholic Group for Health, Justice and Life's particular construction of dignity also limits the agency and autonomy afforded to individuals and their end-of-life decisions.

The views concerning dignity, agency, and autonomy expressed by the Catholic Group for Health, Justice and Life and The Evangelical Fellowship of Canada et al. speak more broadly to research related to physician-assisted dying, dignity, and agency—particularly as concerned with suffering and pain. In the arguments of religious social actors who generally oppose physician-assisted dying there is also present a limited envisioning of agency and autonomy in relation to the idea of death as a way to relieve pain and suffering. These particular social actors oppose the use of physician-assisted dying to mitigate suffering and pain precisely because of how dignity and an individual's sense of value is constructed—as transcendent in nature (Beaman and Steele 2018; Steele 2018). For many of these social actors, one's life course is predetermined and therefore not to be interfered with (Beaman and Steele 2018). Thus, the positions of the religious interveners in *Latimer* are by no means novel or unique. A transcendental approach to dignity, one which posits that all humans have inherent value simply by virtue of being human, is positively correlated with limiting conceptualizations of autonomy and agency over one's decisions concerning end-of-life care.

A similar approach to agency and autonomy is also found throughout many of the submissions made by religious interveners in *Bedford.* In *Bedford* there is an unwillingness for many of the religious interveners to accept that for some individuals sex work and dignity are not mutually exclusive. For these interveners, the prohibitions on sex work were to remain in effect to ensure the protection of and respect for human dignity. The Christian Legal Fellowship et al., for example, argued that:

> The Interveners submit that, based on the purposes of the individual provisions and the scheme as a whole, the overriding objective is to reflect Canadians' strong moral disapproval of prostitution itself, with a view to promoting gender equality, preventing the exploitation of vulnerable persons ***and protecting human dignity***. (*Bedford,* Christian Legal Fellowship et al., at para. 22; emphasis added)[257]

[257] The Christian Legal Fellowship et al. did recognize the choices made by some sex workers and the autonomy they may exercise. Consider, for example, the following statement: "The impugned laws do not infringe the respondents' security of the person rights. Prostitutes have the choice to stop being prostitutes. If prostitutes choose unsafe conditions or to break the law, it is their choice that exacerbates the risk of harm, not the impugned laws. Even if the

The Evangelical Fellowship of Canada echoed the position of the Christian Legal Fellowship et al. in *Bedford*. It said that:

> [The] alleged benefits advanced as reasons for the legalization of prostitution have not borne out in countries that have decriminalized the industry. Harm to those marketed and sold as prostitutes continues in spite of attempts to bring the industry above ground. Decriminalization does not prevent violence against prostitutes, nor significantly improve their working conditions. (*Bedford*, The Evangelical Fellowship of Canada, at para 3)[258]

Consequently,

> ***Human dignity***, including freedom from exploitation or degradation, compels the consideration of those who would be rendered more vulnerable from the removal of the protections the current law provides. (*Bedford,* The Evangelical Fellowship of Canada, at para. 10; emphasis added)

Perhaps unsurprising, The Evangelical Fellowship of Canada was quite critical of the idea that sex workers exercise agency and autonomy in their line of work:

> There is a clear link between human trafficking and prostitution. A common argument for the decriminalization of prostitution ***is respect for the autonomy of individuals who are not forced into the industry and should not face restrictions***. Yet scholarly research demonstrates that a significant portion of sex workers have been manipulated or forced into the trade for the purposes of sexual exploitation. (*Bedford,* The Evangelical Fellowship of Canada, at para. 19; emphasis added)

In short, for the religious interveners in *Bedford,* agency and autonomy are also presented as something quite limited when it comes to matters related to freely engaging in sex work precisely because of how dignity is conceptualized. Sex work is an immoral act and demeans and disrespects the dignity and sense of worth one inherits simply by being human. These interveners suggest that immoral acts violate the nature of human life and thus people should not be permitted to engage in such behaviour, even if they wish to do so.

In *Trinity Western* autonomy and agency are constructed slightly differently. The religious nature of dignity and worth implied by the religious interveners somewhat aides in a

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impugned measures may be found to infringe an individual's choice to engage in prostitution, such an infringement is justified" (*Bedford*, Christian Legal Fellowship et al., at para. 4[c]). The interveners here, however, fail to recognize the fact that perhaps some sex workers actively choose to be sex workers because it lends to their dignity and creates a sense of worth. I discuss this point in more depth later in this chapter. For more on the agency of sex workers, see Durisin et al. (2018) and Cunningham (2021).

[258] Recall too that The Evangelical Fellowship of Canada also argued that: "Attempts to legalize prostitution have shown that the promised benefits are illusory" (*Bedford*, The Evangelical Fellowship of Canada, at para. 28).

communal/collective understanding of autonomy and agency that stands in opposition to that found in *Latimer* and *Bedford.* What one sees in *Trinity Western* is a more expansive, perhaps even limitless, framing of autonomy and agency intended to preserve and respect the religious understanding of dignity and the religious community. The Canadian Council of Christian Charities, for example, argued that:

> removing a religious ***community's ability to decide who can or cannot be a member destroys religious identity and autonomy***; with such removal, the religious community becomes a mirror of the state and its requirements. Difference is not celebrated but assimilated. Conformity becomes the religion of the state, and the equality and inclusion values become the basis for inequality and exclusion. (*Trinity Western,* Canadian Council of Christian Charities, at para. 12; emphasis added)[259]

What is particularly interesting here is that this intervener constructs a freely exercised communal or collective understanding of autonomy and agency intended to preserve religious identity, an identity which encompasses a transcendental and inherent dignity. For this intervener and others like it, religious organizations should be allowed to dictate communal codes of conduct (like that of TWU's Community Covenant) to preserve religious identity. In other words, agency to engage in behaviour that, as they see it, respects and upholds a particular (i.e., religious) rendition of dignity should be permitted if one so chooses.

This notion of the free exercising of communal autonomy bleeds over into the preservation of an historical rendering of Canadian society: one based on religious (i.e., Christian) principles. The Evangelical Fellowship of Canada et al. said that:

> There is nothing new, novel, or reactive about the sexual injunctions in the Community Covenant. ***They reflect core, orthodox Christian belief consistently upheld within Christian communities for the last two millennia***, and have been contained in church and Christian university codes of conduct throughout the world for centuries. (*Trinity Western,* The Evangelical Fellowship of Canada et al., at para. 7; emphasis added)

In fact, these Christian beliefs, not only about sexuality and gender are, to some religious interveners, what contributes to Canada's diverse social and cultural nature:

[259] This intervener also argued that "This Honourable Court recognized *the autonomy of religious communities* in their internal regulations concerning same-sex marriage. However, this Honourable Court has also held that Canada is no longer 'a society of shared social values where marriage and religion were thought to be inseparable' but 'is a pluralistic society.' Marriage, from the perspective of the state, is a civil institution.'" (*Trinity Western*, Canadian Council of Christian Charities, at para. 15; emphasis added).

> Canada will benefit from the diversity represented by TWU. ***Differences of religious and moral opinion do not harm Canada. They are part of what makes this nation strong, tolerant and accepting.*** It is worth noting that diversity of opinion is essential to change within society. (*Trinity Western,* Seventh Day Adventist Church in Canada, para. 11; emphasis added)
>
> Canada's democratic and constitutional history promotes pluralistic liberalism, ***where disagreements and different beliefs amongst Canadians encourage social peace, mutual respect and diversity***. (*Trinity Western,* Roman Catholic Archdiocese of Vancouver et al., at para. 9; emphasis added)

For these interveners, this diversity is to be preserved through the promotion and free exercising of an institutional and communal autonomy:

> Religion in Canada prospers within this context and conception of pluralism and liberalism, wherein society values the building of strong communities ***and not solely the pursuit of maximizing personal autonomy***. (*Trinity Western,* Roman Catholic Archdiocese of Vancouver et al., at para. 14)

While the above statements concerning the free exercise of communal autonomy in relation to the preservation of Canada's historical past do not explicitly reference dignity, it is worth noting that such a historical past is to many of the religious interveners something of personal value. This historical past is thus part of one's dignity and sense of worth: the ability for these religious interveners to freely express their beliefs and to engage in longstanding religious practices is part of how they conceptualize and ultimately respect and preserve their dignity (*Trinity Western,* The Evangelical Fellowship of Canada et al., at para. 7).[260]

In sum, the religious interveners in *Latimer, Bedford,* and *Trinity Western* express a rather specific construction of dignity. What stands out is an understanding of dignity which is often rooted in the transcendent. Humans are portrayed as being made in the image of God and as such their lives are considered sacred. This observation is similar to that in debates about Christian anthropology which posits that "we are human because we are in a relationship with God, requiring no particular capacity or trait […] humans have 'alien dignity' because their dignity does not come from anything they have, but is alien to them, coming from God" (Evans 2016, 6).[261] This is not to say that all reference to dignity in the three cases necessarily mentions or directly draws on the

[260] For more on the desire of certain religious groups to preserve a specific religious past, see Beaman (2020).
[261] Evans also points out that "according to liberal Protestant bioethicist Karen Lebacqz, 'the image of God is therefore ineffable and difficult to describe concretely, since it does not consist in specific characteristics or attributes that can easily be named'" (2016, 6).

transcendent. There are instances in which dignity is discussed by the religious interveners where the transcendent is not mentioned. But such roots are often implied through arguments concerning the transcendental nature of the *Charter* and the rights and values which are derived from it: dignity is one of these values. In this view, dignity is also framed as an inherent human quality. Since humans are made in the image of God, their lives have inherent worth. Dignity is not earned or taken away from an individual. It is possible to disrespect one's dignity, but impossible to take it away given the apparent inviolability of life. In this light, the religious interveners, at points, present a rather *objective* envisioning of dignity: a sense of worth that exists irrespective of the doings of this immanent world (Nordenfelt 2004, 71).

This understanding of dignity necessarily impacts the way in which various Canadian social issues are addressed and discussed. In the context of *Latimer* and *Bedford,* this view of dignity provides for a rather limited and restrictive sense of personal agency and autonomy: individuals should not be allowed to conduct themselves in ways which are viewed, by some, as immoral. In *Trinity Western,* dignity provides for a rather expansive sense of *communal* autonomy that should be freely exercised with the intent of preserving religious belief, values, practices, and history. Dignity as constructed by the religious interveners in *Latimer, Bedford,* and *Trinity Western* is not necessarily absolute. There are points of contradiction and ambiguity, all of which echo broader academic debates about dignity (see Rosen 2012). Importantly, the construction of dignity which I have discussed above is in no way exclusively the domain of the religious interveners. Similarities exist in the way dignity is constructed by the nonreligious interveners, to which I now turn.

Nonreligious Interveners and Dignity

Dignity as Immanent and Inherent

Similar to what was discussed in previous chapters, the nonreligious interveners do not draw on the transcendent, or otherworldly beings, in discussions about dignity. This perhaps comes as no surprise given that what has emerged as a common theme in my analysis is that the nonreligious interveners very rarely draw on the transcendent in the legal debates considered in *Latimer, Bedford,* and *Trinity Western*. Like human rights and morality, nonreligious interveners largely

construct and discuss dignity as something that belongs to the immanent world. There is, however, an exception to this statement. The Attorney General for Ontario in *Latimer* said that:

> Human life must be respected. The mandatory minimum sentence for second degree murder serves to uphold the ***principles of the sanctity of life and the equal worth of all***. (*Latimer,* Attorney General for Ontario, at para. 4; emphasis added)

The Attorney General for Ontario, a nonreligious state actor, clearly suggests an understanding of dignity that is in some way, however indirectly, associated with the transcendent. For the Attorney General for Ontario, the sanctity of life and the equal worth (i.e., dignity) of all go hand-in-hand. This intervener is somewhat of an outlier. As was the case in the previous chapters, the Attorney General for Ontario in *Latimer* blurs the boundaries between the construction of religion and nonreligion and often uses both religious and nonreligious language in its arguments. The arguments of the Attorney General for Ontario notwithstanding, dignity to the nonreligious interveners was not understood as being rooted in the transcendent. Dignity was something of the immanent world and what I refer to as conditional—a point I discuss more fully below.

What is surprising about the nonreligious interveners' approach to dignity, however, is that these interveners also understood dignity as an inherent part of what it means to be human. Dignity was not constructed as something that necessarily needed to be earned. Dignity was imagined as something an individual possesses simply by being human. Like the religious interveners, the nonreligious narrative about dignity evidenced an understanding of dignity which was inherent to all humans. Dignity was framed in many cases as a "basic", fundamental, common value that all humans possess. Consider the following statements:

> All human life has value. (*Latimer,* Canadian Aids Society, at para. 24)

> […] allowing the state to kill will cheapen the value of human life and thus the state will serve a sense as a role model for individuals in society. (*Latimer,* Attorney General for Ontario, at para. 17)

> The Coalition respectfully submits that this Court should not see Tracy Latimer only in terms of her disabilities. ***Her status as a human being must be paramount***. Her disability cannot be used as a justification for departing from ***fundamental constitutional values***. ***She was a person first and that fact must not be obscured by the detail of her medical circumstance.*** (*Latimer,* Council of Canadians with Disabilities et al., at para. 23) [262]

[262] Tracy Latimer's "status" as a human necessarily includes discussion about the supposed value of her life (see *Latimer,* Council of Canadians with Disabilities et al., at paras. 21-23).

> Collectively, stereotypes and the material conditions that reinforce them displace ***basic notions of dignity*** and respect for individual human beings. (*Bedford,* Asian Women Coalition Ending Prostitution, at para. 18)
>
> An inescapable element of the restriction in this case is that it affects those who face the greatest peril to their health, safety ***and dignity***; and those who have suffered from historic stigma and marginalization within the scope of s 15 of the Charter. (*Bedford*, British Columbia Civil Liberties Association, at para. 31; emphasis added)
>
> In furtherance of that mandate, law societies must promote ***the fundamental values of equality and respect for human dignity*** in both the legal profession and in the administration of justice. (*Trinity Western,* Canadian Bar Association, at para. 12; emphasis added)
>
> The application of IHRL [International Human Rights Law] is guided by the principles of universality, ***respect for the inherent dignity of human beings***, (*Trinity Western,* Lawyers' Rights Watch Canada, at para. 8)

While some interveners in the quotes above are quite explicit in their suggestion that the dignity of human beings is inherent (i.e., the Lawyers' Rights Watch Canada in *Trinity Western*) other interveners imply the inherent characteristic of dignity through language such as "fundamental values", "basic notions", and by drawing attention to the idea that one's status as a human being necessarily implies a sense of value and worth. The Council of Canadians with Disabilities et al., implied that Tracy Latimer's life was of value precisely because of her status as a human (see para. 21-23).

The Supreme court in *Latimer* also indirectly hinted at the inherent/natural characteristic of human dignity:

> We [the Court] conclude that there was no air of reality to any of the three requirements for necessity. As noted earlier, if the trial judge concludes that even one of the requirements had no air of reality, the defence should not be left to the jury. Here, the trial judge was correct to remove the defence from the jury. In considering the defence of necessity, we must remain aware of the need to respect the life, ***dignity and equality of all the individuals*** affected by the act in question. The fact that the victim in this case was disabled rather than able-bodied does not affect our conclusion that the three requirements for the defence of necessity had no air of reality here. (*Latimer,* at para. 42)

Here the Court suggests that *all* individuals have dignity that ought to be respected. There is no suggestion by the Court that this dignity is earned throughout an individual's life. Instead, the ruling of the Court that *all* individuals possess dignity regardless of other factors hints at the idea that human beings possess an inherent dignity. The majority of the Court in *Trinity Western* is

perhaps a bit more pointed in its approach to the inherent nature of human dignity when it ruled that:

> […] even if the net result of TWU's proposed law school is that more options and opportunities are available to LGBTQ people applying to law school in Canada — which is certainly not a guarantee — this does not change the fact that an entire law school would be closed off to the vast majority of LGBTQ individuals on the basis of their sexual identity […] This undermines true equality of access to legal education, and by extension, the legal profession. Substantive equality demands more than just the availability of options and opportunities — it prevents "the violation of ***essential human dignity and freedom***" and "eliminate[s] any possibility of a person being treated in substance as 'less worthy' than others" (*Quebec (Attorney General) v. A, 2013 SCC 5, [2013] 1 S.C.R. 61, at para. 138*). (*Trinity Western,* at para. 95)

Unlike in *Latimer,* the Court in *Trinity Western* makes clear that human dignity is something *essential* to the human condition.[263]

For most of the nonreligious interveners, all humans possess a sense of value simply because they are human. Dignity is not god given, as it was for the religious interveners, but simply part of the natural human condition. This conclusion speaks more broadly to debates about dignity, human rights, and law. As Laura Valentini (2017) points out, much of the literature about dignity and human rights posits that humans have an inherent dignity (see also Nascimento and Lutz-Bachmann 2018; Kretzmer and Klein 2002).[264] The narratives of the religious interveners and nonreligious interveners are very clearly not as different as one might have initially thought. The nonreligious interveners were, like their religious counterparts, adamant about the protection of an individual's dignity.

