

Religious Legitimacy

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TABLE OF CONTENTS

Table of Contents 2

I. Abstract..... 3

II. Acknowledgments 5

III. Contribution of Authors 8

IV. Introduction..... 9

V. Body and Discussion..... 14

 1. Legal Consequences of the Attribution of Religious Status 14

 2. The Role of Experts 23

 3. Scholars as Experts 31

 4. Scientology: Fighting for Survival in the 1980s 37

 5. Scientology: Facing Modern-Day Challenges to Legitimacy 58

VI. Conclusion 76

VII. Bibliography 86

I. ABSTRACT

This thesis seeks to demonstrate both the importance of expertise and scholarship in framing a religion's claim of legitimacy in law, and how expertise can be harnessed by a religious group to gain this legitimacy. From a broad overview of the consequences of religious status in law, the thesis analyses the tests used to attribute the status, to show the crucial role that their application affords to experts and scholarship. It then argues that new religious movements, and Scientology, are ideal case studies to illustrate the importance of scholars and scholarship. Scientology is indeed the only major religion to have emerged in the twentieth century and is unique in that it has, over this period, gained, lost, re-gained, and grappled with ongoing challenges to its status in law. The thesis then illustrates these issues with an analysis of two key periods from Scientology's history: its ultimately successful fight to gain tax-exempt status in the United States in the 1980s, and its response to modern-day challenges to this status. Both periods illustrate, in different ways, how Scientology has recognised the power of expertise and scholarship, and sought to harness it to frame its claim of legitimacy in law.

La présente thèse vise à démontrer l'importance de l'expertise et de la recherche dans l'articulation de la prétention de légitimité juridique d'une religion, de même que les méthodes qu'un groupe religieux peut utiliser pour exploiter la recherche afin de gagner cette légitimité. Effectuant d'abord un tour d'horizon des conséquences du statut juridique de religion, la thèse analyse les tests utilisés pour attribuer ce statut, afin de démontrer l'importance que leur application accorde aux experts et à la recherche. Elle affirme ensuite que les nouveaux mouvements religieux, et la Scientologie, sont des études de cas idéales pour démontrer

l'importance des experts et de la recherche. La Scientologie est effectivement la seule religion notable à s'être développée au cours du vingtième siècle. Elle est unique en ce qu'elle a, durant cette période, obtenu, perdu, réobtenu et fait face à des contestations continues de son statut juridique. Cette thèse illustre ensuite ces enjeux à l'aide de deux périodes importantes de l'histoire de la Scientologie : sa bataille éventuellement victorieuse dans le but d'obtenir son exonération fiscale aux États-Unis dans les années 1980, et sa réponse aux contestations contemporaines de la légitimité de cette exonération. Les deux périodes illustrent, différemment, le fait que la Scientologie a reconnu le pouvoir de l'expertise et de la recherche, de même que les méthodes qu'elle a utilisées pour en tirer profit dans l'articulation de sa prétention de légitimité juridique.

II. ACKNOWLEDGMENTS

I am, first and foremost, grateful to the professors of the Faculty of Law, who, through their direct and thoughtful comments, generous mentorship, and passion for the law sparked my own interest in becoming a teacher and scholar of the law. I have had the privilege to call Chancellor Day Hall home for five years, but the feeling of awe has yet to fade. I am also grateful to the administrative and custodial staff of the Faculty. They perform their duties with passion and assiduity, and allow us to focus on what we do best. They are, in many respects, the unsung heroes of our community.

From my first experience writing an objectively awful piece of scholarship five years ago, this has been and remains an exciting, challenging, and transformative journey. I hated writing my first “term paper” (a 10,000-word mandatory essay) while in law school, and I naively thought I could publish it. The comments I received, however, challenged me. While my grades in law school had been good, it seemed my scholarly output was significantly subpar. I felt the challenge to get better and wrote four more papers – on topics which I found of much greater interest.

Teaching first-year law students at McGill was also a highlight of my experience as a law student. It confirmed my strong interest in teaching as a career.

My research would have remained objectively bad, and I would have given up on my hope of becoming a law professor were it not for the underserved generosity of countless members of the Faculty, who read, supervised, and criticised my work and shared with me what they love about the law and their career. To name but a few and in no particular order, I am grateful to Dean Robert Leckey, former Dean Daniel Jutras, and Professors Omar Farahat, Kun Fan, Mark Antaki, Kirsten Anker, and Daniel Weinstock.

I am especially grateful to my supervisor, Professor Shauna Van Praagh. Her support, insight, and mentorship have been and, I am sure, will remain invaluable. I have long been a fan of Professor Van Praagh's work, and working with her has been a true privilege. Her intellect, humility, passion, and dedication are a great source of inspiration.

Beyond the Faculty, I am grateful to Prof. Stephen Kent of the University of Alberta (Steve), a pioneer of my research field, who reached out to me with encouraging words and, again, wholly undeserved generosity. He helped introduce me to a community of people just as peculiar as I am. Finding people with the same passion for research and new religious movements has given and continues to give me purpose and great encouragement.

I also gratefully acknowledge financial support from Canada's Social Sciences and Humanities Research Council (SSHRC). Its generous financial support helped make this research possible. I am a product of Canada's (and Quebec's) public colleges and universities. The generous grant I received from the SSHRC makes me further indebted to my country.

I am, finally, grateful to those who have been by my side from the start: mes parents, qui m'ont montré et prouvé que le travail acharné peut nous mener au bout de nos rêves; my fiancé who somehow always has the right words to, in equal measure and sometimes simultaneously, bring me down to Earth and believe in me – giving credence to the claim that she is quite similar to me, just better; and my friends – especially my best friend Olivier Lirette – who have, for years, read and criticised my work. They are my home and own “village,”¹ and I owe them far more than

¹ I am inspired here by the African proverb “It takes a village to raise a child,” which notably refers to the necessary contribution of countless individuals to one's success. The proverb is unattributed, see e.g. Joel Goldberg, “It Takes A Village To Determine The Origins Of An African Proverb”, *NPR* (30 July 2016), online: <www.npr.org/sections/goatsandsoda/2016/07/30/487925796/it-takes-a-village-to-determine-the-origins-of-an-african-proverb> . The proverb inspired the title of a book by Hillary Rodham Clinton, see *It Takes a Village: And Other Lessons Children Teach Us* (New York: Simon & Schuster, 1996).

I can ever repay. They have, like so many mentors and teachers who crossed my path, given me the greatest gift in the world: that of seeing in me what I had yet to see in myself.

Our destinies are, I believe, the result of a spark. It is the spark that I have seen in the eyes of the professors who shared with me their love of the law and that which now lives in my own eyes. This spark is precious beyond measure, and I fully owe it to my very own village.

III. CONTRIBUTION OF AUTHORS

I am the sole author of all sections of this thesis.

IV. INTRODUCTION

This thesis analyses how religious groups can harness the power of expertise to earn and keep their legitimacy in law. It notes that the law leaves much room to experts (and scholarship) in determining whether a group is a religion. This is especially true for new religious movements, which are seeking religious status for the first time. The dialogue which occurs through scholarship affects both the attribution of legal status and the perception of legitimacy of a religious group. The thesis focusses on Scientology, a recently founded religious organisation which has progressively gained legal recognition as a religion across the world. From its founding, Scientology has sought to establish and defend its legitimacy and move away from its labelling as a cult.

I begin, in the first section, with an overview of the legal consequences of the attribution of religious status. This preliminary picture shows the singular importance of religious legal status in ensuring the survival of a religious group. The section uses Scientology's history, chiefly in the United States, as a case study to illustrate the issues it raises.

The second section introduces the main argument of this thesis. It analyses how religious status is attributed in Canada and the United States. The section focusses on the subjectivity of the tests which are used to attribute religious status, noting that these tests greatly defer to experts.

The third section analyses the role of scholars as experts who intervene in the debate which leads to the attribution of religious status. It argues that, in the attribution of religious status, the experts are most often scholars.

The fourth section preliminarily argues that new religious movements are uniquely appealing case studies to particularise and demonstrate the issues laid out in the previous sections.

When a group is seeking to gain religious status for the first time, and has little else to prove its legitimacy, experts play a particularly significant role. Of new religious movements, Scientology is, because of its unique attributes, the most appealing case study. Scientology is indeed the only major religion to have emerged as part of the mainstream, especially in North America, during the twentieth century. (As is further discussed below, it is currently recognised as a religion in most countries of the world.) Furthermore, Scientology has gained, lost, regained, and grappled with ongoing challenges to its status as a religion.

Then, the fourth and fifth sections particularise the issues raised in the previous ones by focusing on two key periods in the history and development of Scientology as an organisation: Scientology's fight to regain tax-exempt status in the 1980s and its modern-day response to ongoing and intensifying attacks to its legitimacy as a religion (and tax-exempt status). These periods illustrate, in different ways, both the importance of scholars and scholarship in gaining and maintaining status as a religion, and how they can be harnessed by a religious group.

This latter part of the thesis is illustrative. It demonstrates that religious organisations such as Scientology are aware of the importance of legal status, and willing to do a great deal to earn and keep it. For Scientology, this meant recognising and harnessing the power of external, scholarly expertise: at first by attacking scholars it disagreed with and promoting favourable expert opinions, and subsequently by attempting to ground its claims of (legal) legitimacy in a broader body of scholarship.

Scientology's history, and strategies to earn and keep its status in law, illustrate the complex ways in which religious and secular legal systems co-exist and interact. Scientology's determination to gain and defend its status is a recognition of the singular importance that legal status plays in ensuring its survival. The constitutional protections and tax exemptions which the

law attributes allow religious organisations to exist with limited, yet significant, independence from the mainstream legal system. This independence is not inherent to a religious organisation's existence. Instead, it is attributed by the mainstream legal system. To benefit from it, religious organisations must engage with the mainstream legal system – thereby tacitly recognising its primacy. They must fit the categories and labels provided for in secular law, and this thesis illustrates how Scientology has done so. The primacy of the mainstream legal system therefore simultaneously grounds and limits the independence of religious organisations.

As I am undoubtedly a quite prolific self-citer, the notes to this thesis bear the footprints of my prior work. My odd fascination with Scientology has led me to interesting and diverse destinations. It also saw, and made, me grow as a scholar. My initial fascination was with the unusually complex and quite sophisticated legal system set out in Scientology scripture. As further discussed below, Scientology founder L. Ron Hubbard dreamt of establishing his own place in history and as a part of the mainstream. Likely as a result of his run-ins with and rebukes by the medical community and the mainstream legal system, Hubbard eventually developed distrust and hatred for the mainstream legal system. He developed a proportional vision for an organisation that could exist independently and replace the mainstream legal system with its own. In what is perhaps his most famous internal document, *Keeping Scientology Working*, Hubbard states:

We will not speculate here on why this was so or how I came to rise above the bank. We are dealing only in facts and the above is a fact—the group left to its own devices would not have evolved Scientology but with wild dramatizations of the bank called “new ideas” would have wiped it out. Supporting this is the fact that man has never before evolved workable mental technology and emphasizing it is the vicious technology he *did* evolve — psychiatry, psychology, surgery, shock treatment, whips, duress, punishment, etc., ad infinitum.

So realize that we have climbed out of the mud by whatever good luck and good sense, and refuse to sink back into it again.²

² Hubbard Communications Office Policy Letter, 7 February 1965 [emphasis in original].

It is unsurprising to see a religious founder state that his writings – or “technology” – constitute the only solution to mankind’s problems. What I found more surprising was how Hubbard's vision of primacy also extended to Scientology’s governance – and to the elaborate legal system he devised. In my subsequent articles, I analysed how Scientology has asserted its independence by appropriating legal instruments and labels from the mainstream legal system and by using arbitration clauses and agreements to ensure the primacy of its internal legal system in disputes opposing it to former and current members.

As most religious scholars, then, my body of work illustrates the complexity and breadth of the systems which guide human behaviour, as well as the ways in which the law limits and safeguards the existence and independence of religious legal systems.

This thesis takes a further step back. Once we know how vital legal protection and status are to religious legal systems, it is worth asking how religious organisations earn and keep their status in law. This thesis shows that, at least for Scientology, the answer lies in external, scholarly expertise. Scientology has indeed shown keen awareness that experts can play a key role in establishing its status in law, and that its status in law was and remains crucial to its survival and broader claim of legitimacy.

This thesis therefore illustrates not only that scholarly expertise plays a key role in establishing a religious organisation’s legal status, but also that religious organisations which recognise its vital importance can seek to harness, amplify, and diminish the contributions of individual scholars and the influence of broader bodies of scholarship. This aspect of a religious organisation’s engagement with the mainstream legal system is significant not only because it, at least in part, leads to the attribution of the all-important independence which the mainstream legal

system affords religious organisations, but also because it defines, though in a different locus, how the state and religious organisations interact.

V. BODY AND DISCUSSION

1. LEGAL CONSEQUENCES OF THE ATTRIBUTION OF RELIGIOUS STATUS

Before considering how an organisation is labelled a religion, it is worth considering *why* an organisation would want to deserve this label. Religious organisations benefit from unique privileges, mainly as a result of constitutional protections of religious freedom. In most developed countries, religious organisations need to establish their legitimacy in law to benefit from the most significant such legal privileges.

While the consequences are mainly legal ones, they can have much broader impacts on an organisation. In North America, the main consequences are (1) a different characterisation and protection under labour laws, (2) constitutional protections, and (3) tax-exempt status.³ First, religious organisations generally do not need to respect labour laws. Members working for their religious organisation need not receive the minimum wage or overtime pay, though the organisations do need to respect certain laws, such as those regulating child labour.⁴ Second, religious organisations can benefit from various protections under constitutional statutes.⁵ These wide-ranging protections notably protect individual members practising their religion⁶ and

³ See e.g. Michael Ariens, “Defining ‘Church’ in American Law” in Gerhard Robbers, ed, *Church Autonomy: A Comparative Survey* (Frankfurt: Peter Lang, 2011).

⁴ See generally Phil Lord, “The Eternal Commitment: Scientology’s Billion-Year Contract” (2020) 1 *International Journal of Coercion, Abuse, and Manipulation* __ (forthcoming); Douglas Laycock, “Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy” (1981) 81:7 *Colum L Rev* 1373; Ira C Lupu & Robert W Tuttle, “Courts, Clergy, and Congregations: Disputes between Religious Institutions and Their Leaders Church Autonomy Conference” (2009) 7:1 *Georgetown JL & Public Policy* 119; Michael W McConnell, “The Origins and Historical Understanding of Free Exercise of Religion” (1990) 103:7 *Harv L Rev* 1409 and Jarod S Gonzalez, “At the Intersection of Religious Organization Missions and Employment Laws: The Case of Minister Employment Suits” (2015) 65:2 *Cath U L Rev* 303.

⁵ See US Const amend I (in the United States) and *Canadian Charter of Rights and Freedoms*, s 2(a), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (in Canada).

⁶ See generally Benjamin L Berger, “Law’s Religion: Rendering Culture” (2007) 45:2 *Osgoode Hall LJ* 277.

religious organisations in the internal enforcement of their religious doctrine.⁷ Third, like other charitable organisations, religious organisations can gain tax-exempt status with the relevant tax authorities and become exempt from paying taxes (including property tax, income tax, capital gains tax, and so forth).

In the United States, churches can gain tax-exempt status under s 501(c)(3) of the *Internal Revenue Code*.⁸ To do so, the organisation must file Form 1023 with the Internal Revenue Service (the United States revenue agency).⁹ It is, therefore, a revenue agency which determines whether an organisation can be considered religious for the purposes of federal income tax. Analogous provisions exist to gain the exemption with state and local governments. These exemptions are independent. In Canada, the process is similar. Religious organisations need to incorporate as non-profit organisations (and respect the specific requirements to do so). (In some circumstances, they may be unincorporated.) They are then granted charitable status by the Canada Revenue Agency after completing a form.¹⁰ The word charity is not defined in the *Income Tax Act*.¹¹ Gaining the exemption exempts the organisation from both provincial and federal taxes.

The tests governing tax-exempt status are different from and more stringent than those governing religious status (which, as mentioned above, mainly attribute constitutional protections). This stringency is likely proportional to the significance of the consequences which

⁷ See generally Phil Lord, “Case Comment: *Garcia v Church of Scientology Flag Service Organization*” (2020) 86:2 Arbitration 211.

⁸ 26 USC (1986).

⁹ See “About Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code”, online: *Internal Revenue Service* <www.irs.gov/forms-pubs/about-form-1023> .

¹⁰ See “Apply for registration”, online: *Canada Revenue Agency* <www.canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity/apply.html> and “Submit your application”, online: *Canada Revenue Agency* <www.canada.ca/en/revenue-agency/services/charities-giving/charities/registering-charitable-qualified-donee-status/apply-become-registered-charity/apply/submit-application.html#tps> .

¹¹ RSC 1985, c 1 (5th Supp).

come with tax-exempt status. Indeed, as I will further illustrate below, gaining tax-exempt status has major financial consequences.

For any new religion, gaining tax-exempt status is indeed crucial. As mentioned above, this status exempts the organisation from paying almost all types of taxes. Gaining tax-exempt status also makes donations from individual members deductible from the member's income for income tax purposes.¹² For instance, in Canada, donating to a registered charity allows the member to claim a non-refundable tax credit, generally equivalent to the highest marginal tax rate multiplied by the donation amount.¹³ Needless to say, gaining tax-exempt status can substantially increase the income and assets of a charitable organisation and is key to incentivising donations from members. As is further explained in section 4, below, this thesis elects to focus on new religious movements, which are particularly interesting case studies in approaching the issues it engages with. Indeed, unlike more established religions, new religious movements do not benefit from a large membership or existing role in the public debate and popular culture.

Scientology nicely exemplifies the importance of gaining tax-exempt status, as well as the other benefits which accompany religious status. Before illustrating these benefits, it is worth

¹² See *Internal Revenue Code*, *supra* note 8, s 170 and *Income Tax Act*, *supra* note 8, s 118.1. Analogous provisions exist in Canadian provinces and American states. On the significance of the tax advantages afforded to religions, see also Vern Krishna, *The Fundamentals of Canadian Income Tax* (Toronto: Carswell, 2006) at ch 15, which labels the dual advantage of exemption from income tax and the ability of members to deduct donations from their taxable income a major “double-barreled” subsidy.