Dignity as Conditional and Impermanent

While the nonreligious interveners construct dignity as inherent to all humans—that is, dignity is a natural part of the human condition—these interveners did not understand dignity is *inviolable*. Recall that for the religious interveners an individual's dignity could be disrespected and demeaned, but it could not be diminished or taken away from an individual. The religious interveners understood an individual's dignity as objective and permanent and existing regardless

[263] The Court in *Bedford* does not draw on the language of dignity in any substantial fashion, nor does it imply certain key characteristics of what dignity might entail.
[264] Valentini (2017) attempts to nuance this understanding of the conceptual link between human rights and inherent dignity. She suggests that it is "status dignity" that human rights are conceptually linked to.

of external factors and conditions one might be subjected to in his or her navigating of the social world. For these interveners, an individual's sense of dignity remains a constant for the duration of his or her life. The nonreligious interveners, however, framed dignity as subjective. Despite being an inherent human characteristic, a subjective sense of dignity is one that can be disrespected, demeaned, but also taken away from an individual. One's dignity is thus necessarily dependent on his or her place and experiences in the social world (Nordenfelt 2004). For the nonreligious interveners, dignity is an inherent human characteristic, but it is distinguished from the religious intervener's approach to dignity in the sense that it is not a *permanent* human characteristic.

The idea that dignity can be stripped or taken away from an individual is perhaps most prevalent in *Latimer* given the nature of the case and social issues being addressed. The Canadian Aids Society, for example, argued that:

> Persons living with HIV and AIDS live with their disease on a daily basis. They are surrounded by death, not only their eventual death, but the death of many close friends and lovers. For them, ***there is dignity in their complete personhood. This includes the ability to care for themselves, to feed themselves, to clean and bathe themselves. To take their own medications. It also includes the ability to think for themselves, make their own decisions and feel that they are still contributing to society.*** The greatest fear of persons living with HIV and AIDS is not death; that is the inevitable. Rather, their greatest fear is the ***loss of control over their mental faculties and the resulting dependency on others***, who may themselves be living with HIV and AIDS. (*Latimer,* Canadian Aids Society, at para. 4; emphasis added)

For the Canadian Aids Society, an individual's sense of dignity is bolstered through his or her ability to freely act as a human, which includes one's ability to care for himself or herself and to make decisions about his or her life and how he or she fits into society. At the same time, however, this also implies that to take such decisions away from a person is to necessary strip one of their dignity and worth. A person lacks dignity if their personhood is incomplete. To rely on others may instill in an individual that they are no longer useful or provide value to society.

The Council of Canadians with Disabilities et al., expressed a similar sort of sentiment in their submission. These interveners suggested that:

> Sadly, the history of disabled persons in Canada is a history of marginalization, exclusion and ***social devaluation*** […] As a consequence of that perception, disabled persons have been exposed to victimization and discrimination ***[…] which often characterize disabled***

> ***persons as being less than human***. The perception that disabled persons have ***lives of diminished value*** reinforces rationalizations for treating them prejudicially. (*Latimer,* Council of Canadians with Disabilities et al., at paras. 15-16; emphasis added)

The lives of disabled people are certainly not of lesser value than non-disabled persons. As the Council of Canadians with Disabilities et al. make clear, it is the inaccurate history of disabled persons in Canada that portrays disabled persons as being less than human and lacking dignity. What this quote draws attention to, however, is the recognition that there exists the possibility that one's life can have a diminished value or be devalued by society. A person's dignity can be diminished and stripped away not only by the actions and life circumstances of the individual whose dignity is in question, but also by the actions of society. As alluded to above, processes of marginalization and discrimination can strip an individual of his or her dignity. This recognition of the potential to have a life of diminished value is largely missing from the religious narrative about dignity.

In *Bedford* and *Trinity Western* one comes across similar examples of how the value of an individual might be negatively affected and diminished:

> Concern about demand for the prostitution of racialized women is the subject of ongoing international and scholarly attention, providing language essential to the very expression of what might otherwise be an ignored or invisible problem. An example is the naming of ***the dehumanizing rationalization*** that women and children of different races are not harmed by exploitation in commercial sex as a "highly sexualized form of racism" by Sigma Huda, Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children" (*Bedford,* Asian Women Coalition Ending Prostitution, at para. 13; emphasis added)

> […] it must be found both "abhorrent" and "intolerable" ***to sacrifice the lives*** and safety of already marginalized individuals to keep the streets free of nuisance. (*Bedford,* Downtown Eastside Sex Workers United Against Violence Society et al., at para. 24; emphasis added)

> The Court of Appeal failed to account for the ***severe affront to the dignity and personhood interests of sexual minorities*** that would be caused by the approval of the Law School. (*Trinity Western,* BC LGBTQ Coalition, at para. 22; emphasis added)

> State actors must be extremely cautious not to legitimate the ***"affront to the dignity and worth" of the individuals that discrimination represents***. (*Trinity Western,* Canadian Bar Association, at para. 13; emphasis added)

As was the case in *Latimer,* the nonreligious interveners make clear that one's value or dignity is far from absolute. While the above examples do not necessarily draw on the explicit language of

dignity, reference to "dehumanizing" behaviour and the sacrificing of lives implies implications for an individual's dignity or worth. To "dehumanize" someone, or to sacrifice a person's life, is to imply that such an individual is of lesser value than others in society. To these interveners, the actions of individuals and the state are capable of diminishing or demeaning one's sense of value. Despite dignity inhering in a person simple because an individual is a human being is not to suggest that one's dignity remains unscathed throughout the course of his or her life. To the nonreligious interveners, dignity is understood as something that is *conditional.* A person's sense of value and worth is dependent on a variety of immanent social factors, including his or her own actions and the actions of society.

An individual's dignity, however, is not necessarily only diminished or stripped from this person by his or her actions or those of society. The submissions of the nonreligious interveners highlight that a person's relative worth can be bolstered through worldly affairs. Again, in *Latimer,* the Council of Canadians with Disabilities et al. point out that:

> […] Tracy Latimer's life, overall, was not one of either unremitting pain or ***one of emptiness***. She was often ***cheerful and happy and she enjoyed a variety of experiences***. (*Latimer,* Council of Canadians with Disabilities et al., at para. 4; emphasis added)

And in *Bedford* the UN Programme on HIV/AIDS said that:

> An effective HIV response is premised on "human rights principles supporting the right of people to make informed choices about their lives, ***in a supportive environment that empowers them*** to make such choices free from coercion, violence and fear." (*Bedford*, UN Programme on HIV/AIDS, at para. 28)

For these interveners the assumption is that one's sense of worth or dignity is strengthened through positive and empowering experiences in society. To the Council of Canadians with Disabilities et al., Tracy's value as a person was not diminished because of her illness, rather she lived a life of value because of the cheerful and happy moments she experienced. Similarly, for the UN Programme on HIV/AIDS in *Bedford,* a supportive environment for sex workers betters the social position of sex workers thereby ensuring their full participation in society, which ultimately *empowers* them and provides for a sense of worth (at paras. 7-8).

In sum, what is found in the submissions of the nonreligious interveners is an understanding of dignity which posits that a person's value is far from absolute. For these interveners, a person naturally inherits a sense of dignity simply by being human, but this dignity is not permanent or

constant throughout a person's life course. A person's dignity can be diminished, stripped from him or her, or even bolstered by the social world. What appears in the submissions of the nonreligious interveners is what is often referred to as a *subjective* understanding of dignity (Shultziner 2003; Nordenfelt 2004).[265] This subjective approach to dignity is one which is "dependent on somebody's awareness or beliefs" (Nordenfelt 2004, 71). Dignity for the nonreligious interveners is cast as *conditional* or *contingent* and *impermanent*. One's sense of worth is dependent on the context within which he or she finds himself or herself. Important in this conclusion is that for the nonreligious interveners it is up to the person whose dignity is in question to determine the relative worth of his or her life. As the Council of Canadians with Disabilities et al. argued in *Latimer*:

> It is submitted that no one, including a parent, guardian, spouse, relative, caregiver or educator of a person with disabilities, has the capacity to evaluate that person's quality of life. However, '[t]he truth is that if there is such a thing as quality of life, it exists only as a subjective phenomenon. ***People can only rate themselves with any kind of meaning.***' (*Latimer,* Council of Canadians with Disabilities et al., at para. 45; emphasis added)[266]

This approach to dignity is not to be understood as more robust than that of the religious interveners. It is simply different. My analysis here reveals that for the nonreligious interveners, value is placed on the contingency and impermanence of dignity as well as on the importance of the individual in assessing his or her worth.

Dignity and Self-determination

The nonreligious interveners' understanding of dignity suggests that autonomy necessarily impacts an individual's sense of worth. I argue that this approach to dignity is one that is more connected to the immanent social world, individual agency, and society more generally. Unlike the religious interveners, the nonreligious interveners paint a less restricted picture of agency and autonomy. There is an emphasis of self-determination found in the submissions of the nonreligious interveners. Again, this is particularly evident in *Latimer* simply because of the nature of the case

[265] See also Shultziner (2003) for more on the subjective and objective approaches to dignity.

[266] These interveners also argued that "The non-disabled majority is not in a position to experience disability. That reality is often translated into a collective mythology that persons with disabilities live tragic lives, marked by deprivation and suffering. This is not the case. An individual's life does not become unworthy of being lived because he or she has an unresponsive body or reduced cognitive capacity. Disabled persons do not perceive themselves as different, deprived or less normal than other members of society merely because their bodies or minds may not function in the same way as the majority of non-disabled persons" (*Latimer*, Council of Canadians with Disabilities et al., at para. 46).

and its addressing of matters related to mercy killings and end-of-life care. The Canadian Aids Society, for example, made this abundantly clear when it argued that:

> CAS [the Canadian Aids Society] believes in the fundamental ***principle of self-determination*** of persons living with HIV, and for all people, including the ***right to die with dignity*** (*Latimer,* Canadian Aids Society, at para. 7[a])

For the Canadian Aids Society, an individual should have the option to end his or her life should he or she feel as though this would help end the pain and suffering often experienced by those with HIV and AIDS:

> Since the emergence of AIDS, advancements in medicine have made it possible for persons living with HIV and AIDS to live healthy, productive lives. However, the advances in AIDS medications do not detract from the fact that the disease is always fatal and is associated with much suffering and pain. For this reason, among others, ***many persons with HIV and AIDS seek out means of controlling the end of their lives.*** (*Latimer,* Canadian Aids Society, at para. 8; emphasis added)

Similarly, the Council of Canadians with Disabilities et al., also highlighted the exercising of agency and autonomy in relation to one's quality of life and pain:

> […] it is extremely dangerous to base legal conclusions on one person's perception of another individual's ability to tolerate pain or on his or her perception of the ***impact of pain on the other person's quality of life. Pain is subjective***. (*Latimer,* Council of Canadians with Disabilities et al., at para. 42; emphasis added)

The Council of Canadians with Disabilities et al. make clear that an individual is the only one capable of assessing his or her own quality of life and thus self-worth. [267] For many of the nonreligious interveners, it is up to the individual in question to exercise autonomy and agency over matters related to his or her own life and the pain one might be subjected to. The ability to exercise autonomy and agency, particularly concerning decisions around disabilities and end-of-life care, is what contributes to the value of one's life.[268] According to some of the nonreligious

[267] "The Coalition notes the self-evident fact that the Canadian legal and constitutional tradition has always rejected the notion that people should be able to assess the worth of someone else's life" (*Latimer*, Council of Canadians with Disabilities et al., at para. 44; emphasis in original).

[268] Most of the nonreligious interveners supported the idea that an individual's sense of worth is bolstered through his or her ability to make decisions about his or her life—to exercise autonomy and agency. However, not all the nonreligious interveners in *Latimer* supported assisted dying or euthanasia as a valid form of end-of-life care. The Council of Canadians with Disabilities et al., for example, said that: "It is respectfully submitted that the Appellant's contentions amount to nothing more than an attempt to introduce the concept of 'mercy' killing or euthanasia into Canadian law. They are absolutely inconsistent with the rights guaranteed by sections 7 and 15 of the *Charter* and are obviously without merit" (*Latimer,* Council of Canadians with Disabilities et al., at para. 65).

interveners, to deny a person the ability to end his or her life as a means to end pain and suffering would be (1) "inconsistent with [an individual's] right to self-determination" and (2) to die *without* dignity (*Latimer,* Canadian Aids Society, at para. 12).

For the many of the nonreligious interveners, self-determination and being able to exercise bodily autonomy and agency, particularly concerning end of life matters, was dignity *affirming.*[269] The Attorney General for Ontario similarly argued that:

> In *Rodriguez* … Lamer CJC […] recognized that: 'An individual's right to control his or her own body does not cease to obtain merely because that individual has become dependent on others for the physical maintenance of that body; ***indeed, in such circumstances, this type of autonomy is often most critical to an individual's feeling of self-worth and dignity.***' (*Latimer,* Attorney General for Ontario, at para. 18)

Likewise, the Canadian Civil Liberties Association argued that:

> [The Canadian Civil Liberties Association's] major objectives are to promote the legal protection of the freedom ***and dignity of the individual against unreasonable invasion by public authority*** and the promotion of fair procedures for the determination of each individual's legal rights and obligations. (*Latimer,* Canadian Civil Liberties Association, at para. 2)

For the Canadian Civil Liberties Association, public state actors should be limited in their capacity to intervene with one's dignity. An individual's sense of worth is upheld and bolstered through self-interested acts of agency and autonomy, not through actions and decisions imposed on a person by another. For the nonreligious interveners, an individual's ability to exercise agency and autonomy concerning matters related to his or her body is vital in bolstering one's sense of self-worth and dignity.

A similar approach to dignity, autonomy, and agency is evident in *Bedford* and *Trinity Western.* In *Bedford* questions about dignity and autonomy are embedded in debates about sex work. The Supreme Court of Canada and the nonreligious interveners in *Bedford* very clearly acknowledged that some people freely and actively choose to be sex workers. For some of the nonreligious interveners, a person's freely exercised choice to be a sex worker is described as "an

[269] The Canadian Aids Society also said that "modern medicine artificially increases our life span. It also artificially increases our death span" (*Latimer,* Canadian Aids Society, at para. 39). Implied here is that the ability to choose whether one wants to increase his or her death span is a choice that ultimately impacts one's sense of self-worth. To this intervener, forcing someone to extend their life is an affront to their self-worth.

act of personal autonomy" (Canadian HIV/AIDS Legal Network et al., at para. 21). Similarly, while the Court held that "many prostitutes have no meaningful choice but to [work as sex workers]" (at para. 86) it also ruled that sex workers should be afforded the agency to bargain "for conditions that would materially reduce their risk" (at para. 156). The Court was quite pointed in its ruling that sex workers were to decide what was best for sex workers. Moreover, the Joint United Nations Programme on HIV/AIDS in *Bedford* argued that sex workers should play an active role in matters related to the "design and implementation of programmes to provide HIV-related services, especially programmes designed to reach groups at higher risk and *empower* them against HIV" (at para. 29; emphasis added).

For the religious interveners, it was understood that God would decide what was best for an individual, but for the nonreligious interveners, an individual was to decide what was best for himself or herself. Many of the nonreligious interveners, as well as the Supreme Court of Canada, recognized that a person should be granted the choice to work as a sex worker if he or she so desires and that sex workers should be afforded agency in their profession.[270] The nonreligious interveners very clearly portrayed sex workers as having agency and being able to freely exercise such agency and autonomy. Sex workers were not framed as immoral passive members of society who compromised Canadian social values. Instead, sex workers were presented as active members of society who were ultimately capable of contributing to the greater good of society.

In emphasizing the agency of sex workers, both the nonreligious interveners and the Court drew attention to the notion that one's ability to exercise agency contributed in a positive way to one's sense of self-worth, or dignity. The British Columbia Civil Liberties Association, for example, argued that human value was bolstered through an individual's ability to "*think and reflect freely* on [his or her] circumstances and condition"[271] and to participate openly in society as a sex worker (at para. 24; emphasis added). And, as mentioned above, the Joint United Nations Programme on HIV/AIDS suggested that agency and autonomy could *empower* sex workers. The Court similarly held that the prohibitions on sex work, which effectively limited a person's ability to exercise agency in relation to sex work, did not "promote the values of dignity and equality" (at

[270] To clarify, not all of the nonreligious interveners supported sex work and sex workers. There were several that were opposed to it. Those that were opposed to sex work did not, however, discuss dignity, autonomy, or how the two might be related in the context of sex work.

[271] The British Columbia Civil Liberties Association quotes *RWDSU, Local 558 v Pepsi-Cola Canada Beverages (West) Ltd.*, 2002 SCC 8 at para 32, [2002] 1 SCR 156.

para. 138). For the Court, a sex worker's overall sense of self-worth was positively correlated with this person's ability to freely choose to engage in safe sex work (*Bedford,* at paras. 138 and 168).

I must note, however, that the agency of sex workers is debated in feminist literature. In brief, feminist scholarship portrays sex work primarily in one of two ways: as exploitative or liberative (Kissil and Davey 2010, 6). On one hand, abolitionists, or those who oppose sex work, argue that sex work is an "institution of male domination" where women exercise little agency (Kissil and Davey 2010, 7; Miriam 2005, 1). Abolitionists argue that the demand for sex work is ultimately created by men and thus women are the victims of the sexual demands of men (see Miriam 2005, 2). Leslie Ann Jeffrey and Gayle MacDonald point out that radial feminists locate "the sex worker body in a totalizing patriarchy, one that blames men for exploiting women's sexuality. Sex workers are victims and, therefore, unable to act or negotiate sex acts for themselves" (2006, 99). Moreover, abolitionists suggest that arguments that overemphasize the supposed agency of sex workers are often utilized by men to justify their ability to freely purchase sex (see Benedet 2013, 182). For abolitionists, sex work is often framed as "modern day slavery" (see Cunningham 2021, 114). On the other hand, those who favour and support sex work largely consider sex work a legitimate mode of work. Sex workers are thus understood as exercising agency (Kempadoo 1998, 9; Cunningham 2021).[272] To those who support sex work, there is often dignity in the work—it isn't "dirty work" (Cunningham 2021, 154). But, as Kathy Miriam points out, one must be cautious in believing that such agency is always freely exercised—sex workers are often falsely construed "as 'free' unless forcibly coerced into prostitution" (2005, 14).

This is all to say that there are important debates in feminist literature concerning sex workers and agency. My argument presented above is not intended to contribute in any substantial fashion to these debates and whether sex workers actually exercise agency as sex workers. Rather, I simply wish to point out that in debates about dignity and autonomy in the legal context of *Bedford* sex workers are portrayed as having the ability to exercise agency. Whether sex workers freely exercise agency is an entirely different question, but by no means less important than what I have argued above.[273]

[272] See also Jolin (1994).
[273] For an overview of the dignity of sex workers in law, see Yacoub (2019).

In *Trinity Western* discussion of dignity and autonomy is less apparent. What is present echoes the sentiment of the nonreligious interveners in *Latimer* and *Bedford*. The BC LGBTQ Coalition, for example, argued that:

> Human dignity is crucial because it provides an individual or group with self-respect and self worth. It is lost when 'individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian society.' (*Trinity Western,* BC LGBTQ Coalition, at para. 17) [274]

Part of the process of marginalization includes restricting the agency of people to do as they wish concerning the relationships in their lives, such as banning same-sex marriage or regulating sexual encounters (*Trinity Western,* BC LGBTQ Coalition, at para. 16). To regulate choice concerning sexual intimacy is to diminish an individual's dignity. In a similar light, the Lawyers' Rights Watch Canada also argued that:

> In spite of significant advances in recent years, LGBTQ persons continue to suffer egregious human rights violations around the world at the hands of both State and non-state actors that include killings, rape, physical attacks, torture, arbitrary detention, the denial of rights to assembly, expression, and information, and discrimination in employment, health, and education. ***The OAS has repeatedly called on member states to eliminate barriers based on sexual orientation and prevent interference with the private lives of LGBTQ persons***. (*Trinity Western,* Lawyers' Rights Watch Canada, at para. 14; emphasis added)

Like the BC LGBTQ Coalition, the Lawyers' Rights Watch Canada implies in its submission that one's sense of worth is strengthened through his or her ability to exercise agency when it comes to his or her private life and relationships. Interference in the private lives of those who identify as part of the LGBTQ+ community through the denial of sexual agency and autonomy is to dimmish one's dignity.

The West Coat Women's Legal Education and Action Fund is perhaps more explicit in its stance concerning dignity and autonomy. In discussing the specific implications TWU's Community Covenant has for women, this intervener draws attention to the reproductive rights of

[274] This intervener also said that "accrediting a law school that mandates the exclusion of sexual minorities not only affirms an unconstitutional definition of marriage but also condones institutionalized humiliation of sexual minorities and would debase the fundamental principle that all persons are born with freedom and equality in dignity and rights. The experience of being the subject of publicly sanctioned stigma and exclusion should not be deemed, derogatorily, 'hurt feelings'" (*Trinity Western*, BC LGBTQ Coalition, at para. 23).

women and how such rights necessarily involve questions of dignity and autonomy. In relation to abortion, this intervener said that:

> ***Abortion is a deeply personal medical decision***. Taking that decision out of a woman's hands is a severe and discriminatory incursion into her ***personal autonomy***. The LSBC was entitled to deny accreditation in the face of the Covenant's impact on women. ***The harm caused is concrete and includes both physical and psychological harm.*** (*Trinity Western,* West Coast Women's Legal Education and Action Fund, at para. 31; emphasis added)

This incursion into a woman's autonomy not only causes physical and psychological harm, it also detracts from a woman's sense of worth:

> the right to abortion also engages women's liberty: 'The right to reproduce or not to reproduce... is properly perceived as an integral part of modern woman's struggle to assert ***her dignity and worth as a human being***'' (*Trinity Western,* West Coast Women's Legal Education and Action Fund, at para. 14; emphasis added)

To some of the nonreligious interveners, denying same-sex couples, women, and other marginalized groups the ability to do as they wish in their relationships necessarily diminishes one's self-worth. To these interveners, one's dignity is strengthened and bolstered through a person's ability to exercise agency when it comes to questions regarding sex and gender.

In sum, personal autonomy and agency are constructed as vital in the preservation and bolstering of one's sense of self-worth. For the nonreligious, an individual should have choice in matters he or she considers of utmost importance—another person should not be able to determine what is best for another individual. In the factums of the nonreligious, there is emphasis placed on personal autonomy and agency because of the implications these have for dignity. It is through the free exercising of agency and autonomy in matters related to end-of-life care; sex work; and sexuality and gender that contribute to one's sense of worth.

Conclusion

Understanding dignity is a complicated exercise. Many individuals in the everyday world assume that they know what dignity means, but academic debates suggest that the meaning and sources of dignity are quite contested (Herrman 2019; Nordenfelt 2004; Shultziner 2003). For some people, dignity is God given, granted by something or someone from the realm of the transcendent. For others, dignity is the product of this immanent world: it is a social construct. This is to say that what dignity entails for one person is not necessarily so for another. Consequently, questions about

dignity, as was the case with morality, are often accompanied by complex theoretical, philosophical, and ontological debates (Rosen 2012). Like previous chapters, I have purposely avoided engaging with these debates in any real substantial matter. I have no desire in proposing or contributing to definitions of dignity, nor do I wish to concern myself with broader metaphysical debates about the nature of dignity. Selfishly, my interests do not rest in the field of philosophy. I am far more interested in the social world and the ways in which religious and nonreligious people construct their worlds in the context of law. To use the phrasing of Véronique Altglas and Matthew Wood (2018): my intent in this chapter was to, in some ways, 'bring back the social' to debates about dignity.

My analysis has demonstrated how dignity was constructed in the submissions of the religious and nonreligious interveners in *Latimer, Bedford,* and *Trinity Western* and what was perhaps *meaningful* to these interveners in their arguments about dignity. I observed three things in the submissions of the religious interveners. First, dignity was framed as something not of this immanent world. Dignity was framed as something bestowed upon an individual by the transcendent. Second, dignity was constructed as a necessary part of the human condition. Human dignity was conceptualized as an inherent human quality meaning that an individual's life naturally inherits a sense of worth. For many of the religious actors in *Latimer, Bedford,* and *Trinity Western,* a person's dignity was not conditional on the social world and his or her position within society. In this light, a person's value and worth was framed as something unaffected by immanent social forces. One's value could be *disrespected* and *demeaned* but it could not *diminished* or stripped from someone. Dignity was understood as a constant and permanent human characteristic. Finally, the transcendent and inherent qualities of dignity evidenced by the religious interveners provided for conceptualizations of autonomy and agency that were rather limiting. The religious interveners argued that engaging in any type of behaviour, particularly behaviour they considered immoral, could in no way contribute to bolstering one's sense of dignity. Such behaviour could, however, *disrespect* one's dignity. But, this understanding of dignity, autonomy, and agency is not absolute. In *Trinity Western* dignity was conceptually linked to a more expansive communal understanding of autonomy aimed at preserving and respecting religious beliefs, values, practices, history, and (most importantly) dignity.

Dignity was constructed by the nonreligious interveners slightly differently. What was most apparent was a lack of reference to the transcendent. Dignity was understood as something not bestowed upon a person by God or even related to the realm of the transcendent. Dignity was something of this immanent world. The nonreligious, however, also constructed dignity as something one inherits simply by being human. Dignity too was a natural part of the human condition—all humans possess dignity, but to varying degrees.[275] One's self-worth and value was understood as *conditional* and *contingent* on immanent social factors and the place and status of an individual in society. An individual could lose their dignity through processes of marginalization and discrimination but could also regain or bolster their sense of value through being able to exercise personal autonomy and agency (within reason, of course). In other words, dignity could be *disrespected, demeaned,* and *diminished* and stripped from someone—dignity was conditional and contingent on the social world and was impermanent. For the nonreligious interveners, personal autonomy and agency necessarily have implications for one's sense of value, particularly in matters related to end-of-life care, sex work, and LGBTQ+ rights.

The analysis within this chapter has drawn attention to what might be considered meaningful in relation to questions of dignity in the submissions of the religious and nonreligious interveners in *Latimer, Bedford,* and *Trinity Western*. Specifically, I have drawn attention to the positive and meaningful elements of the nonreligious narrative of dignity in the legal contexts I explored. These positive attributes are the immanent world and agency and autonomy. In drawing attention to such positive content three things are worth mentioning. First, as was the case with morality, the nonreligious interveners' approach to dignity is no more valid than the religious interveners' understanding of dignity, they are simply different. Both approaches are equally meaningful and provide ways for people to understand their place and role in society and the world more generally. Each respective approach to dignity allows for one to articulate his or her arguments concerning mercy killings and end-of-life care; sex work; and LGBTQ+ rights.

Second, the nonreligious perspective outlined in this chapter is not new or novel. Such understandings of dignity have been part of broader academic debates long before the dramatic increase in the number of people who now identify as having no religion (Nordenfelt 2004; Evans

[275] The intrinsic nature of human worth exhibited by the religious and nonreligious is similar to a Kantian understanding of dignity, which posits that all people have an intrinsic worth, despite their social class. See Hill (2014) for more on Kant's approach to human dignity.

2016). Rather, what is new in *Latimer, Bedford,* and *Trinity Western* is simply an increasing visibility of nonreligious ways of thinking about dignity that are not linked to the transcendent—there exists a change in degree, not a change in kind. Finally, the two approaches to dignity examined in this chapter are not mutually exclusive. A nonreligious worldview does not necessarily exclude religion or religious ways of thinking about things and vise-versa. What is clear in this chapter is that the frameworks of dignity presented above are not necessarily opposed to one another. These frameworks often share similarities: constructions of nonreligion and religion are not always in contention with one another. As I have argued in the previous two chapters, the differences and similarities in how dignity is conceptualized by the social actors in *Latimer, Bedford,* and *Trinity Western* draw attention to what I suggest represent some of the positive content of nonreligion. What was meaningful to the nonreligious interveners was immanence, the social world, autonomy, and agency.

Conclusion: Toward a Substantial Understanding of Nonreligion in Law

Nonreligion and individuals who identify as having no religion are not new social phenomena (Zuckerman et al. 2016; Marks 2017; Brown 2017; Schmidt 2016; Bullivant and Ruse 2021, 2013).[276] These phenomena have existed for as long as people have been religious (Zuckerman et al. 2016). In my analysis I have not claimed, nor do I wish to have implied, that the object of my study is itself novel or unique. I am one of many individuals who is intellectually fascinated by nonreligion. What I do claim is unique about my analysis, however, is *how* I have explored the social construction of nonreligion and the nonreligious and the conclusions drawn from this exploration.

This thesis was written during a rather fascinating moment in Canadian social history, what some scholars refer to as Canada's "post-Christian era". Recall that since its inception as a country in 1867, Canada has been a religious, specifically Christian, nation (O'Toole 2000, 41). For most of Canadian history, Canadians have predominantly identified as Christian. As recently as 1961, over 96% of the Canadian population identified as Christian (Clarke and Macdonald 2017, 6). Moreover, the various churches found throughout much of the country have had considerable political sway (O'Toole 2000; Egerton 2000). Religion and religious groups have contributed to: (1) the shaping of the Canadian political, legal, and social landscapes; and (2) the legal, political, and social responses to controversial social issues such as physician-assisted dying, reproductive rights, LGBTQ+ rights, and sex work to name a few (Lyon and Van Die 2000; Clarke and Macdonald 2017; Marks 2017; Block 2016). Short of having an official state religion, a "shadow establishment" has somewhat characterised the Canadian state (Martin 2000; Beyer 2000).

Since the 1960s, however, something quite remarkable has happened in Canada (Beaman 2017b; Beaman and Steele 2021). First, there has been a decline in the number of Canadians who identify as religious, particularly among the number of Canadians who identify as Christian. According to the most recent census data released in 2023, only 53.3% of Canadians now identify as Christian (Statistics Canada 2023). Second, and most important to this thesis, is that there has been a simultaneous and rather rapid increase in the number of Canadians who no longer affiliate with religion. Surveys suggest that more and more Canadians are beginning to identify as having

[276] This includes derivatives of nonreligion such as atheism, agnosticism, irreligion, anti-religion, etc.

no religion. As a group, nonreligious Canadians accounted for less than 1% of the total population in 1961 (Clarke and Macdonald 2017). According to Statistics Canada's 2021 census, Canadians who identify as having no religion now account for approximately 34.6% of the total population (Statistics Canada 2023). The rate at which Canadians are identifying as having no religion is quite staggering. This group of individuals is growing so quickly that they now represent the second largest "religious" group in Canada (Clarke and Macdonald 2019, 6). Finally, there has also been an increase in the number of Canadians who identify as belonging to non-Christian religions such as Islam, Sikhism, and Buddhism.[277] Despite the increase in affiliation with non-Christian religions, however, religious affiliation more generally is still declining in Canada (Clarke and Macdonald 2017; Thiessen 2015; Thiessen and Wilkins-Laflamme 2020).

The "post-Christian era" that Canada now finds itself in is therefore an era largely characterized by a "new diversity", a diversity which includes an increasing visibility of non-Christian religions and individuals who identify as having no religion (Beaman 2017b; Beaman 2020). The rapid and exponential increase in the number of individuals who identify as having no religion has, at least for the time being, outpaced the rate at which scholarship has explored this ever-growing portion of the population. As a result, little is known about nonreligion and who the nonreligious are, especially relative to religion and individuals who are religious (Cragun 2016; Smith and Cragun 2019; Lee 2015; Thiessen and Wilkins-Laflamme 2020; Beaman and Stacey 2021).

One area that is particularly lacking concerning the study of nonreligion is its intersection with law. The nonreligious bring with them alternative ways of thinking about controversial social issues. As the number of people who no longer affiliate with religion continues to grow, these alternative ways of thinking about social issues become more visible in Canadian society, often challenging the historically dominant religious narratives of these same social issues. As a result, various social institutions have been prompted to reconsider numerous social policies to ensure the growing population of nonreligious Canadians are afforded full and equal participation in society. One of the institutions that has been called on to resolve conflict associated with the growth of nonreligion is that of law (Beaman 2020; Nixon 2020, 2018; Steele 2020; Zwilling and

[277] According to Statistic Canada's most recent census, approximately 4.9% of the total Canadian population identifies as Muslim, 2.3% of the population identifies as Hindu, and 2.1% identify as Sikh (Statistics Canada 2022).