¹³ See e.g. “How Do I Calculate My Charitable Tax Credits?”, online: *Canada Revenue Agency* <www.canada.ca/en/revenue-agency/services/charities-giving/giving-charity-information-donors/claiming-charitable-tax-credits/calculate-charitable-tax-credits.html> . Peculiarly, the high rate is only applicable to the amount that exceeds 200 dollars, with the first 200 dollars leading to a lower tax credit. While this discussion is beyond the scope of this thesis, it is hard to think of a public policy reason which could justify disincentivising smaller donations to charitable organisations. On the distinction between a tax credit and a tax deduction, see generally Phil Lord, “Incentivising Employment during the COVID-19 Pandemic” (2020) 8:3 *Theory & Practice Legislation* 355 at 13-14, online: *SSRN* <ssrn.com/abstract=3573176> . Since the article is in press, the pinpoint references are to the SSRN preprint.

tracing, for the reader unfamiliar with Scientology, a brief history of what became the Scientology religion.

Scientology was founded in the early 1950s by science fiction author L. Ron Hubbard.¹⁴ In 1950, Hubbard published a book titled *Dianetics: The Modern Science of Mental Health*.¹⁵ The book was an instant bestseller. It spent weeks on the New York Times Best Seller list, and Hubbard began touring the United States to give conferences on his “discoveries.”¹⁶ The book exposes the main concepts of what would later become Scientology. According to Hubbard, human beings have an analytical mind and a reactive mind. Hubbard paints the latter as a repository of a person’s painful experiences. The reactive mind has perfect recall of these experiences, but its memories cannot be readily accessed. Instead, the reactive mind subconsciously and negatively affects individuals. For instance, a person who has been burnt by fire in her childhood may feel discomfort at the sight of fire. This discomfort would counterproductively prevent the person from using a stove or fireplace. Through a form of counselling called auditing, Hubbard posits that the person can break free from the influence of these past experiences. Essentially, auditing consists of recalling the painful experience several times, until it no longer has an emotional “charge.” Once all of a person’s painful memories have been cleared, the person becomes a “Clear.” Hubbard made many grand claims about his discoveries, stating (among many other claims) that Clears have a higher IQ and do not get sick.

Hubbard initially felt that his “discoveries” had been made in a way that was consistent with the scientific method, and that they would revolutionise psychiatry. The scientific community

¹⁴ See Phil Lord, “Scientology’s Legal System” (2019) 21:1 Marburg J Religion 1 at 2.

¹⁵ revised ed (Los Angeles: Bridge, 2007).

¹⁶ See Jennifer Schuessler, “Inside the List”, *The New York Times* (15 July 2011), online: <www.nytimes.com/2011/07/24/books/review/inside-the-list.html> and Janet Reitman, *Inside Scientology: The Story of America's Most Secretive Religion* (Boston: Houghton Mifflin Harcourt, 2011).

felt otherwise. Hubbard's associates unsuccessfully sought publication for papers relating to Dianetics in the Journal of the American Medical Association and the American Journal of Psychiatry.¹⁷ While Hubbard encountered, as mentioned, much success after the publication of his book, he quickly ran into serious issues. The most significant were his poor managerial skills and the growing discomfort of the medical community with his practices.¹⁸ The foundations Hubbard created to administer auditing eventually became insolvent, and Hubbard was sued for illegal practice of medicine.¹⁹ Ostensibly to save Dianetics (and avoid prosecution for illegal practice of medicine), Hubbard founded Scientology.²⁰

Over Hubbard's life, Scientology grew into a religion. It attracted its fair share of controversy, and Hubbard spent the latter part of his life in hiding from various world governments.²¹ Nonetheless, as will be discussed in the next sections, Scientology has now gained religious status in almost all countries of the world. It attracted attention and members by associating with celebrities, building "Celebrity Centres" to tend to celebrities (in recent days and among others: Tom Cruise, John Travolta, and Kirstie Alley).²² These celebrities have brought attention to Scientology, disseminating it to millions around the world and lending it their

¹⁷ See e.g. Russel Miller, *Bare-Faced Messiah: The True Story of L. Ron Hubbard* (Toronto: Key Porter, 1987) at 151.

¹⁸ See Lord, "Scientology's Legal System", *supra* note 14 at 2.

¹⁹ *Ibid.*

²⁰ Recent scholarship, quite favourable to Scientology, quotes Hubbard as having written at the time:
We don't want a clinic. We want one in operation but not in name. Perhaps we could call it a Spiritual Guidance Center. Think up its name, will you. And we could put in nice desks and our boys in neat blue with diplomas on the walls and 1. knock psychotherapy into history and 2. make enough money to shine up my operating scope and 3. keep the HAS solvent. It is a problem of practical business. I await your reaction on the religion angle. In my opinion, we couldn't get worse public opinion than we have had or have less customers with what we've got to sell (Donald A Westbrook, *Among the Scientologists: History, Theology, and Praxis* (Oxford: Oxford University Press. 2018) at 84).

²¹ See Miller, *supra* note 17 at 314-375 and Jon Atack, *A Piece of Blue Sky: Scientology, Dianetics and L. Ron Hubbard Exposed* (Seacaucus: Lyle Stuart, 1990).

²² See "Ideal Churches of Scientology", online: *Scientology* <www.scientology.org/churches/ideal-orgs/> and Aly Weisman, "19 Famous Church of Scientology Members", *Business Insider* (27 October 2015), online: <www.businessinsider.com/celebrities-scientology-2015-3> .

credibility.²³ The religion has grown to tens of thousands of members.²⁴ Through its association with prominent individuals, Scientology also attracted a great deal of media coverage, cementing its place in popular culture and the mainstream.²⁵ As a result, many Scientology scholars have argued that Scientology stands out as the only religion founded in the twentieth century to become a part of the mainstream.

Scientology nicely exemplifies the benefits of legal status as a religion described in this section: (1) a different characterisation and protection under labour laws, (2) constitutional protections, and (3) tax-exempt status.

First, Scientology has long benefitted from the largely uncompensated work of its clergy members. It has its own body of followers who dedicate themselves to the advancement of the religion: the Sea Organisation (Sea Org). These members live and work communally, receiving less than 50 dollars per week – and often no pay at all.²⁶ They work exceedingly long hours.²⁷ As the number of public (non-clergy) Scientologists has plummeted in recent years, the proportion represented by the approximately 5,000 Sea Org members has increased.²⁸ Today, most believe the Church²⁹ could not survive without this low-cost labour.

²³ See Chong Ju Choi & Ron Berger, “Ethics of Celebrities and Their Increasing Influence in 21st Century Society” (2010) 91 *Journal of Business Ethics* 313 and Stephen A Kent & Susan Raine, eds, *Scientology in Popular Culture: Influences and Struggles for Legitimacy* (Santa Barbara: Praeger, 2017).

²⁴ See Lord, “Scientology’s Legal System”, *supra* note 14 at 3.

²⁵ See generally Kent & Raine, *supra* note 23; James R Lewis, “The Growth of Scientology and the Stark Model of Religious ‘Success’” in James R Lewis, ed, *Scientology* (Oxford: Oxford University Press, 2009); James R Lewis, “Scientology vs. the Media” (2015) 6:1 *Alternative Spirituality and Religion Review* 61 and Carole M Cusak, “Celebrity, the Popular Media, and Scientology: Making Familiar the Unfamiliar” in James R Lewis, ed, *Scientology* (Oxford: Oxford University Press, 2009). Media coverage of Scientology is also addressed in Section 5, below.

²⁶ See Lord, “The Eternal Commitment: Scientology’s Billion-Year Contract”, *supra* note 4 at 8-10. See also Sarah Pulliam Bailey, “How One Woman Climbed Her Way Out of Scientology’s Elite Sea Org”, *The Washington Post* (27 March 2015), online: <www.washingtonpost.com/news/acts-of-faith/wp/2015/03/27/how-one-woman-climbed-her-way-out-of-scientologys-elite-sea-org/> .

²⁷ See Lord, “The Eternal Commitment: Scientology’s Billion-Year Contract”, *supra* note 4 at 8-10.

²⁸ *Ibid.*

²⁹ Throughout, I refer to the Church of Scientology as the “Church.”

Second, as the Church gained legal recognition as a religion in most countries of the world,³⁰ it has benefitted from constitutional protections which have allowed it to manage its internal affairs and regulate the relationship which unites it to its members. Scientology indeed has its own set of rules which it applies through internal arbitration procedures. These arbitration procedures are generally protected from review by secular courts of law.³¹

Third, Scientology's history perfectly exemplifies the importance of tax-exempt status. Near the end of the life of its founder, Scientology began facing significant issues gaining tax-exempt status in the United States. I have previously briefly described these issues as follows:

In the 1980s, several lawsuits were brought in the United States regarding the deductibility of donations to Scientology and its affiliated organisations. The issue was that Scientology, unlike most religions, charges fixed prices for specific services, instead of just soliciting voluntary, variable donations from its members. Relevant guidance from the Internal Revenue Service (the United States revenue agency) held that these *quid pro quo* payments were purchases and sales of services, not deductible charitable donations. Several appeals of court decisions on the matter eventually reached the Supreme Court of the United States through the case of *Hernandez v Commissioner*, 490 US 680 (1989).³²

The Supreme Court confirmed the determination made by the IRS, dismissing Scientology's challenge. However, Scientology subsequently reached a settlement with the Agency, which granted Scientology and all of its affiliated and outreach organisations tax-exempt status. (The Court's ruling technically stands to this day, which would make it hard for Scientology to contest an eventual rescission of its tax-exempt status.) Although the settlement terms were initially

³⁰ This point is further discussed below.

³¹ See generally Lord, "Scientology's Legal System", *supra* note 14 and Lord, "Case Comment: *Garcia v Church of Scientology Flag Service Organization*", *supra* note 7.

³² See Lord, "Case Comment: *Garcia v Church of Scientology Flag Service Organization*", *supra* note 7 [references omitted].

confidential, significant pressure from media organisations led to the disclosure of the settlement agreement.³³

At the time, gaining tax exemption was quite literally a life-or-death issue for Scientology. Scientology executives had decided to stop paying taxes years before, and the organisation's tax liability exceeded its total assets. Paying back taxes would have bankrupted Scientology.³⁴ Even today, Scientology's financial survival, like other religions', ostensibly depends on its ongoing exemption from various taxation laws.

It is worth mentioning in passing that, while much has been made in the media of Scientology's successful fight to gain tax-exempt status in the 1980s, it was actually *regaining* tax-exempt status. Early churches had been granted tax-exempt status after the religion's founding in the late 1950s. However, the status was revoked after the IRS (and, upon appeal of the decision, a court) found that Hubbard was personally benefiting from church income and assets.³⁵ The latter point is further addressed later in this thesis.

Scientology's legal recognition in Canada is more limited. In Canada, most Scientology organisations do not currently have full tax-exempt status. Scientology seems to be constitutionally recognised as a religion. For taxation purposes, it is generally exempt in the provinces where it has churches.³⁶ However, donations are not deductible from a member's income for income taxation purposes.³⁷ It is likely that Scientology would meet the relevant tests. Nonetheless, it seems to have

³³ The agreement is archived here: "Closing Agreement on Final Determination Covering Specific Matters", online: <www.cs.cmu.edu/~dst/Cowen/essays/agreemnt.html#In%20General> .

³⁴ Scientology had assets of approximately \$300 million and unpaid taxes of up to \$1 billion (Elizabeth MacDonald, "Scientologists and IRS settled for \$12.5 million", *The Wall Street Journal* (30 December 1997)).

³⁵ See e.g. Hugh B Urban, *New Age, Neopagan, and New Religious Movements: Alternative Spirituality in Contemporary America* (Oakland: University of California Press, 2015) at 149-150.

³⁶ See generally "The Scientology Religion in Canada", online: *Scientology* <www.scientologyreligion.org/religious-recognitions/canada.html> .

³⁷ See generally *Hall v The Queen*, 2013 TCC 314.

essentially given up on obtaining full tax-exempt status, likely as a result of its limited membership and asset base and poor public perception in Canada. (Scientology has under 3,000 members in Canada).³⁸ Scientology is negatively perceived as result of two significant precedents which affected its credibility. In *R v Church of Scientology of Toronto*,³⁹ Scientologists were convicted of having infiltrated the Canadian government during Scientology's campaign to gain tax-exempt status in the United States. The Church itself was also convicted and had to pay a significant fine. In *Hill v Church of Scientology of Toronto*,⁴⁰ the Church had to pay the largest libel award in Canadian history for having defamed a Crown attorney who was in charge of proceedings against the Church. The case has become a key one in the law of libel in Canada.

This section has provided a broad description of the benefits which attach to religious status. It has illustrated these benefits with examples from Scientology's history. The next section analyses the tests which serve to attribute religious status. It focusses on how the application of these tests defers to experts.

³⁸ See Rachel Browne, "What 'Going Clear' means for the decline of Scientology", *MacLean's* (8 May 2015), online: <www.macleans.ca/society/what-going-clear-means-for-the-decline-of-scientology/#:~:text=But%20with%20only%20seven%20churches,down%20from%2045%2C000%20in%201990>

³⁹ [1997] OJ No 1548 (CA).

⁴⁰ [1995] 2 SCR 1130.

2. THE ROLE OF EXPERTS

I emphasised in the previous section the consequences of religious status in law: (1) a different characterisation and protection under labour laws, (2) constitutional protections, and (3) tax-exempt status. In the United States, there is no clear-cut definition or test governing what constitutes a religion for constitutional purposes. The same is true in Canada. In *Syndicat Northcrest v Amselem*, the Supreme Court of Canada stated:

While it is perhaps not possible to define religion precisely, some outer definition is useful since only beliefs, convictions and practices rooted in religion, as opposed to those that are secular, socially based or conscientiously held, are protected by the guarantee of freedom of religion. Defined broadly, religion typically involves a particular and comprehensive system of faith and worship. Religion also tends to involve the belief in a divine, superhuman or controlling power. In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.⁴¹

Similarly, for taxation purposes in the United States, while certain characteristics have been defined by courts and the Internal Revenue Service, the agency uses “a combination of these characteristics, together with other facts and circumstances, to determine whether an organization is considered a church for federal tax purposes.”⁴² To obtain tax-exempt status in Canada, in addition to meeting the criteria for charitable organisations, religious organisations must be constituted for a purpose that advances religion, which the Canada Revenue Agency defines as follows: “Advancing religion in the charitable sense means manifesting, promoting, sustaining, or increasing belief in a religion's three key attributes, which are: faith in a higher unseen power such

⁴¹ 2004 SCC 47 at 39. Subsequent precedent have, however, confirmed that non-believers can be protected under the constitution, see *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 at para 70.

⁴² 501(c)(3): *Tax Guide for Churches and Religious Organizations*, Publication 1828 (Washington).

as a God, Supreme Being, or Entity; worship or reverence; and a particular and comprehensive system of doctrines and observances.”⁴³ The applicable tests to obtain tax-exempt status are different and more stringent. As is further discussed below, an organisation, such as a new religious movement with inadequate financial practices, could be recognised as a religion for the purposes of protection under constitutional statutes, yet not be granted tax-exempt status.

As will become increasingly clear, the opinion of experts is very often particularly relevant. As mentioned, for constitutional purposes, there are no defined tests as to what constitutes a religion. The opinion of legal and religious studies experts is, therefore, relevant to a court’s assessment of the religious status of a particular group. For income tax purposes, the United States test governing the definition of a religion explicitly allows for the consideration of “other facts and circumstances.”⁴⁴ This phrase inserts a degree of subjectivity into the test, which leaves much room for the consideration of the opinion of experts. The Canadian test for tax-exempt status is, similarly, phrased somewhat broadly and also allows for the consideration of the opinion of experts on whether a religious group meets its criteria.

In Canada, the rules governing federal tax-exempt status are particularly dated and incomprehensive. Indeed, while most experts have long argued in favour of a comprehensive reform of the rules governing tax-exempt status for religions,⁴⁵ governments have had little interest

⁴³ This definition is a synthesis of the principles set out by common law courts. It is found in a CRA guidance document, see *How to draft purposes for a charitable registration*, Guidance CG-019 (26 June 2013). The reference to God arguably makes the definition inappropriately rooted in Judeo-Christian traditions. It seems to exclude gnostic religions, such as Scientology, which believe that the individual can be exalted and become God-like. These religions do not believe in a God. These points are further explored in notes 105 and 106, below, and accompanying text.

⁴⁴ See Internal Revenue Service, *501(c)(3): Tax Guide for Churches and Religious Organizations*, *supra* note 42.

⁴⁵ See e.g. Kathryn Chan, “Taxing Charities: Harmonization and Dissonance in Canadian Charity Law” (2007) 55:3 *Can Tax J* 481; Kathryn Chan, “The Advancement of Religion as a Charitable Purpose in an Age of Religious Neutrality” (2017) 6:1 *Oxford JL & Religion* 112; and Samuel Singer, “Charity Law Reform in Canada: Moving From Patchwork to Substantive Reform” (2020) 57:3 *Alta L Rev* 683.

in undertaking such reform.⁴⁶ They have only undertaken very limited, targeted reform of the law and provided limited guidance regarding its interpretation.

The main issue has been that the *Income Tax Act* does not provide a definition of “charitable purposes.”⁴⁷ As mentioned above, an organisation (including a religion) needs to be “charitable” to gain tax-exempt status. This has meant that courts have relied on common law definitions dating hundreds of years and originating in Britain in ascertaining the meaning of the phrase. Prof. Samuel Singer correctly points out that the key legal test is from the 1891 precedent of *Commissioners for Special Purposes of Income Tax v Pemsel*.⁴⁸ However, for religious organisations, the Canada Revenue Agency does provide some additional guidance by stating: “Advancing religion in the charitable sense means manifesting, promoting, sustaining, or increasing belief in a religion’s three key attributes, which are: faith in a higher unseen power such as a God, Supreme Being, or Entity; worship or reverence; and a particular and comprehensive system of doctrines and observances.”⁴⁹

The most promising echoes of reform came from Justin Trudeau’s newly elected majority government in 2015. Prof. Singer notes:

With a new Liberal federal government in 2015 came electoral platform promises of charity law reform, both of the political activity rules specifically and, more widely, modernization of the non-profit and charity regulatory framework. Prime Minister Justin Trudeau’s November 2015 mandate letters to the Minister of Finance and the Minister of Justice instructed the Ministers to work together with the Minister of National Revenue “to develop a modernized regulatory and legal framework governing the Charitable and Not-for-Profit sectors.” The mandate letter to the Minister of National Revenue was more specific. It called on the

⁴⁶ To that effect, Prof. Chan notes, regarding the *Canada Without Poverty v AG Canada* case discussed later in this section: “With one bold superior court application, an anti-poverty charity has accomplished what forty years of charity law reform advocacy could not.” See Kathryn Chan, “Constitutionalizing the Registered Charity Regime: Reflections on *Canada Without Poverty v Canada (AG)*” (2020) 6 Can J Comparative & Contemporary L __ at 28 (forthcoming), online: SSRN <ssrn.com/abstract=3490275> . Since the article is in press, the pinpoint references are to the SSRN preprint.

⁴⁷ See Singer, *supra* note 45 at 686.