Årsheim 2022; McAdam 2018). The law has been called on by the nonreligious to decide upon the constitutionality of various social practices promoted by the state, including the use of prayer to open municipal town hall meetings (Beaman 2020, 2015), and legislation that has prohibited and controlled access to physician-assisted dying (Steele 2018; Beaman and Steele 2021); same-sex marriage;[278] the environment (Strumos 2022); sex work (Steele 2020); and immigration (Nixon 2018, 2020). The intersection of law, nonreligion, and religion thus provides insight into how the law is utilized by the nonreligious and which laws need to change to best ensure all those in society, to paraphrase Beaman (2020, 2017a), "live well together" (see also McAdam 2018; Wexler 2019).

The research that exists concerning the intersection of law and nonreligion,[279] however, very rarely (if at all) explores the positive content of the social construction of nonreligion. To distinguish my research from the research that has already been done regarding nonreligion and law, this thesis explicitly explores the positive content of nonreligion as constructed in law. I have argued throughout this thesis that the law acts as a site to explore the meaningful beliefs, values, and practices of the nonreligious—or the positive content of nonreligion. I have suggested that law can help tell us something useful about the construction of nonreligion. My aim throughout this thesis has therefore been to use *Latimer, Bedford,* and *Trinity Western* as windows through which to peer into the world of nonreligion and the nonreligious. In this light, my thesis was guided by the question: How is nonreligion conceptualized in Canadian law and is this framing of nonreligion characterized by more than the simple rejection or negation of religion—is nonreligion constructed as having positive content in the context of law? In this chapter I summarize the results of my discourse analysis of *Latimer, Bedford,* and *Trinity Western* then make some broader conclusions about nonreligion based on these conclusions.

Summary of Findings

The majority of the Supreme Court of Canada cases that I explored in my analysis are not about religion. *Latimer* addresses questions related to mercy killings, end-of-life care, and constitutional

[278] Here I would like to recognize the Nonreligion in a Complex Future Project's work on the intersection of law, nonreligion, and same-sex marriage. This work has contributed greatly to my thinking about nonreligious responses to same-sex marriage across a variety of geographic contexts. Visit www.nonreligionproject.ca.

[279] During the writing of this thesis, Dia Dabby (2021) recently published a chapter that explores the positive content of nonreligion in law in three court cases: the Canadian *Servatius v. Alberni School District No. 70*, 2020 BCSC 15; the *Casamitjana v. League Against Cruel Sports*, 2020 UKET 3331129/2018 case in the United Kingdom; and the *Sedlock v. Baird*, 235 Cal. App. 4th 874 (2015) case in the United States. Dabby's analysis thus explores entirely different contexts than those considered in this thesis.

exemptions for mandatory minimum sentences. In *Bedford,* the Supreme Court of Canada considers the constitutionality of several prohibitions on sex-work. Neither of these cases have any formal religious element. The cases do not address religion or religious matters or even the notion of religious freedom. *Trinity Western,* however, is about religion and religious freedom. In *Trinity Western* the Court addresses questions about the constitutionality of the Law Society of British Columbia's decision to not approve Trinity Western University's proposed law school because of certain stipulations regarding gender and sexuality outlined in its mandatory community covenant.

The nature of the cases I explored required a methodology and means of analysis which could reveal the subtle and more nuanced ways in which religion (and thus nonreligion) was constructed and woven into legal discourse that was not necessarily about religion. The methodology I employed allowed me to approach the study of the intersection of law, nonreligion, and religion indirectly. By indirectly, I mean that I was not necessarily looking for explicit reference to religion or nonreligion in *Latimer, Bedford,* and *Trinity Western.*.[280] Instead, using discourse analysis I analyzed the construction of certain concepts found in the submissions of the religious and nonreligious interveners, as well as the decisions of the Court. The concepts I analyzed thus allowed me to indirectly explore how religion and nonreligion were more subtly imagined in and woven throughout *Latimer, Bedford,* and *Trinity Western.* While I identified numerous concepts for each case analyzed in this thesis, I limited my analysis to the concepts of human rights, morality, and dignity.

A more direct methodology could have been used to explore religion and nonreligion in *Trinity Western* given that the case was about religion. But, an indirect approach was applied to all three cases for two reasons: First, because *Latimer* and *Bedford* are not about religion an alternative method was required to explore the construction of religion and nonreligion in these cases. For the sake of consistency and the ability to generalize results, this method was also applied to *Trinity Western.* Second, an indirect approach to the study of religion and nonreligion reveals the subtle ways in which religion and nonreligion are imagined in relation to things we often take for granted. The indirect methodology employed in this thesis reveals what might have remained hidden if one were to look exclusively for explicit reference to religion (see also Brown 2017; Marks 2017).

[280] Language about the secular was largely absent from *Latimer* and *Bedford,* but was found in *Trinity Western*.

The results of my discourse analysis revealed two distinct, though not necessarily exclusive, narratives in each case: a religious narrative and a nonreligious narrative. There were certain concepts limited to each narrative, but surprisingly there was much overlap. Both narratives drew on similar concepts in their constructions of the social issues addressed in each case. The concepts of human rights, morality, and dignity were not only found in all three cases, but also in both narratives in all three cases. Having identified two distinct narratives, I used nonreligion as a relational concept to juxtapose the ways in which the religious and nonreligious interveners in *Latimer, Bedford,* and *Trinity Western* constructed human rights, morality, and dignity. In other words, how the nonreligious interveners imagined human rights, morality, and dignity was analyzed in relation to, or in contradistinction to, how the religious interveners thought about these same concepts.

I began my analysis in Chapter Three where I explored how human rights were imagined by the religious and nonreligious interveners. I argued that the religious interveners framed human rights and other constitutional and *Charter* values as rooted in the transcendent. For these interveners, human rights were intended to protect God's 'creatures'. I also argued that the religious interveners seemed more likely to emphasize certain values derived from *Charter* rights rather than specific rights as protected by the *Charter*.

In the factums of the nonreligious interveners, human rights were constructed as the products of law and grounded in the immanent world. Human rights were necessarily related to and intertwined with other immanent worldly affairs like that of self-determination, medicine, equality, sexuality, gender, and health care. The nonreligious interveners were also more likely to explicitly draw on and reference specific human rights in their arguments, rather than the values derived from these rights. Finally, the nonreligious interveners also drew on a greater variation of human rights in their construction of the social issues addressed in the three cases.

In Chapter Four, I analyzed the concept of morality. What was immediately clear was that the interventions of the religious interveners were constructed as moral interventions. The explicit use of morality was found quite frequently in the arguments of these social actors. In addition, these interveners imagined morality as originating in the transcendent. For the religious interveners, there was an other-worldly element to morality, one often related to God or religion. I also observed that for the religious interveners morality was often associated with the idea of

community and promoting the social good. These social actors frequently conceptualized morality as communal in nature, encompassing shared and collective values that were intended to better society and preserve a specific historical past.

Morality was conceptualized somewhat differently by the nonreligious interveners. The nonreligious less frequently referenced morality. The language of morality is very rarely found in the arguments of the nonreligious. In this light, the interventions of the nonreligious were not framed as moral interventions. Their interventions were constructed as legal interventions, grounded in the protection of human rights. This is not to suggest that the nonreligious interveners did not present moral arguments. These interveners indirectly established their moral positions by drawing on other concepts, such as law, human rights, discrimination, and race, gender and sex to establish their positions concerning the issues addressed in *Latimer, Bedford,* and *Trinity Western*. My observations concerning the nonreligious interveners suggest that these social actors are more likely to distance themselves from rigid ideological claims. The nonreligious do not as frequently draw on ideological claims in their arguments (see Salonen 2018).

Finally, in Chapter Five, I analyzed the concept of dignity and its relation to agency and autonomy. In this chapter, I argued that the religious interveners also imagined dignity as rooted in the transcendent. Dignity was constructed as something granted to an individual by a transcendent being. Dignity was thus conceptualized as an inherent human quality: all humans have dignity simply by being human. The religious interveners suggested that all human life has an intrinsic worth and that this worth is not contingent on external immanent social factors. It was a permanent characteristic of one's life. These social factors could *disrespect* or *demean* one's dignity, but they could not *diminish* one's dignity or take it away from a person. For the religious interveners, dignity was constructed as objective in nature—it exists regardless of one's "awareness of it" (Nordenfelt 2004, 71).

Dignity as understood by the religious interveners had implications for autonomy and agency. For the religious interveners in *Latimer* and *Bedford*, engaging in behaviour they considered immoral could in no way bolster one's dignity. For these interveners, it was paramount that autonomy and agency be understood rather narrowly to avoid introducing to society behaviour that could *disrespect* a person's dignity. This construction of autonomy and agency is not, however, absolute. In *Trinity Western,* agency was constructed without such limiting restrictions.

For the religious interveners in *Trinity Western,* the free exercising of agency and autonomy was necessary to preserve and protect the religious beliefs, values, and practices that inform the basis of one's dignity.

As is a reoccurring theme in this thesis, the nonreligious interveners constructed dignity as something not rooted in the transcendent. What is surprising, however, is that to these interveners dignity was also understood as something all humans possess simply by being human. Despite its inherent nature, however, the nonreligious constructed dignity as *conditional* or *contingent* on immanent social factors and the place and status of an individual in society. The social world necessarily had implications for one's dignity. Dignity was therefore understood as impermanent and constantly changing throughout one's life.

The contingent nature of dignity expressed by the nonreligious interveners meant that, on one hand, an individual could gain, or bolster his or her dignity through the ability to exercise agency and engage in activity he or she thought was meaningful. One the other hand, however, an individual could lose his or her dignity through processes of marginalization and discrimination. For the nonreligious interveners dignity could be *disrespected* and *demeaned* but also *diminished.* Consequently, the nonreligious interveners constructed the free exercising of agency and autonomy as necessarily tied to bolstering one's sense of value, particularly related to matters concerning end-of-life care; sex work, and LGBTQ+ rights. The nonreligious interveners did not construct agency and autonomy with the same limitations as the religious interveners. For the nonreligious interveners there was value in the free exercising of personal autonomy and agency.

Thinking about Nonreligion More Generally

The results of my discourse analysis discussed above draw attention to some of the similarities and differences in the ways the religious and nonreligious interveners constructed their arguments in *Latimer, Bedford,* and *Trinity Western.* I have shown how these social actors understood human rights, morality, and dignity in the contexts of the social issues addressed by each case. But what can this tell us more generally about the social construction of nonreligion? Can *Latimer, Bedford,* and *Trinity Western* contribute something to what we know about the social construction of nonreligion and the nonreligious? Considering that there exist considerable gaps in the literature pertaining to the study of nonreligion (Beaman 2020, 2015; McAdam 2018; Årsheim 2018; Wexler 2019; Strumos 2022; Nixon 2020), particularly as related to the positive content of nonreligion in

law, I argue that yes, these three cases can shed light on aspects of the social construction of nonreligion not often explored.

This thesis draws attention to several important observations and conclusions about nonreligion in the context of law. First, nonreligion is imagined as necessarily rooted in the immanent. What was clear in the legal discourse about mercy killings and end-of-life care; sex work; and LGBTQ+ rights of the nonreligious was the absence of the transcendent. The nonreligious did not draw on religious belief, or on an other-worldly being (such as God) to make sense of the world in which they live. The absence of the transcendent in the arguments of the nonreligious interveners, however, is not necessarily an absence defined by the rejection of or a hostility toward religion. Certainly, some of the nonreligious social actors in *Latimer, Bedford,* and *Trinity Western* actively rejected the transcendent or were somewhat hostile toward it, but for the most part the nonreligious were *indifferent* toward the transcendent and religion. The transcendent was simply not a topic of concern, or necessarily *meaningful* for these interveners. Consequently, the transcendent and religion were not drawn on to construct the social worlds in which the nonreligious live. This observation echoes similar findings in research that explores other social contexts (Klug 2017; Quack et al. 2020; Lee 2015; Campbell 1971). Outside of the realm of law many nonreligious individuals exhibit a general indifference toward religion rather than an active rejection of, or hostility toward it (Klug 2017; Woodhead 2016; Frost and Edgell 2017). For most of those who are nonreligious, religion and the transcendent are simply not everyday concerns (Klug 2017; Woodhead 2016).

Despite the obviousness of the position of the nonreligions interveners toward the transcendent and religion, I want to refrain from defining nonreligion *primarily* by its relation to the transcendent. While the position taken by the nonreligious interveners concerning the transcendent is important in thinking about and understanding the social construction of nonreligion in law, to primarily define nonreligion based on its relation to the transcendent is to often define nonreligion by what it lacks. Nonreligion in this sense is therefore a deficit term, seemingly devoid of anything meaningful (Lee 2015; Beyer 2021; Brown 2017). To clarify, indifference toward the transcendent and religion is a necessary component of how nonreligion is imagined and how the nonreligious constructed their social worlds in *Latimer, Bedford,* and *Trinity*

Western, but it is but one part of a larger picture.[281] I argue that other aspects of nonreligion, its other *meaningful* or *positive* parts, should also be used to delimit this phenomenon.[282]

As Manning (2015), Brown (2017), and countless others have pointed out, nonreligion is comprised of its own meaningful beliefs, values, and practices (see also Lee 2015; Quack et al. 2020; Zuckerman et al. 2016; Beyer 2021; Beaman and Stacey 2021). Smith and Halligan (2011) succinctly argue that a nonreligious imagining of the world is one that imbues meaning. In this light, one might argue that the position of indifference evidenced by the nonreligious interveners in *Latimer, Bedford,* and *Trinity Western* is itself a meaningful position, but I want to suggest that there are other more subtle positive attributes of nonreligion that are evidenced in the legal discourse I have considered which should be used to think about nonreligion and how it is socially constructed. One such meaningful attribute is an emphasis on law. To clarify, the religious interveners and nonreligious interveners do not claim anything negative about law, or its functioning, place, or role in society. In other words, both sets of social actors respect the law as an institution and abide by the law. But what stood out in the factums of the nonreligious interveners was an emphasis on law, legal codes, and human rights not necessarily evidenced in the religious narrative.

The nonreligious interveners placed more value on human rights and the utilization of such rights in the cases analyzed. This finding is reflected more broadly in literature about nonreligion and law. Nonreligious individuals often utilize a broader range of human rights and other rights to advance their cases brought before Courts (McAdam 2018; Wexler 2019; Beaman 2020). For the nonreligious in *Latimer, Bedford,* and *Trinity Western,* emphasis was placed on the utilization of law and the rights extended to individuals by the *Charter* to ensure the full and equal participation of marginalized groups in society. This is not to suggest that the religious social actors did not draw on human rights or emphasize law in any meaningful way—the above summary of my results argues the opposite of this. Nor do I want to suggest that religious individuals do not draw on law to combat discrimination and help promote the status of marginalized groups. As James T. Richardson (2015) points out, religious individuals and groups (such as the Jehovah's witnesses)

[281] See also Quack et al. (2020) and Klug (2017).

[282] Beyer makes a similar point, arguing that "a further step is required in order to be able to identify the positive content of religion. The absence of substantive criteria like being outside the religions, not being identified as religion, not containing sacredness or transcendence, or not involving extra-biological agencies still only delimits nonreligion by what it is not" (2021, 22).

are often very active in utilizing the law to help combat the discrimination marginalized groups face (see also Fokas 2018). What I suggest here instead is that in the context of the three cases I explored in this thesis, the nonreligious draw on law more concretely than their religious counterparts. I argue that the law and what it protects articulates meaning in a way that is not as obvious in the factums of the religious interveners. Without attributing too much power to law (see Smart 1989), the law and the rights it entails represent what can be argued as constituting some of the positive content of nonreligion as constructed in the contexts of *Latimer, Bedford,* and *Trinity Western.*

Another positive component of nonreligion evidenced in *Latimer, Bedford,* and *Trinity Western* is agency and autonomy. For most of the nonreligious social actors in the three cases, an individual's ability to freely exercise agency and autonomy concerning choices about one's body was of utmost importance. Many of the arguments presented to the Court by the nonreligious interveners feature arguments attempting to guarantee one's bodily autonomy. These interveners argued that individuals should be able to do as they wish with their bodies, particularly as related to end-of-life care, sex work, and sexuality.

This observation speaks to larger discussions about nonreligion. An emphasis on autonomy and agency is a common theme in much of the research on nonreligion and the nonreligious. Callum Brown (2017) and Brian Clarke and Stuart Macdonald (2017), for example, all draw attention to the importance of the themes of autonomy and agency in the life narratives of nonreligious individuals who have left religion. Similarly, Zuckerman et al. argue that nonreligious people "are distinguished by an aversion to authoritarianism" and thus often value autonomy and agency in things such as childrearing, relationships, and sexuality (2016, 125).[283] Thiessen and Wilkins-Laflamme (2020) also point to the importance of autonomy for nonreligious individuals in the shaping of their identity. And, Christel Manning argues that:

> As diverse as Nones are, they are unified by more than just a refusal to identify with organized religion […] ***Nones, although not a coherent movement, share a deep commitment to personal worldview choice*** that distinguishes them from many of their church counterparts. (Manning 2015, 184; emphasis added)

[283] Zuckerman et al. point out that "secular morality tends to reflect nonauthoritarian themes, such as independent autonomy, rather than obedience to convention, as well as tolerance of unusual yet harmless 'deviant' behaviors" (2016, 152).