⁴⁸ *Commissioners for Special Purposes of Income Tax v Pemsel*, [1891] AC 531.

⁴⁹ See *How to draft purposes for a charitable registration*, *supra* note 43.

Minister to modernize the non-profit and charitable framework to “strengthen the sector,” including by reforming the political activity rules and working to encourage social enterprise and social finance.⁵⁰

This appeared to be the first sign of a serious legislative intent to modernise the current framework. The guidance from the Prime Minister described above led to the creation of the Consultation Panel on the Political Activities of Charities in 2016, which produced its report in 2017.⁵¹ The Panel made several key recommendations, the most significant of which was a major overhaul of the charity law regime.

Again, however, the government largely ignored this key recommendation. Instead, it focussed on the Panel’s other (arguably as important yet simpler to implement) recommendations regarding the intervention of charities in so-called public policy dialogue. In 2016, the precedent of *Canada Without Poverty v AG Canada*⁵² significantly redefined the breadth of the tax exemption. While tax-exempt organisations (including religious ones) sometimes intervene in the public discourse to advocate regarding issues which are germane to their beliefs, the case involved an organisation which almost exclusively engaged in political activities.⁵³ The organisation’s activities were being audited by the Canada Revenue Agency. Canada Without Poverty argued that limitations to these activities were unconstitutional. The Court agreed, finding that no such limitations could be placed on the political activities necessary to carrying out an organisation’s charitable mission.

⁵⁰ See Singer, *supra* note 45 at 709.

⁵¹ *Ibid* at 710.

⁵² 2018 ONSC 4147.

⁵³ *Ibid* at para 10. 98.5 per cent of the organisation’s activities were political.

The case seemed to shake the expert community.⁵⁴ Prior to the decision, there seemed to be a consensus among experts that some level of political activity should trigger the exclusion from tax-exempt status. Through its ruling, the Supreme Court essentially constitutionalised, without such a limitation, these political activities. Most importantly, by constitutionalising these activities, the Court substantially restricted the political decisions that legislators could make regarding charity law. The reaction in the expert community uncovered a shared assumption that charitable organisations should engage in other charitable activities, with political ones occupying only a secondary role. The Panel recommended an amendment to that effect, which was adopted by Parliament.⁵⁵ However, Parliament did not limit political activities which are directly related to a charity's charitable purpose. As a result of *Canada Without Poverty*,⁵⁶ Parliament did not (and could not) go further.

The absence of any major reform and of government interest in undertaking such reform further underscores the importance of the role of experts. When the law is unclear, courts and government officials (such as those of the Canada Revenue Agency) are left to rely on experts for an independent, more disinterested opinion as to whether an organisation should get religious or tax-exempt status.⁵⁷

⁵⁴ See e.g. Chan, "Constitutionalizing the Registered Charity Regime: Reflections on *Canada Without Poverty v Canada (AG)*", *supra* note 46.

⁵⁵ See Singer, *supra* note 45 at 710-11. The relevant bill is Bill C-86, *A second Act to implement certain provisions of the budget tabled in Parliament of February 27, 2018 and other measures*, 1st Sess, 42nd Parl, 2018 (assented to 13 December 2018).

⁵⁶ *Supra* note 52.

⁵⁷ See more generally *R v Welsh* (2007), 51 CR (6th) 33 at paras 10-13; *Syndicat Northcrest v Amselem*, *supra* note 41 at paras 54-77, 140, 160-210; *Saguenay (City of) v Mouvement laïque québécois*, 2013 QCCA 936 at paras 41-55; *Good Spirit School Division No 204 v Christ the Teacher Roman Catholic Separate School Division No 212*, 2017 SKQB 109 at paras 331-35; *Huang v 1233065 Ontario*, 2011 HRTO 825 at paras 16-37 and *Bhinder v Canadian National Railway*, 1981 CanLII 4.

It is worth briefly pointing out that, for the believers, experts may play another, not strictly legal, role. Using again the example of Scientology, as discussed above, experts may help legitimise Scientology and secure its place in the mainstream. This means a few things. First, legitimising Scientology as a religion is important to the members. This importance goes beyond the very significant and personal consequences which come with the *legal* recognition of a religion's status: the constitutional protection of the practice of one's religion, the opportunity to deduct donations, and so forth. It is ostensibly also a vindication of the legitimacy of one's faith, a protection from the ostracisation which can come from holding what are considered to be fringe or unusual beliefs.⁵⁸

The recognition of a religion helps place it within the *mainstream*, which mainstreamises the beliefs of its adherents as well. While we will likely always be at a loss to find a substantive explanation for the distinction between the beliefs (and religions) that are legitimised and those that are stigmatised, the distinction is significant. Believing in the Immaculate Conception or in the resurrection of Christ is acceptable.⁵⁹ Believing in an alien space opera as a creation story is not.⁶⁰ As we interact with others, creating what sociologists refer to as "social worlds," we

⁵⁸ See generally Sean McCloud, *Making the American Religious Fringe: Exotics, Subversives, and Journalists, 1955-1993* (Chapel Hill: University of North Carolina Press, 2004) and Richard A Baer, Jr, "The Supreme Court's Discriminatory Use of the Term 'Sectarian'" (1990) 6:3 JL & Pol 449.

⁵⁹ See generally "Immaculate Conception", online: *Catholic Encyclopedia* <www.newadvent.org/cathen/07674d.htm> .

⁶⁰ See McCloud, *supra* note 58 and Baer, *supra* note 58. On the marginalisation of beliefs in extraterrestrial beings more specifically, see Mark Neal, "Preparing for Extraterrestrial Contact" (2014) 16:2 Risk Management 63 and Neil Dagnall, Kenneth Drinkwater, and Andrew Parker, "Alien Visitation, Extra-Terrestrial Life, and Paranormal Beliefs" (2011) 25:4 Journal of Scientific Exploration 699. Quite ironically, there is not much of an objective reason why an immaculate conception would be more easily believable than a space opera. Scientologists believe in their own space opera. Their creation narrative has been summed up as follows:

Upon completion of OTIII, Scientologists are informed that 75 million years ago, Xenu, the ruler of a Galactic Confederacy of 178 billion people, 26 stars, and 76 planets including Earth (then known as "Teegeeach"), conducted a horrendous act in order to solve the confederacy's overpopulation problem. Xenu eliminated the excess populace when he transported it (via aeroplanes that looked like DC-8s) to Teegeeach. There, the confederacy placed the superfluous population inside volcanoes and then bombarded them with hydrogen-bomb explosions. The spirits of these individuals – thetans – then were subjected to religious and technological implants

emphasise or deemphasise our differences. A social world is, quite simply, a “cluster of organisation.”⁶¹ Though there may be, as mentioned, no substantive and inherently significant difference in beliefs in the Immaculate Conception and an alien space opera, a distinction is socially constructed and emphasised as human beings interact and define groups they belong to (social worlds). For instance, in an analogous context, sociologist Terra Manca argues that Scientologists belong to a social world of individuals who believe in pseudo-medicine.⁶² (As discussed above, Hubbard’s claims have, to his dismay, been starkly rejected by the scientific community.)⁶³ This social world is defined by this belief in pseudo-medicine, and exists in contrast to other social worlds which are defined by a belief in science.⁶⁴

The legal recognition of a religion is, therefore, significant insofar as it contributes to making it a part of the mainstream. As a religion becomes part of the mainstream, its theology is no longer “fringe” or unusual. This redefinition shields members from being excluded from the social worlds which have no room for individuals with such fringe beliefs.⁶⁵ In other words, we

for 36 days (priests and psychiatrists oversaw these implants, also known as the R6 implants). Then the thetans were sent on to either Hawaii or Los Palmas where they were clustered together. According to Hubbard, clusters of body thetans attach themselves to humans, causing many problems for them. The story of Xenu's conduct ends when he is captured six years later and imprisoned in a mountain where he still remains [references omitted] (Susan Raine, “Astounding History: L. Ron Hubbard's Scientology Space Opera” (2015) 45:1 Religion 66 at 80-81).

OT III is an advanced level in Scientology. Years of prior training are necessary to gain access to the confidential scriptures which form part of OT III. As such, it is reasonable to assume that a minority of public Scientologists are aware of this creation story, see Lord, “Scientology’s Legal System”, *supra* note 14 at 14.

⁶¹ See generally Terra Manca, “Alternative Therapy, Dianetics, and Scientology” (2010) 15:1 Marburg J Religion 1 at 1-3.

⁶² *Ibid.* See also Stephen A Kent, “Narconon, Scientology, and the Battle for Legitimacy” (2017) 19:3 Marburg J Religion 1, which builds upon Manca’s work, extending her claim to the particular context of Scientologists’ belief in the efficacy of Narconon, a drug rehabilitation program affiliated with Scientology.

⁶³ See notes 17 to 20, above, and accompanying text.

⁶⁴ *Ibid.* at 1-2.

⁶⁵ On the construction of social worlds which marginalise beliefs in extraterrestrial beings, see the sources cited in note 60, above.

generally accept and respect those who hold different beliefs than we do, but only if these beliefs are part of the *mainstream*, of what we collectively consider to be acceptable.

This inclusion makes the lives of members easier. It helps them feel included and accepted. It probably also helps them be more at ease with *themselves*. The taxing toll of opprobrium is also an internal one. It forces members to constantly questions the legitimacy of their beliefs.⁶⁶ When religion is a crucial part of one's identity, this recognition can make an invaluable difference.⁶⁷

The next section further analyses the importance of expertise. It considers the role of scholars as experts. From a review of the broader role of (legal) scholarship, it points out the important role of scholarship in advancing human knowledge. Then, the section points out more specific characteristics of the role of scholars (their independence and disinterestedness), which help explain their important role in the attribution of religious status in law.

⁶⁶ See generally Beth Robinson and Loretta J Bradley "Adaptation to Transition: Implications for Working With Cult Members" (1998) 36:4 *The Journal of Humanistic Education and Development* 212, Carmen Almendros et al, "'Former Members' Perceptions of Cult Involvement" (2007) 6:1 *Cultic Studies Review* 1, and Mark I Sirkin, "Cult Involvement: A Systems Approach to Assessment and Treatment" (1990) 27:1 *Psychotherapy* 116. While cult membership is generally associated with the systematic annihilation of critical thinking, individuals who join cults tend to have doubts. The same is true in the initial phases of cult membership.

⁶⁷ See e.g. Sirkin, *supra* note 66, Dale W Wimberley, "Religion and Role-Identity: A Structural Symbolic Interactionist Conceptualization of Religiosity" (1989) 30:1 *The Sociological Quarterly* 125, Renate Ysseldyk, Kimberly Matheson, and Hymie Anisman, "Religiosity as Identity: Toward an Understanding of Religion From a Social Identity Perspective" (2010) 14:1 *Personality and Social Psychology Review* 60, Khalil Al-Anani, *Inside the Muslim Brotherhood: Religion, Identity, and Politics* (New York: Oxford University Press, 2016).

3. SCHOLARS AS EXPERTS

As a legal scholar who conducts research at a university, I belong to a community which values scholarship as an important locus in the advancement of human knowledge. I believe that scholars are often key in exploring understudied issues and pushing the boundaries of human knowledge. Indeed, knowledge is not advanced by positing certain facts or findings. It is, rather, advanced dialectically. Scholars constantly engage in dialogue with their peers, those who preceded them, and those who will succeed them.

In a landmark lecture delivered over 100 years ago, German sociologist Max Weber spoke of science as follows:

In science, each of us knows that what he has accomplished will be antiquated in ten, twenty, fifty years. That is the fate to which science is subjected; it is the very *meaning* of scientific work, to which it is devoted in a quite specific sense, as compared with other spheres of culture for which in general the same holds. Every scientific 'fulfilment' raises new 'questions'; it *asks* to be 'surpassed' and outdated. Whoever wishes to serve science has to resign himself to this fact. Scientific works certainly can last as 'gratifications' because of their artistic quality, or they may remain important as a means of training. Yet they will be surpassed scientifically – let that be repeated – for it is our common fate and, more, our common goal. We cannot work without hoping that others will advance further than we have. In principle, this progress goes on *ad infinitum*[.]⁶⁸

While Weber spoke of science, the same is true of scholarship more broadly. For instance, in the context of religious studies, Stephen Kent, a noted Scientology scholar, said the following regarding an article he disagreed with. Kent takes issue not with the article's content but rather with the author's claim that he had finally laid down the "truth." He states:

⁶⁸ HH Gerth & Wright Mills, eds, *From Max Weber: Essays in Sociology* (London: Routledge, 2013) at 129-157 [emphasis in original].

Obviously, some researchers doubted that Hubbard lied about being a civil engineer, so an article presenting evidence about his alleged innocence was the proper academic approach. Unfortunately, then to think that one has written the final, definitive word on the issue — having now put it to rest once and for all — belies how scholarship works. Research findings lead to new research, and in the process, sometimes initial findings are overturned. Elevating one's research conclusions — or doing so regarding research conclusions with which one agrees — to a level of 'truth' is unwise and unsound, especially in disciplines outside of the natural sciences.⁶⁹

Kent appositely concludes by stating that “claims of truth actually may be nothing more than hints of hubris.”⁷⁰ In the humanities, we rarely seek to prove. We rather seek to convince, to propose theoretical frameworks and positions which others will criticise and improve. We do not – or at least should not – seek “win” a debate because, as Weber and Kent state, such is not the point. We should seek to contribute to a debate, which will itself eventually advance knowledge. Our approach should be defined by humility because we are ultimately of relatively little importance. Our work is not definitive, and the value of our contribution is not commensurate with its similarity to the consensus in our field of research at any point in time. Our work and our goal, the advancement of human knowledge, do, as they should, transcend each of us.⁷¹

Similarly, Desmond Manderson speaks of (legal) scholarship as haunted.⁷² Manderson undertakes an analysis of the debate between H.L.A. Hart and Lon L. Fuller, which has been briefly summarised as follows:

The Hart-Fuller debate centred on the discussion of a separation or not between what the law is and what it ought to be. Hart championed the utilitarian tradition with Austin and Bentham and insisted on separation, while Fuller questioned this

⁶⁹ See Stephen A Kent, “Degrees of Embellishment: Scientology, L. Ron Hubbard, and His Civil Engineering Credentials Fraud” (2020) 3:1(Supp) J CESNUR VI at L [Kent, “Degrees of Embellishment”].

⁷⁰ Kent, “Degrees of Embellishment”, *supra* note 69 at LI.

⁷¹ On these points, also see generally James Boyd White, “Legal Knowledge” (2002) 115:5 Harv L Rev 1396.

⁷² See Desmond Manderson, “HLA Hart, Lon Fuller and the Ghosts of Legal Interpretation” (2010) 28:1 Windsor YB Access Just 81.

and argued for a more important connection with his notion of the inner morality of law.⁷³

Fuller's criticism of Hart's positivist argument is briefly summarised in the introduction to his article, which reads as follows:

It is now explicitly acknowledged on both sides that one of the chief issues is how we can best define and serve the ideal of fidelity to law. Law, as something deserving loyalty, must represent a human achievement; it cannot be a simple fiat of power or a repetitive pattern discernible in the behavior of state officials. The respect we owe to human laws must surely be something different from the respect we accord to the law of gravitation. If laws, even bad laws, have a claim to our respect, then law must represent some general direction of human effort that we can understand and describe, and that we can approve in principle even at the moment when it seems to us to miss its mark. If, as I believe, it is a cardinal virtue of Professor Hart's argument that it brings into the dispute the issue of fidelity to law, its chief defect, if I may say so, lies in a failure to perceive and accept the implications that this enlargement of the frame of argument necessarily entails.⁷⁴

Manderson reframes this debate, foundational to legal scholarship and theory, by arguing that it is reductive to think of Hart and Fuller's positions as simply opposing. He argues that much can be learnt by thinking of the debate as haunted, and by attending to the performative aspect of the debate itself. Manderson moves from the traditional interpretations of the positions the authors put forth as substantively incommensurable to attend to the *performance* by each author of his position as correct and incommensurable with the other's. Manderson believes that understanding law involves substantivising the performance and the anxiety which underlies it. He states:

I have likewise sought to understand Hart and Fuller as each performing their separate theories of law: rhetorical performances in which each tried above all to radically exclude the other's language of law, and which each singularly failed to do. The answer to my question lies in understanding Hart and Fuller as providing

⁷³ See Juan Vega Gómez, "The Hart-Fuller Debate Re-Revisited", Book review of *The Hart-Fuller Debate in the Twenty-First Century* (Oxford: Hart, 2010). The two articles which constitute the debate are HLA Hart, "Positivism and the Separation of Law and Morals" (1958) 71 Harv L Rev 593 and Lon L Fuller, "Positivism and Fidelity to Law—A Reply to Professor Hart" (1958) 71 Harv L Rev 630.
632 (1958).

⁷⁴ See Fuller, *supra* note 73 at 632.

us with a performance of law and legal interpretation – not separately but jointly, as two actors in the same play create a performance together and not in isolation.

Neither Hart nor Fuller is right. Nor is it a matter of mixing a bit of Hart with a bit of Fuller in some new (Dworkinian) balance. Rather the disagreement between them, and the oscillation and anxiety that disagreement forges, captures the nature and I would say the unique virtue of legal interpretation, eternally caught between two simultaneous, contradictory, and uncompromisable goals[.]⁷⁵

Manderson helps enrich our understanding of Weber’s view. Manderson believes not only that human knowledge is advanced through debate but also that this debate is intrinsically valuable *as* human knowledge. Our understanding of what we study occurs through this debate, but it is also embodied in it.

Through their role as experts in their field, pushing the boundaries of human knowledge, scholars are particularly helpful experts. Scholars are also uniquely independent from the issues they study. In disputes involving interested parties, scholars can step in as independent experts.⁷⁶ For instance, in a court battle with both sides defending their own interests, scholars called to give evidence can help clarify factual and technical issues from an independent and disinterested perspective. Similarly, in the context of the attribution of religious status in law, religious scholars have little personally at stake in whether a religious group is attributed status as a religion – unlike the religious group itself. Their independence and disinterestedness make them appealing experts, and also lend further credibility to their positions.⁷⁷ These points are further illustrated in sections 4 and 5 with examples from Scientology’s history.

⁷⁵ See Manderson, “HLA Hart, Lon Fuller and the Ghosts of Legal Interpretation”, *supra* note 73 at 107.

⁷⁶ On the nature and role of experts and experts evidence more generally, see Samuel R Gross & Jennifer L Mnookin, “Expert Information and Expert Evidence: A Preliminary Taxonomy” (2003) 34:1 Seton Hall L Rev 141; Dale A Nance, “Reliability and the Admissibility of Experts” (2003) 34:1 Seton Hall L Rev 191; Samuel R Gross, “Expert Evidence” [1991] 6 Wis L Rev 1113 and Déirdre Dwyer, *The Judicial Assessment of Expert Evidence* (Cambridge: Cambridge University Press).

⁷⁷ Examples are provided in note 57, above.

This thesis will seek to further enrich our understanding of the role of experts by showing that, while human knowledge may chiefly advance dialectically and independently, the contribution of experts does not exist in a vacuum – or at least in a vacuum of experts. It can be harnessed by religious groups (such as Scientology) to serve their own aims – in Scientology’s case, to earn and keep its status in law. In doing so, these organisations take part in the debate and seek to shape the impact and direction of the contribution of specific experts or bodies of scholarship.

To give but one brief, introductory example of the importance of experts, Scientology’s status in Germany has been heavily influenced by the opinion of experts. Indeed, Scientology has always struggled to gain religious status, and the German government continues to investigate its practices.⁷⁸ In assessing and confirming Scientology’s legal status, German officials have extensively relied on Prof. Stephen Kent’s scholarship.⁷⁹ They have adopted Prof. Kent’s opinions regarding Scientology’s status as a religion and the various impediments to Scientology gaining recognition, such as its organisational behaviour (including harassment, which I address in Section 4).⁸⁰ The German government has also published Prof. Kent’s research.⁸¹

The next section preliminarily argues that new religious movements, and especially Scientology, are ideal case studies to illustrate the issues raised in this and the previous sections.

⁷⁸ See e.g. Andrew Purvis, “Germany’s Battle Against Scientology”, *Time* (17 December 2007), online: <content.time.com/time/world/article/0,8599,1695514,00.html> and Justin Huggler, “German State Intelligence Investigates ‘Scientologist Infiltration at Leading Art Museum’”, *The Telegraph* (2 March 2017), online: <www.telegraph.co.uk/news/2017/03/02/german-state-intelligence-investigates-scientologist-infiltration/> .

⁷⁹ See generally Stephen A Kent, “Scientology – Is This a Religion?” (30 June 1997), online: <www.cs.cmu.edu/~dst/Library/Shelf/kent/religion.html> and Stephen A Kent, “The French and German versus American Debate Over ‘New Religions’, Scientology, and Human Rights” (2001) 6:1 *Marburg J Religion* 1.

⁸⁰ See Kent, “Scientology – Is This a Religion?”, *supra* note 79 and Kent, “The French and German versus American Debate Over ‘New Religions’, Scientology, and Human Rights”, *supra* note 79.

⁸¹ See Stephen A Kent, *Brainwashing in Scientology’s Rehabilitation Project Force (RPF)* (Hamburg: Interior Ministry, 2000) (available online at <skent.ualberta.ca/contributions/scientology/brainwashing-in-scientologys-rehabilitation-project-force-rpf/>).

Indeed, Scientology is the only major religion to have emerged in the twentieth century, and it has a unique history having gained, lost, re-gained, and grappled with ongoing challenges to its legitimacy as a religion.

Then, the next section and the following particularise the issues raised in the previous ones by focusing on two key periods in the history and development of Scientology as an organisation: Scientology's fight to regain tax-exempt status in the 1980s and its modern-day response to ongoing and intensifying attacks to its legitimacy as a religion. These periods illustrate, in different ways, both the importance of scholars and scholarship in gaining status as a religion and how they can be harnessed by a religious group. They also illustrate, in different contexts, Scientology's shifting strategies to harness scholarship and establish and cement its legitimacy in law.

4. SCIENTOLOGY: FIGHTING FOR SURVIVAL IN THE 1980S

New religious movements, and especially Scientology, are ideal case studies to further consider the issues set out in the last two sections. In this and the next section, I will illustrate both the importance of experts and scholarship in establishing a religious organisation's status in law, as well as how Scientology has recognised and sought to harness their importance. Above, I discussed the tests for religious status found in Canadian and United States constitutional law, and noted the degree of subjectivity associated with those tests. For instance, I mentioned that the United States test which defines religion allows for the consideration of "other facts and circumstances."⁸² This subjectivity could arguably also encompass a group's popularity, or the fact that it has long been recognised as a religion. Indeed, courts and government agencies would arguably be quite reluctant to revoke a well-established religion's tax-exempt status. A religious group needs to meet these definitions through time, and tax-exempt status could be technically stripped from an organisation if it no longer meets the relevant criteria. Nonetheless, this is extremely rare and would have obvious implications for a well-established religion – including public backlash, potential impact on the perceived legitimacy of the relevant government agency, and likely court challenges.

In contrast, new religious movements are gaining tax-exempt status for the first time. They have little public good faith to rely on and generally cannot count on a large body of dedicated followers. There is no expectation that they will gain or keep either religious status or tax-exempt

⁸² See 501(c)(3): *Tax Guide for Churches and Religious Organizations*, *supra* note 42.

status. Most newly founded groups have neither. In this context, experts have a particularly important role to play.

Among new religious movements, Scientology is a uniquely interesting case study. First, as mentioned above, Scientology is the only major religion to have emerged in the twentieth century. Its success in finding a place in the mainstream, at a time where the taxation laws and relevant tests were generally the same as today's, makes it appealing. Additionally, Scientology has gained tax-exempt status. It then lost and had to fight to regain it. Even today, Scientology grapples with ongoing challenges to its status as a religion. Indeed, most recently, prominent former Scientologists have specifically argued that Scientology should be stripped of its tax-exempt status.⁸³ These past and ongoing challenges, which occur in different social contexts, make Scientology a uniquely interesting case study.

I now consider a key period in the history and development of Scientology as an organisation: its fight to regain tax-exempt status in the United States in the 1980s. This period marked the beginning of a consistent pattern of Scientology framing criticism of it as an assault on religious liberty. It helps me particularise the issues raised in the previous sections and illustrates both the importance of scholars and scholarship in gaining status as a religion and how they can be harnessed by a religious group to establish and cement its legitimacy in law.

I mentioned in the first section the difficult situation Scientology executives grappled with near the end of the life of the religion's founder. The religion had lost its tax exemption, as the United States Internal Revenue Service (IRS) had determined that the founder had personally benefitted from church income and assets. The Church had stopped paying taxes years ago, and,

⁸³ This is the topic of Section 5.

absent a reinstatement of its tax-exempt status, the Church would have been insolvent. Scientology executives tried to convince the IRS that the situation had been rectified. This period was the genesis of a pattern of Scientology framing criticism of it as an assault on religious liberty. Scientology executives argued not only that church finances had been rectified, but also that the continuing denial of tax-exempt status constituted a singling out of Scientology and an attack of its members' right to practise their religion.

During that period, Scientology desperately needed to be considered a religion. Its status and legitimacy as a religion were called into question by the revocation of its tax-exempt status. More broadly, one gets a sense that Scientology executives understood that this period would need to mark, as it did, Scientology's maturing from a fringe cultic group to a legitimate religion.⁸⁴ This section analyses the ways in which Scientology executives used external, scholarly expertise to frame Scientology's claim of legitimacy in law. It builds upon the previous sections, which pointed out both the importance of scholarship as expertise, and the importance of expertise in gaining religious and tax-exempt status. In doing so, it tangentially notes that the legitimacy afforded in law to a religious group has broader echoes in establishing and cementing a religious group's place as part of the mainstream.

An introductory note is in order. I am not seeking here to downplay the impact of Scientology's aggressive intimidation campaign aimed at the IRS and its individual employees,⁸⁵ which surely influenced the outcome of the debate. Scientology undertook an extensive campaign

⁸⁴ This point is further supported below.

⁸⁵ See e.g. MacDonald, *supra* note 34 and Douglas Frantz, "The Shadowy Story Behind Scientology's Tax-Exempt Status", *The New York Times* (9 March 1997); Richard Behar, "The Prophet and Profits of Scientology", *Forbes* 400 (27 October 1986) at 314 (archived online: <www-cgi.cs.cmu.edu/afs/cs/usr/dst/www/Library/Shelf/behar/behar-forbes-1986.pdf> ; Robert Gillette & Robert Rawitch, "Church Claims U.S. Campaign of Harassment", *Los Angeles Times* (29 August 1978); Welkos, Robert W.; Sappell, Joel "The Battle with the I.R.S.: Neither Side Blinks in a Lengthy Feud", *Los Angeles Times* (29 June 1990), online: <www.latimes.com/archives/la-xpm-1990-06-29-mn-704-story.html> .

to intimidate the IRS and its agents. Among other things, it filed multiple lawsuits against both the IRS and individual employees and hired private investigators to find compromising information on individual employees. This campaign, and its impact on countless individuals who were only seeking to serve their country, should not be a footnote in history. Scientology was perhaps the only organisation which dared to take on the United States government in such an overtly abusive way (at least in the past century), and, unfortunately – for this or other reasons (as further explored below) – it succeeded, achieving its end goal of obtaining tax-exempt status.

Nonetheless, I believe it is important here to take a broader view of how the perception of legitimacy was and is established and sustained.⁸⁶ The relationships between the various, mutually reinforcing factors influencing this perception is complex. Scientology needs to cultivate an apparent consensus regarding its legitimacy as a religion both among experts in the relevant fields of academic research and in the broader community. Ever since the 1980s, Scientology has masterfully played and reinforced each to establish the other. On the one hand, it has used expert opinions it commissioned from scholars arguing that it is a religion to justify to both judicial and public authorities and the public that it is a religion.⁸⁷ On the other hand, it has presented its self-assessed popularity as *per se* evidence of its legitimacy as a religion. Scientology’s messages can be vernacularised as follows: (1) The definition of a religion is technical, legal, and complex, but, look, the experts who actually know about this stuff all agree we are a religion⁸⁸ and (2) Listen,

⁸⁶ Also relevant may be the fact that Hubbard had died 10 years prior to the granting of tax-exempt status. Hubbard indeed died in 1986, see “L. Ron Hubbard”, *Encyclopaedia Britannica*, online: <www.britannica.com/biography/L-Ron-Hubbard> .

⁸⁷ See generally “Experts Conclude Scientology Is A True World Religion”, online: *Scientology* <www.scientologyreligion.org/religious-expertises/> . On this page, Scientology catalogs all relevant expertises. I nuance my main text claim by mentioning that some expertises may not have been *commissioned*.

⁸⁸ See e.g. “Scientology: A World Religion: International Religious Recognitions of the Church of Scientology”, online: *Scientology* <www.scientologyreligion.org/religious-recognitions/> . See also “Experts Conclude Scientology Is a True World Religion”, *ibid*.

experts, we have five million members, who all seem to think we're great. Are you saying these people are all *cult* members? Have you ever seen a cult with five million members?⁸⁹

Disseminating Favourable Expert Opinions

Scientology is unique in that, though it disseminates favourable scholarship like other religions, it does not generally intervene in its production – unlike other religions and new religious movements.⁹⁰ I mentioned that Scientology has nonetheless commissioned various expert opinions, and I further discuss this process below. Scientology has also, since the 1980s aggressively disseminated these opinions. (As is discussed below, the 1980s – and its IRS battle – is when most of these opinions were first commissioned.) Scientology maintains a website where it catalogs the expert opinions, from scholars in various countries, which it finds favourable.⁹¹ The website boldly claims:

In a few countries the Church has been forced to litigate the issue of its religiosity, either affirmatively or in response to unfounded criminal charges. Inevitably the Church has prevailed in these cases and its religious bona fides have been unequivocally recognized. Some of these decisions, including decisions by the United Kingdom Supreme Court, the Cassation Court in Italy and the High Court in Australia, are now considered by leading scholars and judicial authorities to have established the standards regarding religious recognition that all religions must meet.

⁸⁹ See e.g. “Scientology: A World Religion: International Religious Recognitions of the Church of Scientology”, *ibid* (“Scientology is accepted as a religion throughout the world. Since the establishment of the first Church of Scientology in 1954, the religion has grown to millions of members worldwide. Scientologists practice their religion in virtually every country in the world. [...] Scientology is a truly unique contemporary religion — the only major religion to emerge in the twentieth century”). Of course, Scientology does not have five million members. The actual figure is closer to 50,000, see e.g. Lord, “Scientology’s Legal System”, *supra* note 14 at 3.

⁹⁰ See Lord, “Scientology’s Legal System”, *supra* note 14 at 8. This point is further discussed below, where I give the examples of Jehovah’s Witnesses and The Church of Jesus Christ of Latter-day Saints, two new religious movements which have sought to favour both the production and dissemination of favourable scholarship. See notes 157-159 and accompanying text.

⁹¹ See “Experts Conclude Scientology Is A True World Religion”, *supra* note 87.

*Today there is no question of the status of Scientology as a world religion. [...] [I]f one relies on secondary sources, then courts, scholars and governmental agencies around the world have repeatedly determined that Scientology is a bona fide religion in all respects.*⁹²

Another page states:

The world's foremost experts in the fields of comparative religion, history of religion, religious studies and sociology agree that Scientology is a world religion. *Because of their interest in major and emerging world religions*, distinguished scholars have published numerous studies, opinions and papers testing Scientology against a list of world-religion norms by which they judge any religion. Although these experts and scholars proceed from their unique cultural background and method of analysis, *they have all independently concluded* that Scientology possesses the requisite elements and characteristics of a bona fide religion. *Objective research on this subject* has been conducted by more than one hundred experts, including the most preeminent and acclaimed scholars from interrelated disciplines.⁹³

The intent is clear. Scientology wants all to know that it is a religion, and that (in its opinion), “all [credible experts and scholars have] independently concluded” that it is.⁹⁴ Scientology is trying to reframe the debate. It is trying to frame the opinion of those who criticise it or disagree with its practices as mere disagreements. These disagreements, according to Scientology, do not and cannot call into question its legitimacy as a religion.

Furthermore, Scientology appears to conflate (probably voluntarily) religious status and tax-exempt status. As mentioned above, the relevant tests are different, and those used to attribute tax-exempt status are more stringent. Indeed, a group can, as an example, meet all relevant attributes of a religion, yet have inadequate financial practices which militate against the attribution of tax-exempt status. As is discussed in the next section, much of the recent criticism

⁹² See “Scientology: A World Religion: International Religious Recognitions of the Church of Scientology”, *supra* note 88 [emphasis added].

⁹³ See “Experts Conclude Scientology Is a True World Religion”, *supra* note 88 [emphasis added].

⁹⁴ *Ibid.*

of Scientology's practices concerns this point. It can often be framed as legitimate criticism not of Scientology doctrine but of the practices of Scientology as an organisation (which do not always originate in Scientology doctrine).

Finally, it is clear from the above quotation that Scientology believes expert opinions are useful for the main reason set out in the previous sections: they are objective. We therefore see in these statements what was the genesis of Scientology's conception of how it would gain tax-exempt status: it would do so by using external scholarly expertise. The last paragraph of the quotation has as many sentences as it does references to objectivity. The paragraph notes that experts conduct research "[b]ecause of their interest in major and emerging world religions" (not because Scientology asked), and that they "independently concluded" from "objective research" that Scientology is a religion.⁹⁵

The reality is, however, more nuanced. Scientology's dissemination of academic research and its claim that all credible experts agree that it is a religion originated in the 1980s, when it had lost its tax-exempt status and its survival depended on regaining it. During that period, Scientology was not passively involved in disseminating expert opinions: rather, it played a key role in their commission. Furthermore, unsurprisingly, not all experts do agree that Scientology should benefit from tax-exempt status and religious status. Indeed, as is explained below, in response to this inevitable fact, Scientology has also actively sought to discredit experts it disagrees with.

At the time, the revocation of Scientology's tax-exempt status had called into question a core pillar which justifies the status. As mentioned, the tax authorities found that Scientology founder L. Ron Hubbard personally benefitted from church income and assets. Indeed, the very

⁹⁵ *Ibid.*

definition of an exempt organisation under section 501(c)(3) of the United States Tax Code requires that no individual derive a personal benefit from the organisation.⁹⁶ I mention above the apparently conscious decision of Scientology executives from the 1980s and on to try to cultivate a consensus that Scientology had evolved from a fringe cultic group to a mainstream religion. There is evidence to that effect. In a sworn declaration, Lawrence H. Brennan, a former high-ranking Scientology official, recounts his involvement in that process:

Two of the things that organized scientology felt were of the most importance *in order to avoid compliance with many laws that were contrary to Hubbard policy* were the religious cloaking as covered above and a corporate restructuring to make it very difficult if not impossible for outsiders to ever get to the main assets of organized scientology and to ensure that the real leaders of organized scientology could be insulated from legal liability by hiding their real controls behind a myriad of corporate and other legal veils.

[...]

Once religious cloaking was begun in earnest and many self serving documents were made and images created to reflect a religious image, it was considered vital to get “experts” to support the concept that organized scientology was in fact an organized religion., it’s policies “religious scripture”, etc. The entire intention behind the acquisition and use of such religious and legal scholars was to create and develop “evidence” to support the religious cloaking that could be used in courts and elsewhere where needed. *While organized scientology today parades out various scholars that say they are “religious”, I can tell you that this scholar program was started in the Guardian’s Office and I worked on it as early as 1974.* I worked on the obtainment of such scholars opinions personally and by supervising others to do same and I used such scholars opinions to obtain recognitions that organized scientology would not otherwise have obtained.

At no point where any scholars briefed on either the real controls of organized scientology or the reasons why religious cloaking was developed. Instead they tended to be briefed using the religious cloaking materials developed and/or by speaking with prequalified, briefed scientologists who were told what to tell the scholars. If scholars wrote less than glowing reports of scientology being religious in nature, their opinions were discarded. For those who would write glowing

⁹⁶ *Internal Revenue Code*, supra note 8 (“[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable [...], no part of the net earnings of which insures to the benefit of any private shareholder or individual” [emphasis added]).

reports supporting scientology's "religious nature", those reports were kept for further use in legal and/or PR matters.⁹⁷

Beyond the battle to regain tax-exempt status, the executive notes the many additional advantages that come with religious status in law. As I did above, he notes that governments have much less oversight over religions than they do over non-religious organisations. The status would afford Scientology far more control over both how its internal administration and what it does with its assets and income.

Beyond financial survival then, the process would define Scientology's relationship to the state going forward, and its ability to thrive. It would empower Scientology to conduct its internal affairs (managerial, financial, and otherwise) under far less scrutiny from the United States government. It would define its independence.