Autonomy and agency as meaningful characteristics of nonreligion are thus not limited to the cases I explored. My conclusions extend to nonreligion as constructed in other legal and social contexts. Again, this is not to suggest that the religious social actors in my analysis did not value autonomy or agency. As Chris Cotter (2020) observes, there are often important themes of autonomy and agency in the narratives of religious individuals about religion. Just as Cotter observed, I too observed themes of autonomy and agency in the discussions of the religious interveners. As noted above, many religious interveners in *Trinity Western* advocated for the free exercising of agency of autonomy, but such arguments were about *communal* autonomy, not *individual* autonomy. In this light, I argue that the religious interveners seemingly valued individual autonomy and agency to a lesser degree than the nonreligious interveners. I therefore suggest that individual autonomy and agency also feature in representing some of the positive content of nonreligion as imagined in the legal contexts of *Latimer, Bedford,* and *Trinity Western.*

Finally, I argue that immanence and the contingent nature of the social world represent a positive element of nonreligion. I differentiate my argument here from the immanence described above in relation to the position one takes concerning the transcendent. Here I suggest that the nonreligious interveners in *Latimer, Bedford,* and *Trinity Western* emphasize and draw on immanent social factors more frequently and with greater meaning attributed to them than as evidenced in the submissions of the religious interveners. The nonreligious interveners more regularly brought into conversation questions about things such as healthcare, well-being, economics, social security, and society more generally. In doing so, these interveners seemingly recognized the contingent nature of the social world and how things like healthcare necessarily shape and have implications for the world in which we live. To borrow the phrasing of Véronique Altglas and Matthew Wood (2018), the "social" of the "social world" was of meaning to the nonreligious. A move away from a conservative religious rendering and understanding of the world often results in an alternative envisioning of the world in which immanent social factors, or the mundane, come into focus and obtain greater meaning (Altglas and Wood 2018). For the nonreligious, the social immanent world and the systems which comprise it "do" something, they have a particular meaningful function (see also Beyer 2021). Just as the transcendent, sacred, and other aspects of religion "do" something and function as tools to help construct a world understood

through the lens of religion (Beyer 2021),[284] so too does the immanence of the social world of the nonreligious interveners function to help create meaning in the contexts of *Latimer, Bedford,* and *Trinity Western.*

Again, I am not arguing here that the religious interveners are dismissive of the social world and the systems that comprise it. The religious interveners recognized things like social security and well-being in their arguments. But, in the cases I explored I observed that a greater degree of meaning was attributed to the immanent realms of the social world by the nonreligious interveners. In the contexts of *Latimer, Bedford,* and *Trinity Western* at least, the immanent world and its many facets represents a positive characteristic of nonreligion.

To define nonreligion by what it lacks, or its relation to the transcendent is but one way to think about nonreligion and what nonreligious individuals believe, practice, and value. There is nothing necessarily wrong with defining nonreligion in such a way. But, to focus exclusively on nonreligion as a position relative to the transcendent is to ignore what makes nonreligion meaningful. Deficit approaches to nonreligion fail to capture the nuances of what makes nonreligion meaningful to some people (Lee 2015; Manning 2015; Zuckerman et al. 2016; Quack et al. 2020; Thiessen and Wilkins-Laflamme 2020; Thiessen 2015; Beyer 2015, 2021). It is thus important to explore and more fully consider how nonreligion is lived and constructed by those who are nonreligious (Beyer 2015; Trzebiatowska 2018). To approach *Latimer, Bedford,* and *Trinity Western* with a deficit understanding of nonreligion would produce an entirely different thesis. A deficit understanding of nonreligion would probably yield no thesis at all for there would be nothing meaningful to say about the nonreligious interveners in these cases other than that they are simply indifferent to religion. The relational approach to nonreligion used throughout this thesis, however, sheds light on subtle and more nuanced ways in which nonreligion might be conceptualized. It draws attention to what we might consider of importance and meaningful to nonreligion as hinted at by the nonreligious social actors involved in *Latimer, Bedford,* and *Trinity Western.*

So, to answer the question that I was so captivated by when I first began my journey as a doctoral student and which ultimately guided this thesis: in the legal discourse of mercy killings

[284] Beyer argues that "religion evidently *does* a wide variety of things, and not just those functions favoured by functional definitions" (2021, 22).

and end-of-life care; sex work; and LGBTQ+ rights as found in the Supreme Court of Canada's *Latimer, Bedford,* and *Trinity Western* decisions, the social construction of nonreligion exhibits positive content, or meaningful beliefs, values, and practices. The submissions of the nonreligious interveners suggest meaning is found in the importance of law, human rights, autonomy, agency, and the immanence of the social world. This thesis thus contributes to the literature which seeks to highlight the positive content, or meaningful beliefs, values, and practices of nonreligion, particularly as imagined in law. Despite being a social institution that often discredits and disqualifies certain accounts of the social world and reality (Smith 1989, 4; Cammiss 2013), the law proves to provide a fruitful way to explore the meaningful beliefs, values, and practices of the nonreligious and nonreligion.

Conceptual and Methodological Limitations

The conclusions drawn in this thesis are not without their limitations. They are far from absolute and are necessarily reflective of the contexts that I have explored in this thesis. The construction of nonreligion presented above and the positive content it entails is necessarily dependent on the context in which it is explored. This is particularly true when using relational theories of nonreligion (Lee 2015; Quack 2014; Quack et al. 2020). What I have presented in this thesis is a particular portrayal of nonreligion that exists in specific legal contexts. Nonreligion as constructed here is what one finds in the legal discourse about mercy killings and end-of-life care in *Latimer;* sex work in *Bedford;* and LGBTQ+ rights in *Trinity Western.*

Similar constructions of nonreligion may or may not be found in: (1) other legal discourse and cases about the same social issues considered in this thesis; and (2) in non-legal discourse about these same issues. In other words, legal discourse about LGBTQ+ rights, for example, in an entirely different Supreme Court of Canada decision, or even in a lower court decision, might produce a very different picture of nonreligion. Similarly, discourse about LGBTQ+ rights in popular media might also produce a very different framing of nonreligion than what I have presented here. This disclaimer notwithstanding, the construction of nonreligion evidenced in *Latimer, Bedford,* and *Trinity Western* is like that of nonreligion as it is constructed in broader academic debates about nonreligion. In sum, my conclusions here are somewhat generalizable and applicable to contexts other than those that have been covered in this thesis.

Not only does context matter when exploring nonreligion, so too does the religion nonreligion is being understood in relation to (Quack 2014; Quack et al. 2020; Lee 2015). This thesis has explored nonreligion against a Christian backdrop. This is not by choice. Most of the religious social actors involved in *Latimer, Bedford,* and *Trinity Western* were conservative Christian groups. There were Indigenous and Sikh voices in *Trinity Western,* but the arguments presented by these interveners were predominately legal in nature and thus fell outside the scope of what was explored here.[285] I therefore acknowledge that religions other than Christianity are missing from my analysis. I also acknowledge that the Christian perspectives presented throughout this thesis are not representative of all Christian traditions. Christian beliefs are diverse and plentiful. I have not purposely flattened the diversity of Christian beliefs and practices. The lack of diversity concerning Christian belief is also a product of the data available. This is all to say that if the backdrop which characterized the analysis of this thesis was comprised of more liberal Christian groups or non-Christian religions, the picture of nonreligion that I have painted might look different.[286] Again, however, nonreligion as constructed in this thesis is somewhat generalizable to the broader Canadian public. My findings are somewhat like those found by other researchers who have explored nonreligion in Canada in other social contexts in which there is greater religious diversity (Thiessen and Wilkins-Laflamme 2020; Wilkins-Laflamme 2022; Marks 2017; Block 2016). My findings, however, may or may not apply to other Eurocentric Western countries with a similar religious backdrop and history.

My conclusions are also based on a highly subjective methodology. Discourse analysis is by no means without its controversies (see Toolan 1997; Hjelm 2011; Bucholtz 2001; Taylor 2013). The discursive analysis of the same data by two people may yield different results. In this light, critics of discourse analysis argue that it lacks objectivity and is highly interpretive (Toolan 1997). But, as Stephanie Taylor, points out, "the findings of a discourse analytic study are an interpretation grounded in a rigorous process of data analysis" (2013, 75). Discourse analyses done right are generalizable in that they discover "social meanings and language-related practices which

[285] In *Trinity Western* the World Sikh Organization of Canada, for example, said that it "adopts the facts as set out in the facta of the Appellants and Respondents in both appeals. *It takes no position on the contested facts or merits of this appeal, and confines its submissions to the adequacy of the Doré framework as a basis to review administrative decisions that engage Charter rights and values*" (*Trinity Western*, World Sikh Organization of Canada, at para. 5; emphasis added). The Doré framework is a legal tool used in administrative law to determine if one's *Charter* rights have been infringed.

[286] There were no liberal Christian interveners in the three cases.

are a feature of wider context and population" (2013, 75). While I acknowledge the subjectivity of the concepts that define my analyses, particularly when used as second-order concepts, and the resulting conclusions based on the analysis of these concepts, the strength of my findings is bolstered considering such findings can be found in other literature discussing the beliefs, values, and practices of the broader population of nonreligious Canadians.

Moving Forward with Nonreligion

This thesis is to some degree a story of my journey as a graduate student. It represents the culmination of close to a decade's worth of research focused on the qualitative exploration of nonreligion in Canada and Canadian law. My journey has by no means been an easy one. There have been times of great joy, especially when coming across new, exciting, and intellectually stimulating research, but there have also been times when I felt like I was going nowhere, unable to think about what was to come next, and unsure how to piece the pieces of an ever-so confusing puzzle together. In the end, however, things (thankfully) came to fruition. What has come of this research includes a master's thesis, several publications, and now this doctoral thesis—all of which contribute original research to the broader academic debates about nonreligion. This thesis, however, does not represent the end of my intellectual fascination with nonreligion. It marks a new beginning. As one puzzle is solved, another presents itself as needing to be solved.

I began the conclusion of my master's thesis (Steele 2018) with a quote from a popular TV show of the time called *Black Sails*. One of the lead characters, a pirate called Captain Flint, said the following about his travels around the Caribbean:

> The closer we get to the end of this journey, the more contradictions we'll accumulate—confusing issues we once thought were clear. I suppose the good news is, that's how we'll know we're finally getting somewhere interesting. (Flint, Black Sails, Season 10, Episode 4, February 19, 2017)

I think this quote remains relevant to this thesis. Flint's insight into his own personal journey translates well to that of my own, and the broader debates about nonreligion. While this thesis draws attention to what I consider underexplored elements of nonreligion, it also brings to the fore various contradictions. So, while this thesis answers some of the questions I have had about the social construction of nonreligion it has also muddied the waters or confuses issues I once thought were clear. This thesis has raised new (possibly more exciting) questions that require further

research. The raising of new questions is not to be ignored. This thesis was written during a rather unique period of Canadian social history which warrants such questions be explored.

This thesis raises further questions about the positive content of nonreligion, particularly in relation to law. While I have argued that *Latimer, Bedford,* and *Trinity Western* all point to positive attributes that can be found in constructions of nonreligion, further research is required to unveil what nonreligious social actors value and attribute meaning to in other legal contexts. The question of "is nonreligion characterized by positive content in Canadian law" is not as relevant as it once was. I have shown that nonreligion is imagined as having positive content in law. Future research into the intersection of nonreligion and law should consider other ways in which nonreligion is constructed as having positive content in law.

Nonreligion is a story of "positive human development" (Brown 2017, 5) and the "human discovery of a new moral cosmos" (Brown 2017, 184). As Brown (2017) points out, this new moral cosmos is not devoid of meaning or value (see also Manning 2015). Further research is therefore required to explore how nonreligion as a "positive human development" manifests in law. In short, the conclusions I have drawn in this thesis are but a snapshot of the construction of nonreligion in law at a particular time and in particular contexts. More research is required to draw conclusions about nonreligion across a broader array of legal and social contexts to more fully appreciate the implications nonreligion has for living in the world (Ezzy 2021).

My conclusions also somewhat blur the boundaries between religion and nonreligion. My observations show that religion and nonreligion, at least as imagined in law, are not necessarily fundamentally opposed. At times, religion and nonreligion value and find meaning in the same things. Religious and nonreligious social actors in law can often agree on questions related to controversial social issues. Much of the literature that exists about nonreligion often emphasizes how nonreligion and religion differ, or how these phenomena are distinct and unique (see Marks 2017; Zuckerman 2012; Schmidt 2016; Campbell 1971). This literature tells us something useful about nonreligion, indeed such literature is quite insightful. But more research is needed that (1) critically explores the fluidity of the boundary between religion and nonreligion; and (2) is more focused how religion and nonreligion at times are quite similar and collaborate. In a world and society characterized by a rapidly changing (non)religious diversity, there is a need to emphasize similarity rather than difference to learn how to "live well together" (Beaman 2017a, 2020).

In closing, I acknowledge that in some ways, my thesis does what others have already done: I explore the positive content of nonreligion and the nonreligious in Canada. My study contributes to a growing body of literature which aims to make sense of social phenomena we know relatively little about. My thesis, however, is unique in the sense that it explores the positive content of nonreligion as constructed in Canadian law and is one of the first to do so in the legal contexts of mercy killings, sex work, and LGBTQ+ rights. It is my hope that what I have described throughout this thesis demonstrates that the study of nonreligion matters. We have much to learn about, and from, nonreligion, especially considering the changing (non)religious landscape of many Western societies. Most importantly, however, I have shown that the law is a fruitful avenue through which we can learn more about the meaningful beliefs, values, and practices of nonreligion and those who no longer affiliate with religion.[287]

[287] Following Di Donato, I argue that the submissions (i.e., voices) of the nonreligious interveners in *Latimer, Bedford,* and *Trinity Western* draw attention to the "the multiple human and social dimensions that animate a [legal] case" (2020, 287).

Appendix A

Latimer **Coding Key (Themes and Corresponding Box Colour)**
1. Dignity (value of life too also bits of autonomy)
2. Suffering/Harm
3. Love/Compassion (dashed box)
4. Morality (includes values)
5. Death (includes murder and suicide)
6. Mercy killing (dashed box)
7. Life (includes right to life; quality of life; happiness)
8. Sanctity of life (dashed box)
9. Autonomy (dashed box)
10. Disability (can include other 'vulnerable' populations) (dashed)
11. Children
12. Equality (includes freedom of equality)
13. Humanity (what it means to be human, etc.)
14. Science (includes medicine) (dashed box)
15. Human Rights (rights broadly)
16. Discrimination/inequality (dashed box)
17. Society (includes social good)
18. Transcendent
19. Immanence (dashed box)

Bedford **Coding Key (Themes and Corresponding Highlighting and Box Colour)**
1. Dignity (value of life too also bits of autonomy)
2. Suffering/Harm (box)
3. Love/Compassion/Intimacy (dashed box)
4. Stewardship
5. Morality (includes common values and ethics)
6. Equality
7. Conflict of rights (box)
8. Tolerance (dashed box)
9. Diversity/multiculturalism (box)
10. Sanctity of life and life (dashed box)
11. History
12. Autonomy
13. Biblical/natural law stuff /religion (box dashed)
14. Family
15. Security (includes right to security) and safety
16. Persecution
17. Science (includes medicine/health) (dashed box)
18. Humanity (what it means to be human, etc.)
19. Human Rights (rights broadly/constitutional freedoms)
20. Discrimination/inequality/hate

21. Separation of church/state/secular (box)
22. Society (includes social good/nature of society) and public nuisance
23. Community (box)
24. Individual (dashed box)
25. Transcendent
26. Immanence (dashed box)
27. Vulnerable people (box)
28. LGBTQ (same-sex marriage, family, etc.) and sex trade/prostitution
29. Identity

Trinity Western **Coding Key (Themes and Corresponding Highlighting and Box Colour)**
1. Dignity (value of life too also bits of autonomy)
2. Suffering/Harm (box)
3. Love/Compassion/Intimacy (dashed box)
4. Stewardship
5. Morality (includes common values and ethics)
6. Equality (includes freedom of equality)
7. Conflict of rights (box)
8. Tolerance (dashed box)
9. Diversity /multiculturalism (box)
10. Sanctity of life (dashed box)
11. Autonomy
12. Family (box)
13. Biblical / natural law stuff /religion (box dashed)
14. Persecution
15. Science (includes medicine) (dashed box)
16. Humanity (what it means to be human, etc.) (solid box)
17. Human Rights (rights broadly/constitutional freedoms)
18. Discrimination/inequality/hate
19. Separation of church/state/secular (box)
20. Society (includes social good/nature of society)
21. Community (box)
22. Individual (dashed box)
23. Transcendent
24. Immanence (dashed box)
25. Sex (box)
26. LGBTQ (same-sex marriage, family, etc.)

Bibliography

Case Law

Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37, [2009] 2 S.C.R. 567.

Canada (Attorney General) v. Bedford, 2013 SCC 72, [2013] 3 S.C.R. 1101.

Halpern v Canada (AG), [2003] O.J. No. 2268.

Law Society of British Columbia v. Trinity Western University, 2018 SCC 32, [2018] 2 S.C.R. 293.

R. v. Keegstra, [1990] 3 S.C.R. 697

R. v. Latimer, [2001] 1 S.C.R. 3, 2001 SCC 1.

Reference re Same-Sex Marriage, [2004] 3 S.C.R. 698, 2004 SCC 79.

Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11, [2013] 1 S.C.R. 467.

Academic References

Abbott, Owen. 2020. *The Self, Relational Sociology, and Morality in Practice.* Cham: Palgrave Macmillan.

Ahmed, Farrah. 2015. *Religious Freedom Under the Personal Law System*. New Delhi: Oxford University Press.

Altglas, Véronique, and Matthew Wood, eds. 2018. *Bringing Back the Social into the Sociology of Religion: Critical Approaches*. Leiden: Brill.

Amarnath, Ravi, and Brian Bird. 2016. "Prayer for Relief: Saguenay and State Neutrality toward Religion in Canada." *Cambridge Law Review* 2016: 176-188.

Ammerman, Nancy T. 2016. "Lived Religion as an Emerging Field: An Assessment of its Edges and Frontiers." *Nordic Journal of Religion and Society* 29 (2): 83-99.

Ammerman, Nancy, ed. 2007. *Everyday Religion: Observing Modern Religious Lives*. New York: Oxford University Press.

Angus Reid Institute. 2016. "Canadians say our moral values are weakening four-to-one over those who say they're getting stronger." *Angus Reid Institute*, January 13, 2016. http://angusreid.org/morality/.

Arnal, William E and Russell T. McCutcheon. 2013. *The Sacred Is the Profane: The Political Nature Of "religion."* Oxford: Oxford University Press.

Årsheim, Helge. 2018. "Jack of all Trades? Introducing Law and Non-religion." *Nonreligion and Secularity Research Network Blog*, April 3, 2018. https://nsrn.net/2018/04/03/jack-of-all-trades-introducing-law-and-non-religion/.

Asad, Talal. 2003 *Formations of the Secular: Christianity, Islam, Modernity.* Stanford: Stanford University Press.

Australian Bureau of Statistics. 2022a. "Cultural Diversity: Census." June 28, 2022. https://www.abs.gov.au/statistics/people/people-and-communities/cultural-diversity-census/2021.

Australian Bureau of Statistics. 2022b. "Religious affiliation in Australia." July 4, 2022. https://www.abs.gov.au/articles/religious-affiliation-australia.

Baker, Joseph O., and Buster G. Smith. 2015. *American Secularism: Cultural Contours of Nonreligious Belief Systems*. New York: New York University Press.

Beaman, Lori G. 2020. *The Transition of Religion to Culture in Law and Public Discourse.* London: Routledge.

Beaman, Lori G. 2017a. "Living Well Together in a (non)Religious Future: Contributions from the Sociology of Religion." *Sociology of Religion* 78 (1): 9-32.

Beaman, Lori G. 2017b. "Recognize The New Religious Diversity." *Canadian Diversity* 14 (4): 17-19.

Beaman, Lori G. 2015. "Freedom of and Freedom from Religion: Atheist Involvement in Legal Cases." In *Atheist Identities – Spaces and Social Contexts,* edited by Lori G. Beaman and Steven Tomlins, 39-52. Cham: Springer.

Beaman, Lori G. 2008. *Defining harm: Religious freedom and the limits of law*. Vancouver: UBC Press.

Beaman, Lori G. 2003. "The Myth of Pluralism, Diversity, and Vigor: The Constitutional Privilege of Protestantism in the United States and Canada." *Journal for the Scientific Study of Religion* 42 (3): 311–325.

Beaman, Lori G., and Cory Steele. 2021. "Living Well Together: Nonreligion in the Context of Religious Diversity." *Secular Studies* 3 (2021): 49-70.

Beaman, Lori G., and Cory Steele. 2018. "Transcendence/Religion to Imminence/Nonreligion in Assisted Dying." *International Journal of Human Rights in Healthcare* 11 (2): 129-143.

Beaman, Lori G., Cory Steele, and Keelin Pringnitz. 2018. “The inclusion of nonreligion in religion and human rights.” *Social Compass* 65 (1): 43-61.

Beaman, Lori G. and Timothy Stacey, eds. 2021. *Nonreligious Imaginaries of World Repairing*. Cham: Palgrave Macmillan.

Beckford, James A. 2003. *Social Theory and Religion*. Cambridge: Cambridge University Press.

Bender, Courtney, Wendy Cadge, Peggy Levitt, and David Smilde. 2013. *Religion on the Edge: De-centering and Re-centering the Sociology of Religion*. Oxford: Oxford University Press.

Benedet, Janine. 2013. “Marital Rape, Polygamy, and Prostitution: Trading Sex Equality for Agency and Choice?” *Review of Constitutional Studies* 18 (2): 161-188.

Berger, Arthur Asa. 2016. “A Discourse on Discourse Studies.” *Society* 53: 597-602.

Berger, Benjamin. 2015. *Law’s Religion: Religious Differences and the Claims of Constitutionalism.* Toronto: University of Toronto.

Berger, Peter L. 1974. “Some Second Thoughts on Substantive versus Functional Definitions of Religion.” *Journal for the Scientific Study of Religion* 13 (2): 125-133.

Berger, Peter L. 1967. *The Sacred Canopy: Elements of a Sociological Theory of Religion*. New York: Anchor Books.

Berger, Peter L., and Thomas Luckmann. 1991. *The Social Construction of Reality: A Treatise in the Sociology of Knowledge.* London: Penguin Books.

Beyer, Peter. 2021. “Theoretical and Methodological Background to Understandings of (Non)religion.” In *Nonreligious Imaginaries of World Repairing,* edited by Lori G. Beaman and Timothy Stacey, 19-28. Cham: Palgrave Macmillan.

Beyer, Peter. 2015. “From Atheist to Spiritual But Not Religious: A Punctuated Continuum of Identities among the Second Generation of Post-1970 Immigrants in Canada.” In *Atheist Identities - Spaces and Social Contexts*, edited by Lori G. Beaman and Steven Tomlins, 137–53. Cham: Springer International Publishing.

Beyer, Peter. 2006. *Religions in Global Society*. New York: Routledge.

Beyer, Peter. 2000. “Modern Forms of the Religious Life: Denomination, Church, and Invisible Religion in Canada, the United States, and Europe.” In *Rethinking Church, State, and*

Modernity, edited by David Lyon and Marguerite Van Die, 189-210. Toronto: University of Toronto Press.

Beyer, Peter, Alyshea Cummins, and Scott Craig. 2016. "Measuring Religious Identity Differently: A Canadian Survey Study." *Bulletin for the Study of Religion* 45 (1): 10-15.

Beyer, Peter, Scott Craig, and Alyshea Cummins. 2019. "Religious Identity Construction among Young Adults in Canada: The Religious, the Spiritual, and the Non-Religious." In *Youth, Religion, and Identity in a Globalizing Context*, edited by Paul L. Gareau, Spencer Culham Bullivant, and Peter Beyer, 33-52. Leiden: Brill.

Bibby, Reginald Wayne. 2004. *Restless Gods: The Renaissance of Religion in Canada*. Ottawa: Novalis, Saint Paul University.

Blanes, Ruy Llera, and Galina Oustinova-Stjepanovic, eds. 2017. *Being Godless: Ethnographies of Atheism and Non-Religion*. New York: Berghahn.

Blankholm, Joseph. 2022. *The Secular Paradox: On the Religiosity of the Not Religious.* New York: New York University Press.

Block, Tina. 2016. *The Secular Northwest: Religion and Irreligion in Everyday Postwar Life*. Vancouver: UBC Press.

Blommaert, Jan. 2005. *Discourse: A Critical Introduction.* Cambridge: Cambridge University Press.

Borrows, John. 2019. *Law's Indigenous Ethics.* Toronto: University of Toronto Press.

Bouma, Gary D. 1995. "The Emergence of Religious Plurality in Australia: A Multicultural Society." *Sociology of Religion* 56 (3): 295-302.

Brean, Joseph, and Chris Selley. 2018. "Still seeking law school, Trinity Western drops sexual 'covenant' for students." *National Post,* August 14, 2018. https://nationalpost.com/news/canada/still-seeking-law-school-trinity-western-drops-sexual-covenant-for-students.

Breskaya, Olga, Giuseppe Giordan, James T. Richardson. 2018. "Human Rights and Religion: A Sociological Perspective." *Journal for the Scientific Study of Religion* 57 (3): 419-431.

Brewer, John D. 2007. "Sociology and theology reconsidered: religious sociology and the sociology of religion in Britain." *History of the Human Sciences* 20 (2): 7-28.

Brown, Callum G. 2017. *Becoming Atheist: Humanism and the Secular West*. London: Bloomsbury Academic.

Brown, Michael F. 2008. "Cultural Relativism 2.0." *Current Anthropology* 49 (3): 363-383.

Bruce, Steve. 1996. *Religion in the Modern World: From Cathedrals to Cults*. Oxford: Oxford University Press.

Bucholtz, Mary. 2001. "Reflexivity and Critique in Discourse Analysis." *Critique of Anthropology* 21 (2): 165-183.

Bullivant, Stephen, and Michael Ruse, eds. 2021. *The Cambridge History of Atheism.* Cambridge: Cambridge University Press.

Bullivant, Stephen, and Michael Ruse, eds. 2013. *The Oxford Handbook of Atheism.* Oxford: Oxford University Press.

Burchardt, Marian. 2017. "Recalling Modernity: How Nationalist Memories Shape Religious Diversity in Quebec and Catalonia." *Nations and Nationalism* 23 (3): 599-619.

Burr, Vivien. 2003. *Social Constructionism*. London: Routledge.

Caldwell-Harris, Catherine L., Angela L. Wilson, Elizabeth LoTempio, and Benjamin Beit-Hallahmi. 2011. "Exploring the atheist personality: Well-being, awe, and magical thinking in atheists, Buddhists, and Christians." *Mental Health, Religion & Culture* 14 (7): 659-672.

Cammiss, Steven. 2013. "Stories in Law: Providing Space for 'Oppositionists'?" In *Law and Language: Current Legal Issues Volume 15,* edited by Michael Freeman and Fiona Smith, 221-245. Oxford: Oxford University Press.

Campbell, Colin. 1971. *Toward a Sociology of Irreligion*. London: The Macmillan Press.

Carabine, Jean. 2001. "Unmarried Motherhood 1830-1990: A Genealogical Analysis." In *Discourse as Data: A Guide for Analysis*, edited by Margaret Wetherell, Stephanie Taylor, and Simeon J. Yates, 267-310. London: Sage Publications Ltd.

Casanova, José. 1994. *Public Religions in the modern world*. Chicago: University of Chicago Press.

CBC News. 2010. "Latimer granted full parole." *CBC News,* November 29, 2010. https://www.cbc.ca/news/canada/saskatchewan/latimer-granted-full-parole-1.884458.

CBC News. 2001. "Latimer begins 10-year prison term." *CBC News,* January 19, 2001. https://www.cbc.ca/news/canada/latimer-begins-10-year-prison-term-1.284445.

Chagnon, Rachel, and François Gauthier. 2013. "From Implicitly Christian to Neoliberal: The Moral Foundations of Canadian Law Exposed by the Case of Prostitution." In *Religion in the Neoliberal Age: Political Economy and Modes of Governance,* edited by Tuomas Martikainen and François Gauthier, 177-191. Farnham: Ashgate Publishing Limited.

Chambers, Stuart. 2011. "Of Stewardship, Suffering and the 'Slippery Slope': A Vattimian Analysis of the Sanctity of Life Ethos in Canada (1972-2005)." Doctorate in Philosophy in Religious Studies thesis. University of Ottawa, Ottawa, Canada.

Cicirelli, Victor G. 2011. "Religious and Nonreligious Spirituality in Relation to Death Acceptance or Rejection." *Death Studies* 35 (2): 124-146.

Cipriani, Roberto. 2015. *Sociology of Religion: An Historical Introduction.* New Brunswick: Transaction Publishers.

Clapham, Andrew. 2007. *Human Rights: A Very Short Introduction.* Oxford: Oxford University Press.

Clarke, Brian, and Stuart Macdonald. 2017. *Leaving Christianity: Changing Allegiances in Canada Since 1945*. Montreal: McGill-Queen's University Press.

Cmiel, Kenneth. 2004. "The Recent History of Human Rights." *The American Historical Review* 109 (1): 117-135.

Constitution Act. 1982. "Constitution Act, 1982." https://laws-lois.justice.gc.ca/eng/Const/page-12.html#h-39.

Constitution Project. 2023. "Constitute: God." https://www.constituteproject.org/constitutions?lang=en&key=god.

Cornelissen, Louis. 2021. "Religiosity in Canada and its evolution from 1985 to 2019." *Statistics Canada*, October 28, 2021. https://www150.statcan.gc.ca/n1/pub/75-006-x/2021001/article/00010-eng.htm.

Cotter, Christopher R. Cotter. 2020. *The Critical Study of Non-Religion: Discourse, Identification and Locality.* London: Bloomsbury Academic.

Cragun, Ryan T. 2016. "Nonreligion and Atheism." In *Handbook of Religion and Society*, edited by David Yamane, 301–320. Cham: Springer International Publishing.

Cragun, Ryan T., Barry Kosmin, Ariela Keysar, Joseph H. Hammer, and Michael Nielsen. 2012. "On the Receiving End: Discrimination toward the Non-Religious in the United States." *Journal of Contemporary Religion* 27 (1): 105-127.

Cragun, Ryan T., Joseph H. Hammer, and Michael Nielsen. 2015. "The Nonreligious-Nonspiritual Scale (NRNSS): Measuring Everyone from Atheists to Zionists." *Science, Religion, and Culture* 2 (3): 36-53.

Cunningham, Stewart. 2021. *Sex Work and Human Dignity.* London: Routledge.

Dabby, Dia. 2021. "'World Repairing' and 'Non religious' in Law: Antithetical Notions or New Mindsets?" In *Nonreligious Imaginaries of World Repairing,* edited by Lori G. Beaman and Timothy Stacey, 117-125. Cham: Palgrave Macmillan.

Davie, Grace. 2007a. *The Sociology of Religion.* London: Sage Publications.

Davie, Grace. 2007b. "Vicarious Religion: A Methodological Challenge." In *Everyday Religion: Observing Modern Religious Lives,* edited by Nancy T. Ammerman, 21–36. Oxford: Oxford University Press.

Day, Abby. 2013. "Yes, but Not in the North: Nuances in Religion and Language Cultures." *Studies in Ethnicity and Nationalism* 13 (1): 105–108.

Day, Abby. 2011. *Believing in Belonging: Belief in Social Identity in the Modern World*. Oxford: Oxford University Press.

Demerath III, N. J. 1969. "Irreligion, A-Religion, and the Rise of the Religion-Less Church: Two Case Studies in Organizational Convergence." *Sociological Analysis* 30 (4): 191-203.

Di Donato, Flora. 2020. *The Analysis of Legal Cases: A Narrative Approach.* London: Routledge.

Doggett, Luke, and Alp Arat, eds. 2018. *Foundations and Futures in the Sociology of Religion*. London: Routledge.

Donnelly, Jack. 1984. "Cultural Relativism and Universal Human Rights." *Human Rights Quarterly* 6 (4): 400-419.

Durisin, Elya M., Emily van der Meulen, and Chris Bruckert, eds. 2018. *Red Light Labour: Sex work regulation, agency, and resistance*. Vancouver: UBC Press.

Durkheim, Emile. 1995. *The Elementary Forms of Religious Life.* New York: The Free Press.