The executive speaks of "religious cloaking." I do not think his comments should be construed as suggesting that there were, at the time, no true Scientology believers. One could say that, at the time, Scientology's main, or even only, goal was survival. The executive suggests as much. And as I mentioned above, regaining tax-exempt status was indeed a life-or-death issue for the religion. I nonetheless believe it is reductive to think that Scientology sought tax-exempt status

⁹⁷ See "Declaration of Lawrence H. Brennan" (6 May 2008), online: <lermanet.org/reference/brennan-dec.pdf> at paras 11-13 [emphasis added]. The statement is archived on multiple other websites. See also Frantz, *supra* note 85. In finding the first source, I am ironically indebted to those who have suggested that I may be part of the "scholar program" Brennan refers to. In a Reddit thread created by individuals who wanted to discuss one of my working papers, one copies the link to the affidavit and states, "Scientology Inc. initiated a 'scholar program' in the early 1970s to infiltrate and corrupt religious academics. This is the affidavit by a former senior executive that exposes the fraudulent religious cloaking program of which the Scholar Program is a part. [...] Scientology is psychological not religious. It is also 'political' in that it seeks of obtain power over others (under the guise of 'mental healing.')" See "The Eternal Commitment: Scientology's Billion-Year Contract - academic paper by Phil Lord" (17 March 2019), online: *Reddit* <www.reddit.com/r/scientology/comments/b23fqs/the_eternal_commitment_scientologys_billionyear/> . Some question the reliability of former members' accounts, but they are often our only source of information and can be reliable (especially when, as here, given under oath), see generally Kent, "Brainwashing Programs in The Family/Children of God and Scientology", *supra* note 160, Dawson, *supra* note 161, and Kent, "Compelling Evidence: A Rejoinder to Lorne Dawson's Chapter", *supra* note 162.

only for that purpose. It is true that Scientology has a peculiar relationship to money, at least relative to other religions.⁹⁸ I mentioned above that its charging fixed fees for religious services had an effect on its tax exemption. Although this was never confirmed, L. Ron Hubbard has long been rumoured to have said one or several permutations of the following: “The way to make a million dollars is to start a religion.”⁹⁹ I have also previously noted that the constitution of Scientology as a religion was related to problems the non-religious prior organisation had with its creditors.¹⁰⁰ Regardless of the motives which led to Scientology’s creation, it would be highly reductive to think that there are no true believers in Scientology. Scientology’s clergy, the Sea Organisation, is comprised of thousands of members who work seven-day weeks for little or no pay.¹⁰¹ Public members often dedicate countless hours each week to the religion, and give tens or hundreds of thousands of dollars to study Scientology.¹⁰² There are undoubtedly thousands who truly believe in Scientology doctrine and see it as their path to spiritual fulfillment.

Nonetheless, the executive is correct to suggest that certain measures appear to have been taken solely to, as he states, “reflect a religious image.” The best example is Scientology’s Sunday service, which was created during that period. Scientology describes it on its website as follows:

Scientology helps each being to regain awareness of himself or herself as an immortal spiritual being and the rehabilitation of full spiritual potential — to achieve a recognition of spiritual existence and one’s relationship to the Supreme Being. God is identified in Scientology as the Eighth Dynamic.

The Church of Scientology Sunday service consists of a reciting of the Creed of the Church, a sermon based on the writings of the Scientology Founder L. Ron

⁹⁸ See generally Behar, *supra* note 85 at 314; TeamXenu, “13 Nov 2011 - Former Scientology Insiders Describe a World of Coercion”, *YouTube* (12 November 2011), online: (video) <www.youtube.com/watch?v=KgaX-7fTIJw> ; and L Ron Hubbard, “Income Flows and Pools: Principles of Money and Management”, Hubbard Communications Office Policy Letter, 9 March 1972. Regarding my format for citations of Hubbard Policy Letters and the letters as sources more generally, see Lord, “Scientology’s Legal System”, *supra* note 14 at 6, 12-13.

⁹⁹ See Miller, *supra* note 17 at 117, 133, 148. See also Don Lindsay, ““The way to make a million dollars is to start a religion””, online: *Bible.ca* <www.bible.ca/scientology-1million-start-a-religion.htm> .

¹⁰⁰ See Lord, “Scientology’s Legal System”, *supra* note 14 at 2.

¹⁰¹ See generally Lord, “The Eternal Commitment: Scientology's Billion-Year Contract”, *supra* note 4.

¹⁰² See Lord, “Case Comment: *Garcia v Church of Scientology Flag Service Organization*”, *supra* note 7.

Hubbard, congregational group auditing and prayer. There may also be music and singing, as well as announcements of Church events and programs.¹⁰³

First, Scientologists simply do not believe in a god or gods. In the broadest sense, they may believe in a supreme state of existence which could share similarities with the concept of a god. But Scientologists believe that they will become that supreme being, through Scientology counselling.¹⁰⁴ The highest levels of Scientology training are called the “Operating Thetan” levels because the parishioner’s soul – or thetan – is taught to “operate” independently of the body.

Second, the Sunday service is simply not part of Scientology doctrine. Scientologists believe that the religion’s scripture are all-encompassing, and that the appropriateness of an action – such as a religious belief or practice, or an administrative procedure – should be evaluated based on its consistency with L. Ron Hubbard’s writings.¹⁰⁵ The Sunday service is not mentioned in Scientology scripture. Its creation, and framing on the website as furthering the parishioner’s relationship with God, can therefore be explained (as the executive suggests) by Scientology’s attempt to “reflect a religious image.”¹⁰⁶ With regard to the Sunday service, that seems to mean

¹⁰³ See “Beliefs and Practices: Sunday Service”, online: *Scientology* <www.scientology.ca/what-is-scientology/scientology-religious-ceremonies/scientology-sunday-service.html> .

¹⁰⁴ Scientology is therefore a gnostic tradition like Buddhism, see generally note 43, above, and Donald A Westbrook & James R Lewis, “Scientology and Gnosticism: L. Ron Hubbard’s ‘The Factors’ (1953)” in Garry W Trompf, Gunner B Mikkelsen & Jay Johnston, eds, *The Gnostic World* (London: Routledge, 2018) 632.

¹⁰⁵ See e.g. “Debbie Cook’s Email” (5 March 2013), *Scientology Cult: “A Time Comes When Silence is Betrayal”*, online: <<http://www.scientology-cult.com/debbie-cooks-email.html>> . This is an email from Debbie Cook, a former high-ranking Scientology executive who defected in the early 2010s. The email engages in robust criticism of Scientology’s current leader, David Miscavige. It is a prime example of how Scientologists reason and express themselves. All of Cook’s claims are grounded in and cite specific sections of Scientology scripture. See also L. Ron Hubbard, Hubbard Communications Office Policy Letter, 7 February 1965, *supra* note 2.

¹⁰⁶ To that effect, see also Tony Ortega, “Scientology ‘Sunday Service’ Has Always Been a Lazy PR Ploy, and Now It’s on Full Display” (9 June 2020), online: *The Underground Bunker* <tonyortega.org/2020/06/09/scientology-sunday-service-has-always-been-a-lazy-pr-ploy-and-now-its-on-full-display/> (“[w]e can tell you, after doing this [journalism] for 25 years now, we have not once had a former Scientologist say to us, ‘let me tell you about Sunday Service.’ That’s because ‘Sunday Service’ for Scientology is merely a sop to the public, a public relations ploy that was added as an effort to appear more like a ‘church’ to outsiders. Scientology itself, the real stuff of Scientology, is about a ‘preclear’ and their auditor working one-on-one to advance up the ‘Bridge to Total Freedom,’ not about a chapel and a sermon. And in most places it’s just an afterthought.”)

reflecting the practices of other, older and more established religions – perhaps to convince experts that Scientology is a religion. More specifically, Scientology’s Sunday service closely mirrors that of Christian faiths, which is probably not coincidental.¹⁰⁷ Indeed, the service was created when Scientology was seeking to regain tax-exempt status in the 1980s. The vast majority (over 80%, at the time) of the population of the United States identifies as Christian.¹⁰⁸ As mentioned above,¹⁰⁹ certain statutory definitions seem to favour religions of the Judeo-Christian religions by requiring a belief in God which often cannot be reconciled with gnostic traditions. Mike Rinder, a former high-ranking Scientology executive and international spokesperson, has suggested that other aspects of Scientology, such as its eight-pointed cross which resembles the Christian cross, may have been designed to broadly mirror certain major aspects of Christian faiths.¹¹⁰

The key part of the executive’s statements concerns the procurement and use of expert opinions. The executive notes that, contrary to Scientology’s contemporary statements, the Guardian’s Office, which was at the time a key executive office of the Church, was heavily involved in soliciting and disseminating these expert opinions. I cited above Scientology’s website, which states that experts conduct research “[b]ecause of their interest in major and emerging world religions” (not because Scientology asked), and that they “independently concluded” from “objective research” that Scientology is a religion.¹¹¹ While the way the analysis was conducted may indeed be deemed objective, the experts were specifically asked by Scientology whether it

¹⁰⁷ On the Sunday service as a key aspect of Christian faiths, see generally James F White, *Introduction to Christian Worship*, 3rd ed (Nashville: Abingdon Press, 2000); Geoffrey Wainwright & Karen B Westerfield Tucker, *The Oxford History of Christian Worship* (Oxford: Oxford University Press, 2005) and Roger T Beckwith, *Calendar and Chronology, Jewish and Christian* (Leiden: Brill, 1996) at 10-50.

¹⁰⁸ See “American Religious Identification Survey”, online: *City University of New York* <web.archive.org/web/20110709082644/http://www.gc.cuny.edu/faculty/research_briefs/aris/key_findings.htm> .

¹⁰⁹ See notes 43 and 103.

¹¹⁰ See Koncrete, “The #1 Threat to Scientology | Mike Rinder | KONCRETE Podcast #68” (7 August 2020), online (video): *YouTube* <www.youtube.com/watch?v=j2GCOfdNE1c> .

¹¹¹ See “Experts Conclude Scientology Is a True World Religion”, *supra* note 88.

could be considered a religion. Furthermore, the executive notes that not all opinions were retained. Scientology simply ignored the opinions it disagreed with. As the mandated experts would have no reason to disseminate them (especially if they were retained by Scientology), these opinions were probably never disseminated elsewhere. Additionally, as is explained below, when experts chose to publicly denounce the Scientology, Scientology has, then and since, actively sought to discredit these experts.

Though Scientology executives, at the time, may have been driven by necessity, promoting the production of research to legitimise a research subject is not unheard of. Professor Kent recounts how The Family, a controversial new religious movement founded slightly after Scientology, similarly funded the production of articles which would legitimise its putative status as a religion.¹¹² Like Scientology, The Family was founded in the second half of the twentieth century.¹¹³ The group was initially named “The Children of God,” but the name was changed to “The Family of Love”, and then shortened to “The Family”.¹¹⁴ The name changes were part of a broader restructuring of the group in an attempt for it to become a more established religion. While the group’s finances had been mismanaged, the main issue was the historical practice of “Flirty Fishing.” A 1993 article describes the practice, and its issues as follows:

Around this time [1978], the group began its practice of "flirty fishing" ("FFing," many members called it), which won it an enduring notoriety.

To show God's love, members would offer sex as a way of evangelizing people. The idea was [group founder David] Berg's. The Family's history states that, based on his reading of Scripture, "Father David arrived at the rather shocking conclusion that Christians were therefore free through God's grace to go to great lengths to show the Love of God to others, even as far as meeting their sexual needs." [...]

¹¹² See Stephen A Kent & Theresa Krebs, “When Scholars Know Sin: Alternative Religions and Their Academic Supporters” (1998) 6:3 Skeptic 36.

¹¹³ The group was founded in 1968, roughly two decades after Scientology, see “The Origins of a Movement: From ‘The Children of God’ to ‘The Family International’”, online: *The Family* <web.archive.org/web/20090429042335/http://www.thefamily.org/dossier/statements/origins.htm> .

¹¹⁴ See Kent & Krebs, *supra* note 112 at 36.

Critics like to cite a couple of publications from The Family of Love period, including a 1987 "Basic Training Handbook," which offers explicit advice on sex among prepubescent teens. There's also something called "My Little Fish" containing nude photographs of a young boy and an adult woman embracing. [...]

These days, one of the most outspoken is Edward Priebe, a Canadian who helped edit group publications until he quit in 1990 after 19 years. He alleges that it was not unusual for adult members to have sexual relations with teenagers before 1986, when the leadership moved against this.¹¹⁵

This practice is, by any standard, unacceptable. At the time, however, the public most took issue with the fact that minors had been sexually abused through the practice – which also led to a significant number of teenage pregnancies.¹¹⁶

As mentioned, The Family was at the time, like Scientology, a recently founded religious group struggling to move away from a dark legacy.¹¹⁷ The Family's standing in the public opinion had suddenly been significantly affected as a result of media coverage of the practice of Flirty Fishing which was, by then, universally condemned. Like Scientology, The Family sought to use external, academic expertise to both enhance its public image and defend its legitimacy as a religion. This decision led, in part, to its reformation and the formulation of a broader strategy tailored to spur future growth.¹¹⁸

¹¹⁵ See Gustav Niebuhr, "'The Family' and Final Harvest", *The Washington Post* (2 June 1993), Page A01.

¹¹⁶ Prof. Susan Raine notes that some 350,000 men were reached through the practice, see Susan Raine, "Flirty Fishing in the Children of God: The Sexual Body as a Site of Proselytization and Salvation" (2007) 12:1 *Marburg J Religion* 1 at 13. As late as 2009, The Family was still defending the practice, see "The Origins of a Movement: From 'The Children of God' to 'The Family International'", *supra* note 113 ("[a]lthough this sexual liberality expressed in the writings of Father David sent shock waves through the media and religious institutions around the world, many people, most of whom would never attend church, were reached and won to Christ through this open, humbly honest, and intimately human approach to witnessing. FFing proved to be tremendously fruitful and was effectively used as an outreach ministry in the Family for close to ten years. As a result, over 100,000 received God's gift of salvation through Jesus, and some chose to live the life of a disciple and missionary. [...] Although we no longer practice FFing, we believe the scriptural principles behind the ministry remain sound.")

¹¹⁷ As mentioned, for Scientology, this past involved financial mismanagement, which led to the revocation of its tax-exempt status.

¹¹⁸ On these points, see generally Gary Shepherd & Gordon Shepherd, "Accommodation and Reformation in The Family/Children of God" (2005) 9:1 *Nova Religio* 67; David E Van Zandt, *Living in the Children of God* (Princeton: Princeton Legacy Press, 1991) and Rex Davis & James T Richardson, "The Organization and Functioning of the Children of God" (1976) 37:4 *Sociological Analysis* 321.

To do so, The Family engaged in a vast campaign of research promotion. It invited scholars to its religious communes to see the premises and write favourable articles on the group.¹¹⁹ Like Scientology, it only showed these scholars what it wanted them to see. The Family concurrently engaged in an effort which led to the destruction of countless documents that referred to the practice of flirty fishing.¹²⁰ The group also vehemently attacked scholars it disagreed with.¹²¹ As an example, the groups succeeded (though temporarily) in halting the publication of one of Kent's papers.¹²² Its legal threats had intimidated the academic publisher, which did not carry liability insurance.¹²³

Scientology's promotion of expert opinions it agrees with is also reminiscent of pharmaceutical companies funding research into their own products to objectivise their promotion.¹²⁴ Like religious organisations, pharmaceutical companies are seeking legal recognition. To be able to sell their drugs, they must first gain approval from government bodies. The companies are thereby incentivised to favour the production of research into their drugs, and they have historically been significant funders of such medical research. Research funded by pharmaceutical companies has been shown to overwhelmingly favour its funder(s), and is more likely to exhibit various methodological issues.¹²⁵ While many have argued that the main solution

¹¹⁹ See Kent & Krebs, *supra* note 112 at 37-38

¹²⁰ *Ibid* at 38.

¹²¹ I further discuss below how Scientology did the same.

¹²² See Kent & Krebs, *supra* note 112 at 37. See also "The Family Blocking Academic Articles", correspondence between Prof. Stephen Kent and Phil Lord, on file with the author, which compiles academic and legal correspondence with Prof. Kent regarding his articles whose publication The Family sought to prevent.

¹²³ Kent's paper was later published in a different venue.

¹²⁴ See e.g. Joel Lexchin et al, "Pharmaceutical Industry Sponsorship and Research Outcome and Quality: Systematic Review" (2003) 326 *British Medical J* 1167 and Samer S Chopra, "Industry Funding of Clinical Trials: Benefit or Bias?" (2003) 290:1 *J American Medical Assoc* 113.

¹²⁵ See Lexchin et al, *supra* note 124 (which discusses outcomes favourable to the funder) and Chopra, *supra* note 124 (which discussed methodological bias). Pharmaceutical companies have also published papers in predatory journals with lax or non-existent peer review. Pharmaceutical companies have, for instance, published numerous papers in journals owned by predatory publisher OMICS online, which was recently sued by the United States Federal Trade Commission for \$50 million (concerning its practices), see Gina Kolata, "The Price for 'Predatory' Publishing? \$50 Million", *The New York Times* (3 April 2019), online:

to these issues is that the funding sources of the research be clearly disclosed,¹²⁶ this may not be sufficient, especially considering that most clinical research is privately funded.¹²⁷ Furthermore, as was the case for Scientology's expert opinions, we can observe an intrinsic bias: pharmaceutical companies are free to discard the research findings they disagree with.¹²⁸ There is evidence that some companies have engaged in that practice.¹²⁹ Even when the research is properly conducted, the resulting output may therefore not be representative of the results obtained.

Discrediting Unfavourable Experts

Thus far, this section has shown how Scientology has harnessed expertise in its quest for legitimacy in law. It focused on how Scientology requested expert opinions regarding its status as a religion. It noted that Scientology discarded the opinions it disagreed with and engaged in aggressive dissemination of the opinions it agrees with. This behaviour is indicative of both the relative subjectivity of the tests which attribute religious status in law and the dialectic nature of the relationship between experts and government officials (who attribute religious status). Scientology's decision to actively seek to convince experts of its status as a religion therefore

<www.nytimes.com/2019/04/03/science/predatory-journals-ftc-omics.html> and Esmé E Deprez & Caroline Chen, "Medical Journals Have a Fake News Problem", *Bloomberg News* (29 August 2017), online: <www.bloomberg.com/news/features/2017-08-29/medical-journals-have-a-fake-news-problem> .

¹²⁶ See e.g. Chopra, *supra* note 124.

¹²⁷ On the latter point, see *ibid*. The same could be argued regarding the social sciences. Even when funding is properly disclosed, the mention tends to be quite brief relative to the length of the research piece. Furthermore, there is no data on the impact of the mention (if any) on the dissemination and scholarly impact of the research.

¹²⁸ The problem is further exacerbated in the pharmaceutical industry. I mentioned above that Scientology experts would have little incentive to disseminate research findings discarded by Scientology. Most expert opinions commissioned by Scientology did not involve financial reward. In the pharmaceutical industry, when the research is funded by private interests, it is far likelier that unfavourable results will not be disseminated. Indeed, the scientists conducting the research may be reliant on the company funding the research for future funding, or the company may own the results due to the funding arrangement.

¹²⁹ See Chopra, *supra* note 124.

illustrates its understanding that experts play an important role in persuading courts and government officials of a religious group's status.

It is now worth analysing the last portion of Scientology's approach to research and expertise in the 1980s: the discreditation of experts it disagreed with. While the practice began in the 1980s, as Scientology was seeking to regain its tax-exempt status in the United States, it has been a key attribute of Scientology's public relations strategy ever since.

Scientology's decision to attack its perceived enemies is deeply rooted in Scientology scripture. Indeed, in 1965, founder L. Ron Hubbard created the "Fair Game Law."¹³⁰ It states that individuals who are declared "fair game" because they oppose Scientology are not "protected by the codes and disciplines or the rights of a Scientologist."¹³¹ They may be "deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist" and "tricked, sued or lied to or destroyed."¹³²

Scientology has intervened in the public discourse not simply by favouring the production of research but also by attacking specific scholars it disagreed with. The best (and a quite typical)¹³³ example of Scientology harassment in the academy is that experienced by Prof. Kent of the University of Alberta. Kent is a pioneering scholar of new religious movements, and he was, in

¹³⁰ See Lord, "Scientology's Legal System", *supra* note 14 at 6. As mentioned in the source, the creation of a law in Scientology is simply the production by Hubbard of an official document called a policy letter.

¹³¹ *Ibid.*

¹³² *Ibid* at 6-7. The Fair Game Law is also ostensibly the reason Scientology attacked, as stated above, various members of the United States government and its Internal Revenue Service. While Scientology has argued that the Law has been "cancelled," this assertion is inaccurate (*ibid*).

¹³³ Another example of Scientology harassment is the case of Paulette Cooper. Cooper was one of the first journalists to cover the Church, and Scientology essentially forged bomb threats to government officials using her stationery (which contained her fingerprints), see Lord, "Scientology's Legal System", *supra* note 14 at note 13. Had Scientology been successful, Cooper could have spent the rest of her life in jail. It is worth mentioning that this level of intensity of harassment is no longer typical. On scholars more specifically, see also Ruth Graham, "Are Academics Afraid to Study Scientology?" (5 November 2014), online: *JSTOR Daily* <daily.jstor.org/scholars-on-scientology/> .

the 1990s,¹³⁴ one of the very first scholars to study Scientology, especially from a more critical perspective. As a Scientology scholar, I can attest to the fact that Prof. Kent is widely recognised as the foremost expert on Scientology. He has written extensively on the topic, and holds through his institution one of the largest collection of archival documents on Scientology. The harassment of Kent occurred as part of a broader pattern of Scientology practices, which often consist in hiring private investigators to follow targeted individuals (at a very high cost)¹³⁵ and engaging in “character assassination” by spreading false rumours among the individual’s neighbours and co-workers. This is unfortunately not a forum to list everything Kent went through over his four-decade career. Among other things, Scientology sent multiple letters to various officials at Kent’s university to discredit him and his research.¹³⁶ It also hired private investigators to follow him during some of his transatlantic research trips.¹³⁷

Kent’s conclusion is simple: the purpose of the harassment is and has been to ruin his professional reputation,¹³⁸ ostensibly to both disincentivise future research into Scientology (by

¹³⁴ See e.g. Kent, “Scientology – Is This a Religion?”, *supra* note 79 and Stephen A Kent, “The Globalization of Scientology: Influence, Control, and Oppositions in Transnational Markets” (1999) 29:2 Religion 147.

¹³⁵ See e.g. Thomas C Tobin, “Church of Scientology Paid Two Private Investigators Millions to Trail David Miscavige’s Rival, Lawsuit Claims”, *The Tampa Bay Times* (21 September 2012), online: <www.tampabay.com/news/scientology/church-of-scientology-paid-two-private-investigators-millions-to-trail/1252846/> , which notes that Scientology paid approximately \$10,000 per week and \$12 million in total for private investigators to follow Scientology leader David Miscavige’s father after he defected from the Church.

¹³⁶ See generally Stephen Kent, “Scientology’s Harassment of Stephen A Kent, September 1997 – November 2001” in Herbert C Northcott, ed, *A History of the Department of Sociology at the University of Alberta* 61, online: <era.library.ualberta.ca/items/5d96e454-6177-49a4-b3a3-7a9e7a7cbcf1/view/cf9ca389-f480-4e20-ba61-cd790f5dc171/01022018_History_of_Dept_Sociology_UAlberta.pdf> ; Donald A Westbrook, “Scientology Studies 2.0: Lessons Learned and Paths Forward” (2020) 14:2 Religion Compass 1 at 2-3; Michael Peckham, “New Dimensions of Social Movement/Countermovement Interaction: The Case of Scientology and Its Internet Critics” (1998) 23:4 Canadian Journal of Sociology 317; Lewis, “Scientology vs. the Media”, *supra* note 25; Terra Manca, “Presentations of Scientology in North American News Series” in Stephen A Kent & Susan Raine, eds, *Scientology in Popular Culture: Influences and Struggles for Legitimacy* (Santa Barbara: Praeger, 2017) and Hugh B Urban, “Fair Game: Secrecy, Security, and the Church of Scientology in Cold War America” (2006) 14:2 Journal of the American Academy of Religion 356. This behaviour is quite similar to that of the The Family, which, as mentioned above, was able to temporarily halt the publication of one of Kent’s paper (see Kent & Krebs, *supra* note 112 at 37).

¹³⁷ See Kent, “Scientology’s Harassment of Stephen A Kent, September 1997 – November 2001”, *supra* note 136.

¹³⁸ *Ibid* at 68.

him or others) and to strip him of the professional credibility he needs to disseminate his research findings. To this day, Scientology maintains a website to attack Kent's credibility,¹³⁹ as it does for other researchers.¹⁴⁰ While Scientology cannot control how Kent produces and disseminates his research, it can attack him in an effort to undermine his reputation with his peers. More broadly, Scientology's actions can disincentivise other scholars to conduct their own research. Through this harassment, Scientology can therefore indirectly impact the research output, by minimising the volume and impact of research which criticises it.

This bipartite effort of disseminating positive scholarship regarding its legitimacy in law and aggressively seeking to undermine scholars who question the legitimacy of its prospective status helped Scientology earn its tax-exempt status in the 1980s. It was key to Scientology's demonstration to the United States government that it deserved tax-exempt status. This status in turn ensured the survival of Scientology.

The next section focusses on a different context in Scientology's history, which illustrates a change in strategy. Unlike in the 1980s, Scientology is now widely recognised as a religion

¹³⁹ See "Bigotry & Hate Exposed: Stephen Kent", online: *Scientologists Taking Action Against Discrimination* <www.standleague.org/bigotry-and-hate/exposed/stephen-kent.html> ("Stephen Kent is a biased sociologist of religion who adopted the universally debunked theories of psychologist Margaret Singer and sociologist Richard Ofshe of 'coercive persuasion' and 'brainwashing' as applied to religions and made a career as a paid witness for litigants against new religious movements. In abdicating academic integrity and methodology for pseudoscientific anti-religious vilification, Kent earned the disrespect and ire of professionals in the field.") The Scientologists Taking Action Against Discrimination (STAND) League is a group established by Scientology to advocate for the interests of Scientologists. It routinely categorises attacks of Scientology as religious discrimination. See also "About STAND", online: *Scientologists Taking Action Against Discrimination* <www.standleague.org/about/> .

¹⁴⁰ See e.g. "Bigotry & Hate Exposed: Jon Atack", online: *Scientologists Taking Action Against Discrimination* <www.standleague.org/bigotry-and-hate/exposed/jon-atack.html> (which attacks Jon Atack, author of *A Piece of Blue Sky: Scientology, Dianetics and L. Ron Hubbard Exposed* (*supra* note 21) and the foremost expert on Scientology's early history) and "Bigotry & Hate Exposed: Margaret Singer", online: *Scientologists Taking Action Against Discrimination* <www.standleague.org/bigotry-and-hate/exposed/margaret-singer.html> (which attacks a prominent research psychologist). It is worth noting that Singer died over 15 years ago. The website is likely still accessible because Singer's work is foundational to other researcher's work on "brainwashing" within new religious movements. The theory can be used to, notably, challenge Scientology's tax exemption or justify an intrusion into the relationship which unites Scientology and its members. For some, getting a Scientology hate website is considered a rite of passage, see Growing Up in Scientology, "Scientology's Hate Websites" (21 March 2017), online (video): *YouTube* <www.youtube.com/watch?v=WBWJYDQrLQI> .

around the world. In the all-important United States, where Scientology has significant assets and membership, the 1993 ruling from the Internal Revenue Service granted Scientology and all of its affiliated organisations tax-exempt status. The ruling has been regarded as final, and few have sought to seriously question it. (This is likely not divorced from the unique context that led to the ruling: as mentioned above, Scientology engaged in a long and aggressive campaign of intimidation targeting individual IRS employees.)¹⁴¹ Yet recently, as becomes plain in the next section, many have begun to call more aggressively for the revocation, or at least the re-evaluation, of Scientology’s tax-exempt status.

As I mentioned above, Scientology earned tax-exempt status essentially as a result of an administrative decision: the Internal Revenue Service, which definitively attributes the status, chose to grant Scientology and all of its affiliated organisations tax-exempt status.¹⁴² Just prior to that decision, the Supreme Court of the United States had issued a devastating ruling, finding that donations to Scientology were made in exchange for specific religious services, making them *quid pro quo* payments lacking the requisite donative intent.¹⁴³ This terminal ruling would have made individual donations to Scientology definitively ineligible for a tax credit. Significantly, though, as I mentioned above, the Supreme Court’s ruling technically stands to this day. It is simply deprived of any practical significance as a result of the IRS’ overriding administrative decision. As such, Scientology’s status remains more fragile than that of other organisations. If the IRS

¹⁴¹ It is nonetheless worth mentioning that the agreement requires continuous compliance, see “Closing Agreement on Final Determination Covering Specific Matters”, *supra* note 32. However, the IRS has shown little interest in auditing Scientology’s compliance.

¹⁴² See notes 31 to 33, above, and accompanying text.

¹⁴³ As former Scientology executive Mike Rinder remarks, most people are now familiar with *quid pro quo* payments (Konkrete, *supra* note 110). (Rinder likely referred to the impeachment proceedings involving outgoing American President Donald J. Trump, see e.g. Savannah Behrmann, “The Trump Impeachment Is All About an Allegation of Quid Pro Quo. But What Does That Mean?”, *USA Today* (6 November 2019), online: <www.usatoday.com/story/news/politics/2019/11/06/trump-impeachment-what-does-quid-pro-quo-mean/4170817002/>). At the time, however, as Rinder notes, it was a somewhat obscure taxation law concept.

rescinded its tax-exempt status, Scientology would automatically be subject to the Supreme Court's decision. Furthermore, since Scientology's primary "business model" of selling religious courses for fixed "donations" has not changed, Scientology would have no obvious grounds to criticise the continued relevance and applicability of the Supreme Court's ruling.¹⁴⁴

It is now worth pointing out a key distinction in Scientology's approach as described in this section. While Scientology has been actively involved in the production of expert opinions which legitimise its status as a religion, it has shown little interest in the production of broader research concerning it as a religion. Scientology has been interested in the opinion of experts as to whether it meets established criteria for religious status in law, but not in the opinion of experts as to anything else. It is the only major religion without its own scholars. Indeed, there are no religious scholars who identify as Scientologists. Very recently (since 2017), we have witnessed increasingly intense attacks in the media on Scientology's organisational practices and tax-exempt status. In response to these attacks, Scientology has shifted its approach and sought to proactively encourage the production of favourable scholarship (on broader questions than that of its status as a religion). The next section is a forum to explore this shifting strategy and the contrasting way in which Scientology has, in a different context, sought to harness the power of expertise to establish and maintain its legitimacy in law.

¹⁴⁴ Though beyond the scope of this thesis, it is worth briefly mentioning that current Scientology leadership has varied Scientology's income sources – to significant criticism. Indeed, over the past several decades, and contrary to L. Ron Hubbard's express policy, members have been required (to gain access to advanced Scientology training) to make significant donations to the International Association of Scientologists, an unrestricted fund largely used by Scientology to cover legal fees and fees for private investigators involved in harassment campaigns – getting nothing in return. See generally Phil Lord, "Scientology's Legal System", *supra* note 14; Konkrete, *supra* note 110; "Debbie Cook's Email", *supra* note 105; and L. Ron Hubbard, Hubbard Communications Office Policy Letter, 7 February 1965, *supra* note 2.

5. SCIENTOLOGY: FACING MODERN-DAY CHALLENGES TO LEGITIMACY

When Scientology received its tax exemption in 1993, its executives breathed a sigh of relief. Their campaign had worked, and they had ensured the survival of the religion. As just mentioned, Scientology's status was intrinsically more fragile than that of other religious organisations – as it resulted from an administrative decision made in spite of a contrasting United States Supreme Court ruling. As we will see in this section, its status has become yet more fragile in very recent years. For the same reasons discussed above, and especially today, Scientology relies on its tax-exempt and religious status for more than its financial survival. The statuses largely shield it from government scrutiny of its managerial, financial, and other internal practices. They allow it to exist somewhat independently from the secular laws of the countries where it operates.

Since the 1980s ruling granting it tax-exempt status, Scientology has considerably changed. As mentioned above, while its membership did not significantly increase, it cemented its place in popular culture. By now, most have heard of Scientology – which is an impressive feat for a relatively small organisation.¹⁴⁵ Scientology had, until very recently, been able to keep relative control of its public image: when high-ranking and unhappy members left, Scientology was able to silence them using a combination of intimidation campaigns and million-dollar settlements.¹⁴⁶

¹⁴⁵ Scientology now has approximately 50,000 members, see e.g. Lord, “Scientology’s Legal System”, *supra* note 14 at 3.

¹⁴⁶ The previous sections analysed intimidation campaigns. On settlements, see e.g. Tony Ortega, “Scientology Settles With Debbie Cook”, *The Village Voice* (24 April 2012), online: <www.villagevoice.com/2012/04/24/scientology-settles-with-debbie-cook/> ; Steve Cannane & Brigid Andersen, “How the Church of Scientology Tried to Bring down Journalist Paulette Cooper, AKA Miss Lovely”, *ABC News* (17 July 2015), online: <www.abc.net.au/news/2015-07-17/how-scientology-tried-to-bring-down-miss-lovely/6627782> ; and Thomas C Tobin & Joe Childs, “The Truth Rundown, Part 2 — Death in Slow Motion”, *The Tampa Bay Times* (17 October 2019), online: <www.tampabay.com/special-reports/2019/10/17/the-truth-rundown-part-2-of-3-death-in-slow-motion/> .

More recently, however, the tide appears to have turned. Negative media coverage of Scientology,¹⁴⁷ broader animus in society, and changes in Scientology's organisational practices¹⁴⁸ have led to a wave of defections.¹⁴⁹ This wave has, in turn, made defectors more vocal about their experiences. A model where vocal defectors are intimidated and/or bought off can only work when there is a limited number of defectors. It is indeed impossible to settle with or fund the intimidation of a large, and growing, group of individuals.

The main tipping point seems to have been the television show *Leah Remini: Scientology and the Aftermath*, which ran on the A&E channel from 2016 to 2019.¹⁵⁰ The show is the brainchild of successful former actress and Scientologist Leah Remini and former high-ranking Scientology executive Mike Rinder. It stars both of them as they interview former Scientologists. The show

¹⁴⁷ See e.g. see e.g. Joe Nocera, "Scientology's Chilling Effect" (24 February 2015), *The New York Times*, online: <<https://www.nytimes.com/2015/02/24/opinion/joe-nocera-scientologys-chilling-effect.html>> and Gillian Grace, "Anderson Cooper to Scientology's David Miscavige: 'It's On'" (28 March 2010), *The National Post*, online: <<https://nationalpost.com/news/anderson-cooper-to-scientologys-david-miscavige-its-on>> ; and Chris Jancelewicz, "Church of Scientology Sued for Physical, Emotional Abuse by Ex-Member", *Global News* (19 June 2019), online: <globalnews.ca/news/5407402/scientology-ex-member-harassment-lawsuit/> .

¹⁴⁸ The main issue has been the increasing focus on revenue, which many have found oppressive and inconsistent with Scientology scripture, see e.g. "Debbie Cook's Email", *supra* note 105 and Thomas C Tobin, "Former Scientology Insiders Describe a World of Closers, Prospects, Crushing Quotas and Coercion", *The Tampa Bay Times* (27 December 2016), online: <www.tampabay.com/news/scientology/former-scientology-insiders-describe-a-world-of-closers-prospects-crushing/1201166/> . Scientology's leader since the death of founder L. Ron Hubbard, David Miscavige, has twice re-released sets of fundamental Scientology books and lecture. He argued that his team had found transcription and other errors. As most members had to purchase the materials each time, many saw the re-releases as pretexts to increase revenue. See e.g. "David Miscavige: Scientology Scripture Recovered and Restored in 25-Year Program Completed in 2009", online: *Scientology*: <www.scientology.org/david-miscavige/renaissance-for-scientology/completion-of-the-goldenage-of-knowledge.html> and Tony Ortega, "Scientology's Big Gamble: 'Golden Age of Tech 2' Is Here!" (16 November 2016), online: *The Underground Bunker* <tonyortega.org/2012/11/16/scientologys-big-gamble-golden-age-of-tech-2-is-here/> . Furthermore, to the extent that the re-releases are pretextual, they would constitute an "alteration" of the "tech" (Scientology scripture), which most Scientologists would consider an extremely serious transgression, see generally L Ron Hubbard, "Keeping Scientology Working", *supra* note 2.

¹⁴⁹ Recent and vocal celebrity defectors include Leah Remini, Paul Haggis, and Jason Beghe. Members of Scientology leader David Miscavige, such as his father Ron Miscavige and niece Jenna Miscavige Hill, have also spoken out against Scientology. Finally, none of the top high-ranking executives who managed Scientology 10 to 15 years ago remain believers. Vocal former executives include Marty Rathbun and Mike Rinder. On defectors generally, see Nina Hernandez, "Scientology Defectors: A Timeline", *Rolling Stone* (30 January 2017), online: <www.rollingstone.com/culture/culture-lists/scientology-defectors-a-timeline-126911/marty-rathbun-127823/> .

¹⁵⁰ See "Leah Remini: Scientology and the Aftermath: About", *A&E*, online: <<https://www.aetv.com/shows/leah-remini-scientology-and-the-aftermath/about>> .

was watched by millions¹⁵¹ and covered Scientology from a highly critical standpoint. It has been a uniquely effective forum for Scientology defectors. The series has notably covered physical abuse of Scientology Sea Org members and executives, disconnection from family members (shunning), and coerced abortions among Sea Org members.