Ecklund, Elaine Howard, and David R. Johnson. 2021. *Varieties of Atheism in Science.* New York: Oxford University Press.

Edge, Peter W., and Graham Harvey, eds. 2000. Law and Religion in Contemporary Society. London: Routledge.

Edgell, Penny. 2012. "A cultural sociology of religion: New directions." *Annual Review of Sociology* 38: 247-265.

Edgell, Penny, Douglas Hartmann, Evan Stewart, and Joseph Gerteis. 2016. "Atheists and Other Cultural Outsiders: Moral Boundaries and the Non-Religious in the United States." *Social Forces* 95 (2): 607–638.

Edgell, Penny, Jacqui Frost, and Evan Stewart. 2017. "From Existential to Social Understandings of Risk: Examining Gender Differences in Nonreligion." *Social Currents* 5 (6): 556-574.

Edmundson, William A. 2012. *An Introduction to Rights.* Cambridge: Cambridge University Press.

Egerton, George. 2000. "Trudeau, God, and the Canadian Constitution: Religion, Human Rights, and Government Authority in the Making of the 1982 Constitution." In *Rethinking Church, State, and Modernity*, edited by David Lyon and Marguerite Van Die, 90-112. Toronto: University of Toronto Press.

Epstein, Greg M. 2009. *Good Without God: What a Billion Non-Religious People Do Believe*. New York: HarperCollins.

Evans, John H. 2016. *What Is a Human?: What the Answers Mean for Human Rights*. Oxford: Oxford University Press.

Ezzy, Douglas. 2021. "Afterword: Towards an Understanding of Being Human." In *Nonreligious Imaginaries of World Repairing,* edited by Lori G. Beaman and Timothy Stacey, 141-150. Cham: Palgrave Macmillan.

Fairclough, Norman. 2010. *Critical Discourse Analysis: The Critical Study of Language*. London: Routledge.

Fairclough, Norman. 1992. *Discourse and Social Change.* Cambridge: Polity Press.

Fedler, Kyle D. 2006. *Exploring Christian Ethics: Biblical Foundations for Morality*. Louisville: Westminster John Knox Press.

Ferrone, Vincenzo. 2017. “The Rights of History: Enlightenment and Human Rights.” *Human Rights Quarterly* 39 (1): 130-141.

Finnis, John. 2011. *Natural Law and Natural Rights.* Oxford: Oxford University Press.

Fokas, Effie. 2018. “The legal status of religious minorities: Exploring the impact of the European Court of Human Rights.” Social Compass 65 (1): 25-42.

Fokas, Effie. 2017. “The European Court of Human Rights at the grassroots level: who knows what about religion at the ECtHR and to what effects?” *Religion, State and Society* 45 (3-4): 249-267.

Foucault, Michel. 2002. *The Archaeology of Knowledge and the Discourse on Language*. London: Routledge.

Foucault, Michel. 1995. *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books.

Foucault, Michel, and Colin Gordon. 1980. *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*. New York: Pantheon Books.

Freeman, Michael. 2022. *Human Rights*. Cambridge: Polity Press.

Freeman, Michael. 2004. “The Problem of Secularism in Human Rights Theory.” *Human Rights Quarterly* 26 (2): 375-400.

Frost, Jacqui, and Penny Edgell. 2017. “Rescuing Nones From the Reference Category: Civic Engagement Among the Nonreligious in America.” *Nonprofit and Voluntary Sector Quarterly* 47 (2): 417-438.

Furseth, Inger, ed. 2018. *Religious Complexity in the Public Sphere: Comparing Nordic Countries*. Cham: Springer.

Galen, Luke W. 2012. “Does Religious Belief Promote Prosociality? A Critical Examination.” Psychological *Bulletin* 138 (5): 876–906.

Garbin, David, and Anna Strhan, eds. 2017. *Religion and the Global City*. London: Bloomsbury.

Geertz, Clifford. 1966. “Religion as a Cultural System.” In *Anthropological Approaches to the Study of Religion*, edited by Michael Banton, 1-44. London: Routledge.

George, Robert P. 2008. “Natural Law.” *Harvard Journal of Law & Public Policy* 31 (1): 171-196.

Gert, Bernard. 2005. *Morality: Its Nature and Justification*. Oxford: Oxford University Press.

Gewirth, Alan. 1978. *Reason and Morality.* Chicago: The University of Chicago Press.

Giddens, Anthony, ed. 1972. *Emile Durkheim: Selected Writings.* Cambridge: Cambridge University Press.

Glaser, Barney G., and Anselm L. Strauss. 2017. *The Discovery of Grounded Theory: Strategies for Qualitative Research.* London: Routledge.

Government of Canada. N.d. *Canadian Charter of Rights and Freedoms.* https://laws-lois.justice.gc.ca/eng/const/page-12.html#h-40.

Government of Canada. 2022. "Guide to the Canadian Charter of Rights and Freedoms." https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html.

Granholm, Kennet. 2013. "Esoteric currents as discursive complexes." *Religion* 43 (1): 46-69.

Habermas, Jürgen. 2006. "Religion in the Public Sphere." *European Journal of Philosophy* 14 (1): 1-25.

Hall, David D., ed. 1997. *Lived Religion in America: Toward a History of Practice.* Princeton: Princeton University Press.

Harper, Kyle. 2016. "Christianity and the Roots of Human Dignity in Late Antiquity." In *Christianity and Freedom: Historical Perspectives, Volume 1,* edited by Timothy Samuel Shah and Allen D. Hertzke, 123-148. Cambridge: Cambridge University Press.

Hassall, Christopher, and Ian Bushfield. 2014. "Increasing Diversity in Emerging Non-Religious Communities." *Secularism and Nonreligion* 3 (December). doi:10.5334/snr.as.

Heavin, Heather. 2001. "Human Rights Issues in *R. v. Latimer* and Their Significance for Disabled Canadians." *Saskatchewan Law Review* 64 (2): 613-630.

Heelas, Paul, and Linda Woodhead. 2005. *The Spiritual Revolution: Why Religion is Giving Way to Spirituality*. Oxford: Blackwell.

Hegtvedt, Karen A., and Heather L. Scheuerman. 2010. "The Justice/Morality Link: Implied, then Ignored, yet Inevitable." In *Handbook of the Sociology of Morality*, edited by Steven Hitlin and Stephen Vaisey, 331-360. New York: Springer.

Herrman, Charles. 2019. “What Is Dignity?” *Eidos* 3 (9): 103-126.

Heyman, Steven J. 2021. “Reason and Conviction: Natural Rights, Natural Religion, and the Origins of the Free Exercise Clause.” *University of Pennsylvania Journal of Constitutional Law* 23 (1): 1-124.

Hill, Thomas E., Jr. 2014. “Kantian perspectives on the rational basis of human dignity.” In *The Cambridge Handbook of Human Dignity,* edited by Marcus Düwell, Jens Braarvig, Roger Brownsword, and Dietmar Mieth, 215-221. Cambridge: Cambridge University Press.

Hitlin, Steven, and Stephen Vaisey. 2010. “Back to the Future: Reviving the Sociology of Morality.” In *Handbook of the Sociology of Morality*, edited by Steven Hitlin and Stephen Vaisey, 3-14. New York: Springer.

Hjelm, Titus. 2011. “Discourse Analysis.” In *The Routledge Handbook of Research Methods in the Study of Religion,* edited by Michael Stausberg and Steven Engler, 134-150. Oxon: Routledge.

Horii, Mitsutoshi. 2019. “Historicizing the category of ‘religion’ in sociological theories: Max Weber and Emile Durkheim.” *Critical Research on Religion* 7 (1): 24-37.

Hurd, Elizabeth Shakman. 2015. *Beyond Religious Freedom: The New Global Politics of Religion*. Princeton: Princeton University Press.

IdeaCity. 2012. “Terri-Jean Bedford, Amy Lebovitch & Valerie Scott - Sex Work & Constitutional Reform.” *Youtube*. https://www.youtube.com/watch?v=ZSq99RBSTxM.

Jeffrey, Leslie Ann, and Gayle MacDonald. 2006. *Sex Workers in the Maritimes Talk Back*. Vancouver: UBC Press.

Jenkins, Maricarmen. 2001. “Moral Judgment and the Case of Robert Latimer.” *Saskatchewan Law Review* 64 (2): 545-558.

Jolin, Annette. 1994. “On the Backs of Working Prostitutes: Feminist Theory and Prostitution Policy.” *Crime & Delinquency* 40 (1): 69-83.

Jørgensen, Marianne, and Louise Phillips. 2002. *Discourse Analysis as Theory and Method*. London: SAGE Publications.

Kazemipur, Abdolmohammad. 2016. “John Porter Book Prize Lecture: Bringing the Social Back In—On the Integration of Muslim Immigrants and the Jurisprudence of Muslim Minorities.” *Canadian Review of Sociology* 53 (4): 437-456.

Kempadoo, Kamala. 1998. "Introduction: Globalizing Sex Workers' Rights." In *Global Sex Workers: Rights, Resistance, and Redefinition*, edited by Kamala Kempadoo and Jo Doezema, 1-28. New York: Routledge.

Kislowicz, Howard. 2015. "Law, Religion, and Feeling Included/Excluded: Case Studies in Canadian Religious Freedom Litigation." *Canadian Journal of Law and Society* 30 (3): 365-380.

Kissil, Karni, and Maureen Davey. 2010. "The Prostitution Debate in Feminism: Current Trends, Policy and Clinical Issues Facing an Invisible Population." Journal of Feminist Family Therapy 22 (1): 1-21.

Klug, Petra. 2017. "Varieties of Nonreligion: Why Some People Criticize Religion, While Others Just Don't Care." In *Religious Indifference: New Perspectives from Studies on Secularization and Nonreligion*, edited by Johannes Quack and Cora Schuh, 219–237. New York: Springer.

Koenig, Matthias. 2015. "Governance of religious diversity at the European Court of Human Rights." In *International Approaches to the Governance of Ethnic Diversity*, edited by Jane Boulden and Will Kymlicka, 51-78. Oxford: Oxford University Press.

Kohlhaas, Jacob. 2018. "What is natural law?" https://uscatholic.org/articles/201807/what-is-natural-law/.

Kretzmer, David, and Eckart Klein. 2002. *The Concept of Human Dignity in Human Rights Discourse.* The Hague: Kluwer Law International.

Krippendorff, Klaus. 2004. *Content Analysis: An Introduction to Its Methodology.* Thousand Oaks: SAGE Publications.

Laborde, Cécile. 2017. *Liberalism's Religion*. Cambridge: Harvard University Press.

Lee, Lois. 2015. *Recognizing the Non-Religious: Reimagining the Secular*. Oxford: Oxford University Press.

Lee, Lois. 2014. "Secular or Nonreligious? Investigating and Interpreting Generic 'not Religious' Categories and Populations." *Religion* 44 (3): 466–82.

Leung, Doris. 2007. "Granting death with dignity: patient, family and professional perspectives." *International Journal of Palliative Nursing* 13 (4): 170-174.

Lyon, David, and Marguerite Van Die, eds. 2000. *Rethinking Church, State, and Modernity: Canada between Europe and America*. Toronto: University of Toronto Press.

Mahmood, Saba. 2016. *Religious Difference in a Secular Age: A Minority Report*. Princeton: Princeton University Press.

Manning, Christel J. 2015. *Losing Our Religion: How Unaffiliated Parents Are Raising Their Children*. New York: New York University Press.

Marks, Lynne. 2017. *Infidels and the Damn Churches: Irreligion and Religion in Settler British Columbia.* Vancouver: UBC Press.

Martin, David. 2000. "Canada in Comparative Perspective." In *Rethinking Church, State, and Modernity,* edited by David Lyon and Marguerite Van Die, 23-33. Toronto: University of Toronto Press.

Martin, David. 2005. *On Secularization: Towards a Revised General Theory.* London: Routledge.

Martin, David. 1978. *A General Theory of Secularization*. Oxford: Blackwell.

Marx, Karl, and Frederick Engels. 1975. *Collected Works: Volume 3, Marx and Engels, 1843-1844*. Moscow: Progress Publishers.

Mayrl, Damon. 2018. "The Judicialization of Religious Freedom: An Institutionalist Approach." *Journal for the Scientific Study of Religion* 57 (3): 514-530.

McAdam, Marika. 2018. *Freedom from Religion and Human Rights Law: Strengthening the Right to Freedom of Religion and Belief for Non-Religious and Atheist Rights-Holders*. London: Routledge.

McGuire, Meredith. 2008. *Lived Religion: Faith and Practice in Everyday Life*. New York: Oxford University Press.

Mehta, Jal, and Christopher Winship. 2010. "Moral Power." In *Handbook of the Sociology of Morality*, edited by Steven Hitlin and Stephen Vaisey, 425-438. New York: Springer.

Miriam, Kathy. 2005. "Stopping the Traffic in Women: Power, Agency and Abolition in Feminist Debates over Sex-Trafficking." *Journal of Social Philosophy* 36 (1): 1-17.

Moka-Mubelo, Willy. 2017. *Reconciling Law and Morality in Human Rights Discourse: Beyond the Habermasian Account of Human Rights.* Cham: Springer.

Moon, Richard, ed. 2008. *Law and Religious Pluralism in Canada*. Vancouver: University of British Columbia Press.

Moyn, Samuel. 2015. *Christian Human Rights.* Philadelphia: University of Pennsylvania Press.

Mullan, David J. 2001. *Administrative Law.* Toronto: Irwin Law Inc.

Nascimento, Amos, and Matthias Lutz-Bachmann, eds. 2018. *Human Dignity: Perspectives from a Critical Theory of Human Rights.* London: Routledge.

Nelson, Chad, and Robert H. Woods, Jr. 2011. "Content Analysis." In *The Routledge Handbook of Research Methods in the Study of Religion,* edited by Michael Stausberg and Steven Engler, 109-121. London: Routledge.

Nixon, Alan G. 2020. "'Non-Religion' as Part of the 'Religion' Category in International Human Rights." *Religions 11 (2)*, 79. https://doi.org/10.3390/rel11020079.

Nixon, Alan Gilbert. 2018. "The Case of Non-religious Asylum Seekers." *Journal for the Academic Study of Religion* 31 (2): 113–148.

Nordenfelt, Lennart. 2004. "The Varieties of Dignity." *Health Care Analysis* 12 (2): 69-81.

Office for National Statistics. 2022. "Religion, England and Wales: Census 2021." https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/bulletins/religionenglandandwales/census2021.

Office of the High Commissioner. 2023. "Status of Ratification Interactive Dashboard." *United Nations*. https://indicators.ohchr.org/.

Ontario Human Rights Commission. 2013a. "Teaching human rights in Ontario - A guide for Ontario schools." https://www.ohrc.on.ca/en/teaching-human-rights-ontario-guide-ontario-schools.

Ontario Human Rights Commission. 2013b. *Human Rights and Creed Research and Consultation Report*. http://www.ohrc.on.ca/sites/default/files/consultation%20report_creed%20human%20rights%20research%20and%20consultation%20report.pdf.

Orsi, Robert A. 2003. "Is the Study of Lived Religion Irrelevant to the World We Live in? Special Presidential Plenary Address, Society for the Scientific Study of Religion, Salt Lake City, November 2, 2002." *Journal for the Scientific Study of Religion* 42 (2): 169-174.

Orsi, Robert Anthony. 2002. *The Madonna of 115th Street: Faith and Community in Italian Harlem, 1880-1950.* New Haven: Yale University Press.

O'Toole, Roger. 2000. "Canadian Religion: Heritage and Project." In *Rethinking Church, State, and Modernity: Canada between Europe and America*, edited by David Lyon and Marguerite Van Die, 34-51. Toronto: University of Toronto Press.

Parliament of Australia. N.d. "Commonwealth of Australia Constitution Act." https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution/preamble#covering_clauses-proclamation_of_commonwealth.

Patel, Dipti. 2005. "The Religious Foundations of Human Rights: A Perspective from the Judeo-Christian Tradition and Hinduism." https://www.nottingham.ac.uk/hrlc/documents/publications/hrlcommentary2005/religiousfoundationshumanrights.pdf.

Payne, Alan. 2013. "Redefining 'Atheism' in America: What the United States Could Learn from Europe's Protection of Atheists." *Emory International Law Review* 27 (1): 661-[v].

Pew Research Center. 2015. "America's Changing Religious Landscape." *Pew Research Center*. May 12, 2015. http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

Pew Research Center. 2013. "Canada's Changing Religious Landscape." *Pew Research Center*. June 27, 2013. http://www.pewforum.org/2013/06/27/canadas-changing-religious-landscape/.