Most importantly, the show brought more than renewed interest in Scientology beliefs and practices: it reignited the passion of those who believe Scientology should lose its tax exemption. The first seasons of the television show did briefly refer to Scientology's tax-exempt status, and some airtime was dedicated to noting that Rinder and Remini consulted lawyers and spoke with the Federal Bureau of Investigation (FBI).¹⁵² The last season, and its last episode, adopted a significantly different framing. The last episode was dedicated to the recent allegations of serious sexual misconduct by Danny Masterson.¹⁵³ Masterson is a Scientologist, and Scientology is believed to have systematically failed to report the allegations of rape to police authorities and indeed has helped Masterson defend himself against the allegations. The final episode is a two-hour special, filmed in front of a live audience. It brings together the many former Scientologists who have been interviewed during seasons of the show. The episode frames the sexual abuse as

¹⁵¹ See e.g. Laura Hurley, "The Huge Number of People Who Watched Leah Remini's New Scientology Show" (1 December 2016), online: *Cinema Blend* <www.cinemablend.com/television/1592410/the-huge-number-of-people-who-watched-leah-reminis-new-scientology-show> .

¹⁵² After the show's cancellation, Remini noted that her goal had always been to trigger the revocation of Scientology's tax-exempt status, see Michael O'Connell, "Leah Remini's 'Scientology and the Aftermath' to End with Explosive Special", *The Hollywood Reporter* (14 August 2019), online: <www.hollywoodreporter.com/news/leah-remini-scientology-aftermath-ending-special-sexual-abuse-1231767> ("[w]e're exposing so much, but we need to do some other things to bring the fight to a different level. We did not plan on more than a season or two. I always thought it would be six or eight episodes and that would be enough for the FBI, local police and the IRS to start doing something about it — or at the very least revoke their tax exemptions.")

¹⁵³ On the allegations, and subsequent criminal charges, see generally Andrew Dalton, "'That 70s Show' Actor Danny Masterson Charged in 3 Rapes", *AP News* (17 June 2020), online: <apnews.com/0094b7382d1bb54252a8d0662cf5a733> and Julia Jacobs, "'That '70s Show' Actor Danny Masterson Charged With Raping 3 Women", *The New York Times* (17 June 2020), online: <www.nytimes.com/2020/06/17/arts/television/danny-masterson-rape-charged.html> .

both a reason to revoke Scientology's tax exemption and a result of it. Without the money accumulated through the tax exemption (up to 3 billion US dollars),¹⁵⁴ they purport, Scientology would not be able to hurt its victims or engage in intimidation campaigns to protect its members or its interests. The episode frames the tax exemption as the root of Scientology's inappropriate behaviour, and the solution to it.

It worked. Breathtakingly well. By the time the last episode ran, the media extensively covered Scientology's tax-exempt status. Throughout the past several years and far more in coverage related to the Masterson case, over one hundred news articles have critically mentioned Scientology's tax-exempt status.¹⁵⁵ Even the President of the United States reportedly told an aide that he felt it might time the reconsider Scientology's tax-exempt status.¹⁵⁶

In response to this renewed assault, and in a new context, Scientology has had to adopt a new strategy. The old one would not suffice. Indeed, the calls for the revocation of Scientology's tax-exempt status came even as Scientology aggressively disseminated favourable expert opinions and attacked the experts it disagreed with. Again, Scientology has harnessed the power of objectivity and expertise to respond to challenges to its legitimacy, this time by using a more

¹⁵⁴ See Tony Ortega, "Shock Dox: Scientology's 2011 Book Value for Just Two of Its Entities Is \$1.2 Billion" (7 April 2014), online: *The Underground Bunker* <tonyortega.org/2014/04/07/shock-dox-scientologys-book-value-for-just-two-of-its-entities-is-1-2-billion/> and O'Connell, *supra* note 152.

¹⁵⁵ See e.g. Alex Johnson, "Ex-Scientology Member Sues Church and Its Leader Alleging Abuse, Human Trafficking", *NBC News* (19 June 2019), online: <www.nbcnews.com/news/religion/ex-scientology-member-sues-church-its-leader-alleging-abuse-human-n1019506> and Peter J Reilly, "IRS And Scientology - Everything You Want To Know And More", *Forbes* (12 November 2017), online: <www.forbes.com/sites/peterjreilly/2017/11/12/irs-and-scientology-everything-you-want-to-know-and-more/#3e9e17ef4042> . Very recently, in an unprecedented feat, Mark Bunker, a long-time Scientology critic, was elected to the city council of Clearwater, where Scientology's headquarters are located and where the Church owns dozens of properties. His platform's main promise was to openly discuss Scientology's tax-exempt status, see Tracey McManus, "Once Unspoken, Scientology at Forefront of Clearwater City Council's Seat 2 Race", *Tampa Bay Times* (20 February 2020), online: <www.tampabay.com/news/clearwater/2020/02/20/once-unspoken-scientology-at-forefront-of-clearwater-city-councils-seat-2-race/> .

¹⁵⁶ See e.g. John Bowden, "Trump Thinks Scientology Should Lose Tax-Exempt Status", *The Hill* (11 September 2017), online: <thehill.com/blogs/blog-briefing-room/news/359730-trump-thinks-scientology-should-lose-its-tax-exempt-status> .

sophisticated strategy. I mentioned previously that Scientology showed, until recently, very little interest in scholarship on topics other than its status as a religion. Scientology's response to this modern-day challenge has been to favour the production of research on these other topics. This will ostensibly help Scientology move the conversation to other topics, cultivating the idea that there is an apparent consensus among experts as to the legitimacy of its status as a religion. Furthermore, this research helps further solidify and deepen its place as a mainstream religion. Scientology's new strategy may indicate its maturing as a religion, and also positions it to respond to future challenges to its legitimacy as a religion.

I further analyse Scientology's strategy later in this section. I organise the section around three parts. The first part briefly describes the characteristics of Scientology research prior to Scientology's change of strategy. The second describes the characteristics of Scientology research after. The third part analyses the impacts and reasons for this change in strategy.

Scientology Research since the Religion's Founding

The study of Scientology as a religion has always been peculiar. The field of research is, first, quite young. As mentioned, Scientology stands out as the only religion founded in the twentieth century to become a part of the mainstream. Even among new religious movements (most of which were founded some 100 years before Scientology), Scientology is quite young.¹⁵⁷ The research on Scientology is, unsurprisingly, much sparser than that on other new religious

¹⁵⁷ See Lord, "Scientology's Legal System", *supra* note 14 at 2-3.

movements such as Jehovah's Witnesses and The Church of Jesus Christ of Latter-day Saints.¹⁵⁸

In light of Scientology's harassment of scholars it disagrees with, this is surprising.

Furthermore, the research on Scientology has been defined by its relative ideological homogeneity. Most scholars studying Scientology have, although along a continuum, voiced opposition or criticism to at least some aspects of the religion. Scientology has not, in response to this trend, attempted to groom its own scholars, who could adopt ideological positions closer to the Church's. I have previously (though briefly) noted that this is in stark contrast to other new religious movements, such as The Church of Jesus Christ of Latter-day Saints:

The Church of Jesus Christ of Latter-day Saints has, for instance, been highly effective at encouraging the production and dissemination of academic research. The Church has "founded, supported, and guided" Brigham Young University, a prominent private research university in the United States. There are numerous prominent, peer-reviewed academic publications in the field of Mormon studies, notably *Dialogue: A Journal of Mormon Thought* and the *International Journal of Mormon Studies*. Academic research has, undoubtedly, supported the emergence of The Church of Jesus Christ of Latter-day Saints as a *mainstream* – at least mainstream-like – religion, especially as academics such as Nathan Oman have been appointed at prestigious research universities beyond Brigham Young University.¹⁵⁹

¹⁵⁸ *Ibid.*

¹⁵⁹ Lord, "Scientology's Legal System", *supra* note 14 at 8 [references omitted]. On this phenomenon within Jehovah's Witnesses and The Church of Jesus Christ of Latter-day Saints, also see more generally Brent L Top & Bruce A Chadwick, "'Seek Learning, Even by Study and Also by Faith': The Relationship between Personal Religiosity and Academic Achievement among Latter-day Saint High-School Students" (2001) 2:2 *The Religious Educator* 121; Michael K Young, "Legal Scholarship and Membership in the Church of Jesus Christ of Latter-day Saints: Have They Buried Both an Honest Man and a Law Professor in the Same Grave Response" [2003] 3 *BYUL Rev* 1069; Boyd K Packer, "The Mantle Is Far, Far Greater Than the Intellect" (1981) 21:3 *Brigham Young University Studies* 259; Lesley Anne Cyril, "Nurturing Servant Leaders in Religious Education: A Case Study of the Church Educational System of the Church of Jesus Christ of Latter-Day Saints in Aotearoa/New Zealand" (2006) [unpublished]; Benjamin Beit-Hallahmi, "Explaining the Secularity of Academics: Historical Questions and Psychological Findings" (2015) 2:3 *Science, Religion & Culture* 104; Carl Mosser & Paul Owen, "Mormon Scholarship, Apologetics, and Evangelical Neglect: Losing the Battle and Not Knowing It?" (1998) 19:2 *Trinity J* 180; George Chryssides, "Conflicting Expectations?: Insider and Outsider Methods of Studying Jehovah's Witnesses" (2015) 17:1 *Diskus* 14; Carolyn R Wah, "An Introduction to Research and Analysis of Jehovah's Witnesses: A View from the Watchtower" (2001) 43:2 *Review of Religious Research* 161; Zoe Knox, "Writing Witness History: The Historiography of the Jehovah's Witnesses and the Watch Tower Bible and Tract Society of Pennsylvania" (2011) 35:2 *J Religious History* 157 and George D Chryssides, *Jehovah's Witnesses: Continuity and Change* (London: Routledge, 2016) (pages 5-25 are of particular relevance).

Scientology scholars have, at times vigorously, criticised each other's work. For instance, one of Stephen Kent's articles¹⁶⁰ was the subject of a detailed critique,¹⁶¹ which was, in turn, the subject of a response by Kent.¹⁶² Scientology has also, somewhat awkwardly and while seemingly attempting to adopt an academic tone, responded to articles through its spokespersons.¹⁶³ However, no scholars had, thus far,¹⁶⁴ either identified as Scientologists or adopted positions which are explicitly favourable to the Church. Although some have shared papers adopting such positions (including at research conferences), none had been published in peer-reviewed publications.¹⁶⁵

I have previously decried the relative ideological homogeneity of Scientology research.¹⁶⁶ Scientology has always been able to tell its side of the story. It disseminates friendly information through its television channel, Scientology Network,¹⁶⁷ sustains a website to attack former members who now criticise it,¹⁶⁸ and employs spokespersons who routinely participate in televised

¹⁶⁰ Stephen A Kent, "Brainwashing Programs in The Family/Children of God and Scientology" in Thomas Robbins & Benjamin Zablocki, eds, *Misunderstanding Cults: Searching for Objectivity in a Controversial Field* (Toronto: University of Toronto Press, 2000) 349.

¹⁶¹ Lorne L Dawson, "Raising Lazarus: A Methodological Critique of Stephen Kent's *Revival of the Brainwashing Model*" in Thomas Robbins & Benjamin Zablocki, eds, *Misunderstanding Cults: Searching for Objectivity in a Controversial Field* (Toronto: University of Toronto Press, 2000) 379.

¹⁶² Stephen A Kent, "Compelling Evidence: A Rejoinder to Lorne Dawson's Chapter" in Thomas Robbins & Benjamin Zablocki, eds, *Misunderstanding Cults: Searching for Objectivity in a Controversial Field* (Toronto: University of Toronto Press, 2000) 401.

¹⁶³ See Leisa Goodman, "A Letter from the Church of Scientology", *Response*, (2001) 6:2 *Marburg J Religion* 1. This paper is a response to an article by Kent (Stephen A Kent, "The French and German versus American Debate Over 'New Religions'", *supra* note 79).

¹⁶⁴ Until 2017, as detailed in the next subsection.

¹⁶⁵ See e.g. Galina Krylova, "Controversies about the Church of Scientology in Russia. Legal Methods of Defense of the Right for Freedom of Religion" (Paper delivered at the CESNUR 2001 Conference, London, April 2001) [unpublished] and Kyriakos N Kyriazopoulos, "The Legal Treatment of Scientology's Church in Greece" (Paper delivered at the CESNUR 2001 Conference, London, April 2001) [unpublished].

¹⁶⁶ See e.g. Lord, "Scientology's Legal System", *supra* note 14 at 8 ("[t]he perspective of Scientologist scholars remains lacking yet necessary to a balanced conversation" at 8).

¹⁶⁷ See "Home", online: *Scientology Network* <www.scientology.tv/> and "End of a Decade, Beginning of Forever: New Year's Celebration Caps History-Defining Ten Years for Scientology" (31 December 2019), online: *Scientology* <www.scientology.org/scientology-today/events/new-years-2020.html#slide2> ("[a]nd so came the historic launch of the Scientology Network, bringing the voice of Scientology to the world across satellite television and live streaming platforms in 17 languages — setting a new standard for religious programming and already earning more than 50 industry awards for innovation and excellence"). I am unable to verify the last claim of the quotation.

¹⁶⁸ See section 4, above.

reports on the Church.¹⁶⁹ However, Scientology did not groom its own scholars to have the same place in scholarship as it does in the media and, more broadly, the public debate.¹⁷⁰ For scholars to openly criticise Scientology, with no credible scholarly response adopting an opposing stance, arguably challenges fundamental notions of what a debate (even a scholarly one) should be. To state that a contrasting perspective is vital to a field of research is to recognise the intrinsically dialectic nature of scholarship and the humility which should define our approach to scholarship.

A New Strategy

This relative ideological homogeneity ended in 2017, with the creation of The Journal of CESNUR. CESNUR stands for, in Italian, “Center for Studies on New Religions.”¹⁷¹ As an organisation, CESNUR significantly predates its journal.¹⁷² Its stated purpose is:

[T]o promote scholarly research in the field of new religious consciousness, to spread reliable and responsible information, and to expose the very real problems associated with some movements, while at the same time defending everywhere the principles of religious liberty.¹⁷³

CESNUR has, over the past three decades, often defended controversial new religious movements and supported criticism of leading religious scholars adopting opposing views.¹⁷⁴ That is especially

¹⁶⁹ See e.g. 20/20 – Official Channel, “20/20 Scientology: A War Without Guns” (10 January 2017), online (video): *YouTube* <www.youtube.com/watch?v=WBWJYDQrLQI> and 20/20 – Official Channel, “20/20 Scientology: A Father’s Story | Ron Miscavige Interview [2020 FULL DOCUMENTARY]” (13 May 2016), online (video): *YouTube* <www.youtube.com/watch?v=asr15FAFOX4> .

¹⁷⁰ See generally section 4, above and Kent & Raine, *supra* note 25.

¹⁷¹ See “About”, online: *CESNUR: Center for Studies on New Religions* <www.cesnur.org/about.htm> [“About CESNUR”].

¹⁷² See *ibid.* The organisation was founded in 1988.

¹⁷³ *Ibid.*

¹⁷⁴ See generally Kent, “The French and German versus American Debate Over ‘New Religions’, Scientology, and Human Rights”, *supra* note 163 at 15-19.

true regarding Scientology.¹⁷⁵ Prof. Kent has called CESNUR “the highest profile lobbying and information group for controversial religions.”¹⁷⁶ He considers its director, patent and trademark attorney Massimo Introvigne, “[a] persistent critic of any national attempts to identify or curtail so-called ‘cults’” who has “spoken out against what he considers to be intolerance toward ‘minority religions,’ especially in Belgium, France, and Germany.”¹⁷⁷ While the language is (characteristically) strong, the substance of Kent’s argument is correct. CESNUR’s “information page” on Scientology is effectively a collection of sources adopting a positive stance on Scientology or criticising sources which do not.¹⁷⁸ As will be further detailed below, CESNUR has also supported (indeed, celebrated) scholarship adopting a more favourable stance on Scientology. CESNUR also has significant ties to Scientology.

It is worth mentioning here a point which I have alluded to previously: there is absolutely nothing wrong with an organisation, regardless of how it is funded, supporting controversial new religious movements such as Scientology. People can rightly expect some transparency regarding the organisation’s funding and strongly criticise its stances. However, neither I nor, I believe, any other Scientology scholar is suggesting that CESNUR should be curtailed in its advocacy. To disagree on substance is not to disagree on freedom of expression. An organisation supporting controversial new religious movements would not even be a subject of particular academic interest. CESNUR has become one because of its prominence and legislative advocacy, including with European governments.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid* at 15.

¹⁷⁷ *Ibid.*

¹⁷⁸ See “Scientology: Documents and Updates from CESNUR”, online: *CESNUR: Center for Studies on New Religions* <www.cesnur.org/testi/se_scientology.htm> .

As mentioned above, CESNUR created The Journal of CESNUR in 2017. The Journal is a refereed publication¹⁷⁹ and marks a shift in CESNUR's strategy. The Journal's information page reads as follows:

CESNUR, the Center for Studies on New Religions, was founded in 1988. In thirty years of activity, more than 1,000 scholarly papers have been presented at its international conferences and seminars. Many of them have been posted on CESNUR's Web site, others have found their way to international journals.

Acknowledging that many changes have happened in the world of international scholarly publishing, after thirty years of activity CESNUR has decided to launch a new adventure, its own journal.¹⁸⁰

The creation of the Journal marks a shift in CESNUR's strategy. While one could argue that CESNUR simply wanted to encourage the production of scholarship on new religious movements, it is likelier – especially considering CESNUR's history – that it was trying to legitimate its positions and encourage the production of academic research which objectivises and supports these positions. We can interpret the above quotation as indicating that CESNUR was frustrated with the absence of research adopting stances similar to its own, even as it attempted to promote this research through events such as its annual conference.

The porousness of the boundary between CESNUR and its journal is evident. Massimo Introvigne, the director of CESNUR mentioned above, serves as the Journal's Editor-in-Chief.¹⁸¹ Though Introvigne is not and appears never to have been affiliated with a research institution,¹⁸² he has published a curiously high number of articles in the Journal. By my count, as of January

¹⁷⁹ See "Peer Review Guidelines", online: *The Journal of CESNUR* <cesnur.net/peer-review-guidelines/> .

¹⁸⁰ See "About", online: *The Journal of CESNUR* <cesnur.net/about/> .

¹⁸¹ See "Board", online: *The Journal of CESNUR* <cesnur.net/board/> .

¹⁸² See e.g. Massimo Introvigne, "Soka Gakkai in Italy: Success and Controversies" (2019) 3:6 J CESNUR 3 and "Board", *ibid.*

2020, Introvigne has published 30 articles in the Journal – which as of that date has existed for 2 years and four months.