Phillips, Nelson, and Cynthia Hardy. 2002. *Discourse Analysis: Investigating Processes of Social Construction.* Thousand Oaks: Sage Publications Inc.

Powell, Christopher. 2010. "Four Concepts of Morality: Differing Epistemic Strategies in the Classical Tradition." In *Handbook of the Sociology of Morality*, edited by Steven Hitlin and Stephen Vaisey, 35-56. New York: Springer.

Quack, Johannes. 2014. "Outline of a Relational Approach to 'Nonreligion.'" *Method & Theory in the Study of Religion* 26 (4-5): 439–469.

Quack, Johannes, and Cora Schuh, eds. 2017. *Religious Indifference: New Perspectives from Studies on Secularization and Nonreligion*. Cham: Springer.

Quack, Johannes, Cora Schuh, and Susanne Kind. 2020. *The Diversity of Nonreligion: Normativities and Contested Relations*. Oxon: Routledge.

Quataert, Jean H., and Lora Wildenthal, eds. 2020a. *The Routledge History of Human Rights.* London: Routledge.

Quataert, Jean H., and Lora Wildenthal. 2020b. "Introduction: an open-ended and contingent history of human rights." In *The Routledge History of Human Rights,* edited by Jean H. Quataert and Lora Wildenthal, 1-17. London: Routledge.

Quillen, Ethan G. 2018. *Atheist Exceptionalism: Atheism, Religion, and the United States Supreme Court.* London: Routledge.

Research Co. 2021. "Canada's Moral Compass Relatively Unchanged Since 2020." *Research Co,* April 30, 2021. https://researchco.ca/wp-content/uploads/2021/04/Release_Morals_CAN_30Apr2021.pdf.

Richardson, James T. 2015. "Managing Religion and the Judicialization of Religious Freedom." *Journal for the Scientific Study of Religion* 54 (1): 1-19.

Richardson, James T., and François Bélanger, eds. 2014. *Legal Cases, New Religious Movements, and Minority Faiths*. Farnham: Ashgate.

Rosen, Michael. 2012. *Dignity: Its History and Meaning.* Cambridge: Harvard University Press.

Russell, Peter H. 1983. "The Political Purposes of the Canadian Charter of Rights and Freedoms." *Canadian Bar Review* 61 (1): 30-54.

Ryder, Bruce. 2008. "The Canadian Conception of Equal Religious Citizenship." In *Law and Religious Pluralism in Canada,* edited by Richard Moon, 87-109. Vancouver: UBC Press.

Ryder, Bruce. 2005. "State Neutrality and Freedom of Conscience and Religion." In *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference*, 29:10.

Salonen, Anna Sofia. 2018. "Living and Dealing with Food in an Affluent Society—A Case for the Study of Lived (Non)Religion." *Religions* 2018 (9): 1-15.

Sandberg, Russell. 2014. *Religion, Law and Society. Cambridge*: Cambridge University Press.

Schmidt, Leigh Eric. 2016. *Village Atheists: How America's Unbelievers Made Their Way in a Godly Nation*. Princeton: Princeton University Press.

Schnell, Tatjana, and William J. F. Keenan. 2011. "Meaning-Making in an Atheist World." *Archive for the Psychology of Religion* 33 (1): 55-78.

Schuh, Cora, Marian Burchardt, and Monika Wohlrab-Sahr. 2012. "Contested Secularities: Religious Minorities and Secular Progressivism in the Netherlands." *Journal of Religion in Europe* 5 (3): 349–383.

Seljak, David. 2012. "Protecting religious freedom in a multicultural Canada." *Canadian Diversity* 9 (3): 8-11. http://www.ohrc.on.ca/en/creed-freedom-religion-and-human-rights-special-issue-diversity-magazine-volume-93-summer-2012/protecting-religious-freedom-multicultural-canada.

Shah, Timothy Samuel, and Allen D. Hertzke, eds. 2016. *Christianity and Freedom: Historical Perspectives, Volume 1*. Cambridge: Cambridge University Press.

Shultziner, Doron. 2003. "Human Dignity – Functions and Meanings." *Global Jurist Topics* 3 (3): 1-21.

Simmons, Frederick V. 2016. "Introduction: A Conjunctive Approach to Christian Love." In *Love and Christian Ethics: Tradition, Theory, and Society* edited by Frederick V. Simmons and Brian C. Sorrells, 1-15. Washington: Georgetown University Press.

Smart, Carol. 2009. "Shifting horizons: Reflections on qualitative methods." *Feminist Theory* 10 (3): 295-308.

Smart, Carol. 1989. *Feminism and the Power of Law.* London: Routledge.

Smart, Ninian. 1998. *The World's Religions. Second Edition*. Cambridge: Cambridge University Press.

Smith, Christian. 2010. *What is a Person? Rethinking Humanity, Social Life, and the Moral Good from the Person Up*. Chicago: The University of Chicago Press.

Smith, Jesse M. 2017. "Can the Secular Be the Object of Belief and Belonging? The Sunday Assembly." *Qualitative Sociology* 40 (1): 83-109.

Smith, Jesse M., and Caitlin L. Halligan. 2021. "Making Meaning without a Maker: Secular Consciousness through Narrative and Cultural Practice." *Sociology of Religion* 82 (1): 85-110.

Smith, Jesse M., and Ryan T. Cragun. 2019. "Mapping Religion's Other: A Review of the Study of Nonreligion and Secularity." *Journal for the Scientific Study of Religion* 58 (2): 319-335.

Smith, Jonathan Z. 1998. "Religion, Religions, Religious." In *Critical Terms for Religious Studies,* edited by Mark C. Taylor, 269-284. Chicago: The University of Chicago Press.

Smith, Jonathan Z. 1982. *Imagining Religion: From Babylon to Jonestown*. Chicago: University of Chicago Press.

Spickard, James V. 2017. *Alternative Sociologies of Religion: Through Non-Western Eyes*. New York: New York University Press.

Stacey, Timothy. 2021. "Reweaving Spheres: Towards an Ultimate Meaning of Practice." In *Nonreligious Imaginaries of World Repairing*, edited by Lori G. Beaman and Timothy Stacey, 89-101. Cham: Palgrave Macmillan.

Stammers, Neil. 1999. "Social Movements and the Social Construction of Human Rights." *Human Rights Quarterly* 21 (4): 980-1008.

Stark, Rodney, and William Sims Bainbridge. 1987. *A Theory of Religion*. New York: Peter Lang.

Stark, Rodney, and William Sims Bainbridge. 1985. *The Future of Religion: Secularization, Revival, and Cult Formation*. Berkeley: University of California Press.

Statistics Canada. 2023. "Census Profile, 2021 Census of Population: Profile table." https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/prof/details/page.cfm?Lang=E&DGUIDList=2021A000011124&GENDERList=1,2,3&STATISTICList=1&HEADERList=0&SearchText=Canada.

Statistics Canada. 2022. "The Canadian census: A rich portrait of the country's religious and ethnocultural diversity." https://www150.statcan.gc.ca/n1/daily-quotidien/221026/dq221026b-eng.htm.

Statistics Canada. 2016. "Two-thirds of the population declare Christian as their religion." https://www150.statcan.gc.ca/n1/pub/91-003-x/2014001/section03/33-eng.htm.

Statistics Canada. 2003. "2001 Census: Analysis series, Religions in Canada." https://publications.gc.ca/Collection/Statcan/96F0030X/96F0030XIE2001015.pdf.

Statistics Canada. 1983. *1981 Census of Canada: Population, Religion.*

Stausberg Michael and Steven Engler. 2011. "Introduction: Research methods in the study of religion\s." In *The Routledge Handbook of Research Methods in the Study of Religion*, edited by Michael Stausberg and Steven Engler, 3-20. London: Routledge.

Steele, Connor. 2020. "Shameful Subjects, Queer Passions, and Law's Stained-Glass Closet: A Feminist Critique of Kantian Discourse Concerning TWU's Law Degree." Doctorate in Philosophy in Religious Studies thesis. University of Ottawa, Ottawa, Canada.

Steele, Cory. 2020. "Nonreligion as a Substantial Category in Canadian Law: *Canada (Attorney General) v. Bedford.*" *Implicit Religion* 23 (1): 26-50.

Steele, Cory. 2018. "*Carter v. Canada*: Nonreligion in the Context of Physician-Assisted Dying." Master's in arts in Religious Studies thesis. University of Ottawa, Ottawa, Canada.

Stets, Jan E. 2010. "The Social Psychology of the Moral Identity." In *Handbook of the Sociology of Morality*, edited by Steven Hitlin and Stephen Vaisey, 385-409. New York: Springer.

Street, Annette F., and David W. Kissane. 2001. "Constructions Of Dignity In End-of-Life Care." *Journal of Palliative Care* 17 (2): 93-101.

Strumos, Lauren. 2022. "Ethical veganism as nonreligion in *Mr J Casamitjana Costa v the League Against Cruel Sports*." *Studies in Religion* 51 (3): 295-313.

Stueck, Wendy, and Sunny Dhillon. 2018. "B.C.'s Trinity Western University drops mandatory covenant forbidding sex outside heterosexual marriage." *The Globe and Mail,* August 14, 2018. https://www.theglobeandmail.com/canada/british-columbia/article-bcs-trinity-western-university-drops-mandatory-covenant-forbidding/.

Sullivan, Winnifred Fallers. 2005. *The Impossibility of Religious Freedom.* Princeton: Princeton University Press.

Sullivan, Winnifred Fallers. 1994. *Paying the Words Extra: Religious Discourse in the Supreme Court of the United States.* Cambridge: Harvard University.

Taira, Teemu. 2013. "Making space for discursive study in religious studies." *Religion* 43 (1): 26-45.

Tarozzi, Massimiliano. 2020. *What is grounded theory?* London: Bloomsbury Academic.

Taves, Ann. 2009. *Religious Experience Reconsidered: A Building-Block Approach to the Study of Religion and Other Special Things*. Princeton: Princeton University Press.

Taylor, Charles. 2007. *A Secular Age*. Cambridge: Belknap Press of Harvard University Press.

Taylor, Stephanie. 2013. *What is Discourse Analysis.* London: Bloomsbury.

Taylor, Stephanie. 2001. "Locating and Conducting Discourse Analytic Research." In *Discourse as Data: A Guide for Analysis*, edited by Margaret Wetherell, Stephanie Taylor, and Simeon J. Yates, 5-48. London: Sage Publications.

The National Survey of Religious Identification. 1991. "Research Report." The Graduate School and University Center of the City University of New York. http://commons.trincoll.edu/aris/files/2013/11/ARIS-1990-report1.pdf.

Thiessen, Joel. 2015. *The Meaning of Sunday: The Practice of Belief in a Secular Age*. Montreal: McGill-Queen's University Press.

Thiessen, Joel, and Sarah Wilkins-Laflamme. 2020. *None of the Above: Nonreligious Identity in the US and Canada.* New York: New York University Press.

Toolan, Michael. 1997. "What is critical discourse analysis and why are people saying such terrible things about it." *Language and Literature* 6 (2): 83-103.

Trinity Western University. 2023. "About Us." https://www.twu.ca/about.

Trinity Western University. 2019. "Community Covenant Agreement." https://www.twu.ca/sites/default/files/community_covenant_june_25_2019.pdf.

Trzebiatowska, Marta. 2018. "Sovereign of Herself: Women's Narratives of 'Lived Atheism'." *Secularism and Nonreligion* 7 (1). http://doi.org/10.5334/snr.88.

Turner, Shad. 2015. "Saying 'Yes' to Trinity Western University's Law School Says 'No' to Diversity." *Law Matters* 40 (2): 22-24.

Tylor, Edward B. 1871. *Primitive Culture: Researches into the Development of Mythology, Philosophy, Religion, Arts, and Custom*. London: John Murray.

United Nations. 2022a. "Human Rights." https://www.un.org/en/global-issues/human-rights.

United Nations. 2022b. "International Bill of Human Rights: A brief history, and the two International Covenants." https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights.

United Nations. 2022c. "What is the difference between signing, ratification and accession of UN treaties?" https://ask.un.org/faq/14594.

Valentini, Laura. 2017. "Dignity and Human Rights: A Reconceptualisation." *Oxford Journal of Legal Studies* 37 (4): 862-885.

Van Dijk, Teun A. 1995. "Discourse Analysis as Ideology Analysis." In *Language and Peace*, edited by Christina Schäffner and Anita L. Wenden, 17-33. Australia: Harwood Academic Publishers.

Vernon, Glenn M. 1968. "The Religious 'Nones': A Neglected Category." *Journal for the Scientific Study of Religion* 7 (2): 219-229.

Vertovec, Steven. 2007. “Super-diversity and its implications.” *Ethnic and Racial Studies* 30 (6): 1024-1054.

Voas, David, and Siobhan McAndrew. 2012. “Three Puzzles of Non-religion in Britain.” *Journal of Contemporary Religion* 27 (1): 29-48.

Von Stuckrad, Kocku. 2013. “Discursive Study of Religion: Approaches, Definitions, Implications.” *Method and Theory in the Study of Religion* 25 (2013): 5-25.

Wallis, Simeon. 2014. “Ticking ‘no Religion’: A Case Study amongst ‘young Nones.’” *DISKUS* 16 (2): 70-87.

Weaver, Darlene Fozard. 2011. *The Acting Person and Christian Moral Life*. Washington: Georgetown University Press.

Weber, Max. 1965. *The Sociology of Religion.* London: Methuen & Co Ltd.

Wetherell, Margaret. 2001. “Debates in Discourse Research.” In *Discourse Theory and Practice: A Reader*, edited by Margaret Wetherell, Stephanie Taylor, and Simeon J Yates, 380–400. London: SAGE.

Wexler, Jay. 2019. *Our Non-Christian Nation: How Atheists, Satanists, Pagans, and Others Are Demanding Their Rightful Place in Public Life*. Stanford: Stanford University Press.

Wilkins-Laflamme, Sarah. 2022. “And then there were none: Regional dynamics of non-religious identities, beliefs and practices among Canadian millennials.” *Studies in Religion,* online first: 1-23. https://doi.org/10.1177/00084298221102926.

Wilkins-Laflamme, Sarah. 2014. “Toward Religious Polarization? Time Effects on Religious Commitment in U.S., UK, and Canadian Regions.” *Sociology of Religion* 75 (2): 284-308.

Williams, Rhys H. 2015. “Religion and Multiculturalism: A Web of Legal, Institutional, and Cultural Connections.” *Sociological Quarterly* 56 (4): 607-622.

Wilson, Bryan. 1998. “The secularization thesis: criticisms and rebuttals.” In R. Laermans, B. Wilson and Billiet (eds), *Secularization and Social Integration: Papers in Honour of Karel Dobbelaere*, 45-66. Leuven: Leuven University Press.

Witte, John, Jr. 2015. “Law and religion in the Western legal tradition.” In *Routledge Handbook of Law and Religion,* edited by Silvio Ferrari, 29-42. London: Routledge.

Wodak, Ruth. 2001. “What CDA is about – a summary of its history, important concepts and its developments.” In Methods of Critical Discourse Analysis, edited by Ruth Wodak and Michael Meyer, 1-13. London: SAGE Publications.

Woodhead, Linda. 2017. “The rise of ‘No Religion’: Towards an Explanation.” *Sociology of Religion* 78 (3): 247-262.

Woodhead, Linda. 2016. “The Rise of ‘No Religion’ in Britain: The Emergence of a New Cultural Majority.” *Journal of the British Academy* 4: 245–261.

Woodhead, Linda. 2011. “Five Concepts of Religion.” *International Review of Sociology* 21 (1): 121-143.

Yacoub, Amin R. 2019. “Consensual sex work: An overview of sex-workers' human dignity in law, philosophy, and Abrahamic religions.” *Women’s Studies International Forum* 76 (2019): 1-17.

Zubrzycki, G. 2012. “Religion, religious tradition, and nationalism: Jewish revival in Poland and ‘religious heritage’ in Québec.” *Journal for the Scientific Study of Religion* 51 (3): 442–455.

Zuckerman, Phil. 2012. *Faith No More: Why People Reject Religion*. New York: Oxford University Press.

Zuckerman, Phil. 2008. *Society Without God: What the Least Religious Nations Can Tell Us about Contentment*. New York: New York University Press.

Zuckerman, Phil, Luke W. Galen, and Frank L. Pasquale. 2016. *The Nonreligious: Understanding Secular People and Societies*. New York: Oxford University Press.

Zwilling, Anne-Laure, and Helge Årsheim. 2022. *Nonreligion in Late Modern Societies: Institutional and Legal Perspectives.* Cham: Springer.