Introvigne also shared a presentation on CESNUR’s website (not the Journal’s website), where he describes a set of articles published in the Journal and written by Ian C. Camacho in glowing terms.¹⁸³ These articles have sought to question long-accepted facts regarding Scientology founder L. Ron Hubbard’s life¹⁸⁴ – facts which directly contradict the Church’s near-fictional, hagiographic tale of his life.¹⁸⁵ Most experts have indeed long agreed that Hubbard lied on a wide range of things, including his war record, educational background, and life experiences.

Introvigne celebrates the fact that Camacho has provided further support for prior claims by J. Gordon Melton. Melton has long been one of the very few scholars less critical of Scientology. Introvigne describes the articles as follows:

Even on details, critics were often wrong. Some insisted for years that Melton overlooked the fact that Hubbard falsely claimed to have an academic degree in engineering... until in 2018 an independent scholar called Ian Camacho published a *tour-de-force study* proving that Hubbard did not claim it and even poke fun in public at those inside and outside the Church of Scientology who did[.]¹⁸⁶

¹⁸³ I mention and cite these articles below.

¹⁸⁴ See Ian C Camacho, “The World’s First Clear Presentation: When Hubbard Met Sonya Bianchi at the Shrine Auditorium” (2019) 3:3 J CESNUR 18 (which challenges the consensus that Hubbard’s demonstration of the first Clear (a person freed from aberration by Scientology technology) was a failure, as the Clear failed to remember – though she should have had perfect recall of these – pages of her university textbook, physics formulae (she was a college student), and the colour of Hubbard’s tie); Ian C Camacho, “Degrees of Truth: Sequoia University and Doctor L. Ron Hubbard, PhD, D.Sc., D.D.” (2019) 3:4 J CESNUR 31 (which challenges Hubbard’s deliberate claim that he held a degree from a diploma mill (an illegitimate university granting degrees for little or no work)); Ian C Camacho, “Degrees of Truth: Engineering L. Ron Hubbard” (2018) 2:4 J CESNUR 28 (which challenges the consensus that Hubbard falsely claimed to be a certified civil engineer and a graduate of George Washington University (which Hubbard did attend before shortly dropping out)); and Ian C Camacho, “No B.S. in C.E. Here: An Addendum to ‘Degrees of Truth: Engineering L. Ron Hubbard’” (2019) 3:1 J CESNUR 140 (which reiterates the claims from the previous article in light of new sources regarding these claims).

¹⁸⁵ See generally Dorthe Refslund Christensen, “Inventing L. Ron Hubbard: On the Construction and Maintenance of the Hagiographic Mythology of Scientology’s Founder” in James R Lewis & Jesper Aagaard, eds, *Controversial New Religions* (Oxford: Oxford University Press, 2005) 227 and Ruth A Tucker, *Another Gospel: Cults, Alternative Religions, and the New Age Movement* (Zondervan: Grand Rapids, 1989) at 299-318.

¹⁸⁶ See Massimo Introvigne, “Even Scientology Can Be Studied: Gordon Melton and the Wisdom of Diversity” (18 November 2018), online: *CESNUR: Center for Studies on New Religions* <www.cesnur.org/2018/melton_scientology_denver.pdf> [emphasis added].

In this presentation, Introvigne also states that “Melton’s side emerged as victorious in the academia, where anti-cult positions were marginalized, while anti-cult stereotypes against Scientology and other new religions are still a part of media accounts and popular culture.”¹⁸⁷

I am not suggesting that there is any reason to doubt that the Journal is indeed, as it claims and in a narrow sense, a refereed publication. It is, however, possible to question the rigour of the peer review process and the selection of peer reviewers – especially given Introvigne’s unreasonably high research output and the questionable quality of some of the scholarship it published.¹⁸⁸ The journal’s credibility is helped by the noted scholars listed on its website.¹⁸⁹ Most notably, J. Gordon Melton, who (as mentioned above) had long been the sole prominent religious scholar less critical of Scientology, appears to sit on the Journal’s Board.¹⁹⁰ However, as these scholars are listed under the heading “Editorial Board / International Consultants,” it is unclear what their actual involvement is.

Articles in the Journal regarding Scientology have been overwhelmingly positive. The Journal has published book reviews (including one by Introvigne) highly critical of books written by traditional Scientology scholars,¹⁹¹ as well as positive reviews of books which adopt a more

¹⁸⁷ *Ibid.*

¹⁸⁸ It is also worth mentioning that Introvigne is, in an article published in the Journal, oddly referred to as “Professor Introvigne”, see PierLuigi Zoccatelli, “What Is Really Happening in Russia? A Response to Prof. Introvigne and Prof. Falikov” (2018) 2:2 J CESNUR 111.

¹⁸⁹ See “Board”, *supra* note 181.

¹⁹⁰ *Ibid.* Melton has also published three articles in the Journal, one of which is a book review of a recently published book from a young religious scholar who attempts to adopt a more “objective” tone regarding Scientology, see J Gordon Melton, “The Religious Background of the Movement for Spiritual Integration into the Absolute” (2017) 1:1 J CESNUR 43; J Gordon Melton, “A Contemporary Ordered Religious Community: The Sea Organization” (2018) 2:2 J CESNUR 21; and J Gordon Melton, Book Review of *Among the Scientologists: History, Theology, and Praxis* by Donald A Westbrook, (2019) 3:1 J CESNUR 165 [Melton, “Book Review”].

¹⁹¹ See Massimo Introvigne, Book Review of *Scientology and Popular Culture: Influences and Struggles for Legitimacy* by Stephen A Kent and Susan Raine, eds, (2018) 2:2 J CESNUR 124 (“[r]ather than a study of Scientology and popular culture, it is largely a summary of Kent’s decade-old anti-Scientology obsessions. Kent has become somewhat proverbial among scholars of new religious movements for his obsessive crusade against the Church of Scientology. While he has been able to recruit to it some younger disciples,

positive stance on Scientology.¹⁹² Other articles argue that Scientology is a religion¹⁹³ and that it has been the subject of persistent “cult wars” aimed at eliminating its presence in certain countries.¹⁹⁴ Some scholars have attempted to theorise various Scientology beliefs and practices and have argued that they do not significantly differ from those of other religions.¹⁹⁵ Many articles have argued against the direct or indirect “outlawing” of new religious movements.¹⁹⁶ Most recently, as mentioned above, CESNUR published a series of articles by independent scholar Ian C. Camacho which have attempted to question long-accepted facts regarding Scientology founder L. Ron Hubbard’s life. As Camacho is not and appears never to have been affiliated with a research institution, it may be worth asking how his research is funded.¹⁹⁷

The result has been a steady and significant flow of articles openly favourable to Scientology in a field which had seen just about none for decades. Over a dozen articles on Scientology (again, as of January 2020) have been published in CESNUR’s Journal in just over two years and four months.

his claims have become increasingly bizarre, as evidenced by his recent statement that Scientology ‘faces extinction’” at 124 [references omitted]).

¹⁹² See Melton, “Book Review”, *supra* note 190 and Luigi Berzano, Book Review of *Scientology. Libert  e immortalit *. by Aldo Natale Terrin, (2018) 2:2 J CESNUR 129.

¹⁹³ See Luigi Berzano, “Is Scientology a Religion?” (2018) 2:2 J CESNUR 11.

¹⁹⁴ See “Introduction: Scientology and the New Cult Wars” (2018) 2:2 J CESNUR 4 (which calls Kent a “veteran anti-Scientology crusader” at 5).

¹⁹⁵ See Massimo Introvigne, “Disconnection in Scientology: A ‘Unique’ Policy?” (2019) 3:1 J CESNUR 119 (which argues that the practice of shunning (called disconnection) in Scientology is not unique) and Melton, “A Contemporary Ordered Religious Community: The Sea Organization”, *supra* note 190 (which analyses Scientology’s religious order, the Sea Organisation). On the Sea Organisation and disconnection in Scientology, see generally Lord, “The Eternal Commitment: Scientology’s Billion-Year Contract”, *supra* note 4.

¹⁹⁶ See e.g. “Introduction: Scientology and the New Cult Wars”, *ibid*; Boris Falikov, “The Provisions Against Religious Extremism and Illegal Business Activity as Instruments for Outlawing Religious Minorities in Russia: The Case of the Church of Scientology” (2018) 2:2 J CESNUR 101 (which energetically makes the claim that not outlawing cults makes Russia “an invincible fortress against the morally corrupted West” at 101); Patricia Duval, “Religious Discrimination and State Neutrality: The Case of Scientology in Hungary” (2018) 2:2 J CESNUR 118; and Massimo Introvigne, “Scientology, Anti-Cultists, and the State in Russia and Hungary” (2018) 2:2 J CESNUR 93.

¹⁹⁷ See e.g. Camacho, “The World’s First Clear Presentation: When Hubbard Met Sonya Bianchi at the Shrine Auditorium”, *supra* note 184 at 19.

Analysis

Of course, CESNUR is not Scientology. Nonetheless, the relationship between both organisations is deep. CESNUR is an independent group of scholars and other individuals who have long advocated for Scientology. Whether they associate within the Church (as if, for instance, the Church created its own journal) or within a non-profit organisation is largely immaterial. Indeed, CESNUR and its scholars have openly aligned themselves with the Church's positions and priorities.¹⁹⁸ For scholars to associate within CESNUR even projects at least a limited aura of independence and impartiality, which may help legitimise the research conducted and published at CESNUR.

We do not and cannot know how CESNUR is funded. CESNUR's website vaguely describes its funding sources as follows:

It is independent from any Church, denomination or religious movement. CESNUR International was recognized as a public non-profit entity in 1996 by the Italian authorities, who are the main current contributors to its projects. It is also financed by royalties on the books it publishes with different publishers, and by contributions of the members.¹⁹⁹

We have no way to verify this claim. Given the wealth of the Church,²⁰⁰ its interest in academic research, and the lack of mandatory disclosure requirements for funding in Italy (where CESNUR is incorporated); it is quite likely that Scientology may fund CESNUR. That is especially true

¹⁹⁸ See e.g. "About CESNUR", *supra* note 171, which essentially states that CESNUR does not support theories of brainwashing used to oppose cults and also opposes the unrestricted use of testimonies of former members. This mirrors the Church's positions, see e.g. "Bigotry & Hate Exposed: Stephen Kent", *supra* note 139.

¹⁹⁹ See "About CESNUR", *supra* note 171.

²⁰⁰ See e.g. Ortega, "Shock Dox: Scientology's 2011 Book Value for Just Two of Its Entities Is \$1.2 Billion", *supra* note 154 and O'Connell, *supra* note 154.

given the fact that CESNUR counts so many “independent scholars” who have no apparent source of funding.²⁰¹

Scientology has also provided CESNUR scholars unprecedented access.²⁰² This access is key to conducting research on Scientology, and constitutes direct support of CESNUR’s activity. While, as mentioned above, many scholars – and Scientology – have criticised the use of testimonies of former members, it is worth mentioning that most Scientology scholars have little else to work with. Scientology is one of the only religions, if not the only religion, to have confidential scripture, which is protected by copyright and other intellectual property tools.²⁰³ Furthermore, Scientology is, as mentioned above, never keen to collaborate with anyone it finds antagonistic. Scholars with whom Scientology disagrees will have access neither to Scientology’s confidential scripture nor to its members, churches, and other facilities.

Finally, Scientology has aggressively disseminated CESNUR’s scholarship.²⁰⁴ This constitutes a major shift in strategy, and it is the first time that Scientology has disseminated scholarship on anything other than its status as a religion. As we will see, this tactic is also quite intentional, and aimed at cementing Scientology’s legitimacy in law.

²⁰¹ It is also worth mentioning that, while scholars affiliated with higher learning institutions may be subject to an ethics code which mandates that they disclose funding they receive, independent scholars are generally not subject to an ethics code and may not need to disclose their funding sources – especially if the journal they publish with has no requirement to that effect.

²⁰² See e.g. Camacho, “The World’s First Clear Presentation: When Hubbard Met Sonya Bianchi at the Shrine Auditorium”, *supra* note 184 at 19 (which acknowledges both access and extensive direct help from a member of Scientology’s publishing arm, Bridge publications); Camacho, “Degrees of Truth: Sequoia University and Doctor L. Ron Hubbard, PhD, D.Sc., D.D.”, *supra* note 184 at 29-30; and Donald A Westbrook, *Among the Scientologists: History, Theology, and Praxis* (Oxford: Oxford University Press, 2019) at 10-13.

²⁰³ See e.g. Walter A Effross, “Owning Enlightenment: Proprietary Spirituality in the 'New Age' Marketplace” (2003) 51:3 Buff L Rev 483 and “Why Is Everything Copyrighted and Trademarked in Scientology?”, online: *Scientology* <www.scientology.org/faq/scientology-in-society/why-is-everything-copyrighted-and-trademarked-in-scientology.html> .

²⁰⁴ See e.g. “Scientology Religion Featured in Latest CESNUR Journal” (2 June 2018), online: *Scientology* <www.scientologyreligion.org/blog/scientology-religion-featured-in-latest-cesnur-journal.html> and “CESNUR Paper Sheds Light on the Anti-Religious Movement” (3 September 2018), online: *Scientology Israel* <www.scientologyreligion.org.il/blog/cesnur-paper-sheds-light-on-the-anti-religious-movement.html> .

I must admit that my first reaction to CESNUR's Journal was one of indignation. I initially read Melton's aforementioned article on the Sea Organisation and, even though I disagreed with parts of its argument, found it helpful and interesting.²⁰⁵ I cited it in my work.²⁰⁶ When I read the other articles on Scientology (and especially Camacho's), however, I emailed a colleague, stating, "How do they keep publishing so many of those? And who do they get to peer review? Anyone with even an elementary knowledge of Scientology / Hubbard can see through their claims."²⁰⁷ I intuitively felt – as I am sure many others did – that publishing such scholarship (which I considered full of factual and other inaccuracies) was unacceptable. I felt overwhelmed with the volume of articles published by CESNUR and realised it would be hard to effectively respond to all of them.

Upon further reflection, I believe that may have been the very point. CESNUR has overwhelmed traditional Scientology scholars, who will simply not have time to respond to its scholars – and far less to deeply engage with them. CESNUR will likely fundamentally redefine the field of research concerning Scientology as a religion (and its ideological balance), flooding it with favourable scholarship.

Through CESNUR, Scientology has therefore operated a shift in strategy. In response to the renewed challenges to its legitimacy as a religion (described at the beginning of this section), it has begun to get involved in the production and dissemination of scholarship on topics other than its status as a religion. Until very recently, Scientology appeared not to care about what scholars had to say about it. Beyond Scientology's status as a religion, Scientology executives had

²⁰⁵ See Melton, "A Contemporary Ordered Religious Community: The Sea Organization", *supra* note 190.

²⁰⁶ See Lord, "Scientology's Legal System", *supra* note 14 at 24.

²⁰⁷ Prof. Kent more exhaustively provides support for these claims in his article, see Kent, "Degrees of Embellishment", *supra* note 69.

little interest in furthering the field of research concerning Scientology as a religion. Through CESNUR, this all changed. Scientology has sought the production and dissemination of more positive scholarship. To face today's challenges, Scientology executives want their religion to look more like any other religion, with a robust field of research concerning various aspects of it.

Through this new research, Scientology has matured. Instead of reactively attacking scholars it disagrees with, it has proactively favoured the emergence of those it agrees with. In helping build a field of research concerning Scientology as a religion, Scientology will likely deepen its place as a mainstream religion. The research indirectly helps project an apparent consensus regarding Scientology's status as a religion, by shifting the conversation to other topics related to Scientology. Scientology's response to challenges to its legitimacy used to be: "No credible scholar thinks we are not a religion." It is now more sophisticated, something like: "No credible scholar thinks we are not a religion. In fact, scholars aren't *there* anymore, they are discussing countless other aspects of our faith, as they do for any religion. We are not just a religion, we are a *normal* religion – and a pretty good one, if one relies on what scholars say about us."

In doing so, Scientology hopes to rise above the recent debates regarding the legitimacy of its legal status, to avoid to even have to engage, as it did in the 1980s, with those who believe its status should be revoked. Scientology wishes (and has worked) to present itself as a mature, world religion, whose status can no longer be questioned. Through that strategy, Scientology hopes to keep its legal status, acutely aware of the singular importance it has played and must continue to play in its survival – in its ability to exist somewhat independently from the secular legal system.

Unlike for the period covered in the previous section, we do not have the benefit of hindsight. We know that Scientology's strategy in the 1980s worked: Scientology gained tax-

exempt status in the United States. Time will tell whether Scientology's new strategy will work. That being said, if the past is a reasonably good predictor of the future, we would be wise not to underestimate Scientology.

VI. CONCLUSION

This thesis has sought to demonstrate the importance of expertise and scholarship in framing a religion's claim of legitimacy in law, and how expertise can be harnessed by a religious group to gain this legitimacy.

Section 1 provided a broad overview of the consequences of religious status in law. Through examples from Scientology, it illustrated the crucial importance of religious status in the survival and growth of a religious organisation. Section 2 further analysed the tests used to attribute religious status and tax-exempt status, to show the crucial role that experts play in helping courts and government officials determine whether an organisation should be attributed these statuses. Section 3 considered the role of experts and scholarship. It equated scholarship and expertise, especially in the context of establishing a religion's claim of legitimacy in law. Section 4 preliminarily argued that new religious movements, and Scientology, are ideal case studies to illustrate the importance of scholars and scholarship. It noted that Scientology is the only major religion to have emerged in the twentieth century. Scientology is also unique in that it has, over this period, gained, lost, re-gained, and grappled with ongoing challenges to its status in law.

Sections 4 and 5 then illustrated these issues with two key periods from Scientology's history: its ultimately successful fight to gain tax-exempt status in the United States in the 1980s, and its response to modern-day challenges to its tax-exempt status. Both periods illustrate how Scientology has recognised the power of expertise and scholarship, and sought to harness it to frame its claim of legitimacy. Scientology used radically different strategies in both contexts. In the 1980s, Scientology focussed on sourcing and disseminating expert opinions regarding its status as a religion. It also attacked experts it found antagonistic to its goals. This helped Scientology

establish its status as a religion and gain tax-exempt status. Scientology did not seek to favour the production of scholarship on issues other than its status as a religion. This decision in part made the field of research concerning Scientology ideologically homogeneous, with almost all scholars adopting stances which are unfavourable to Scientology.

The following section focussed on how Scientology has responded to very recent challenges to its tax-exempt status. These challenges have occurred in spite of the strategy described in the previous section, and have recently been quite effective. Scientology has again recognised the power of expertise and sought to harness it to respond to these challenges. However, it adopted a different strategy, by seeking to remedy the historical ideological homogeneity of the field of research concerning it as a religion. Scientology has taken unprecedented interest in this research, and has sought to fundamentally reshape it. It has seen it as its path to deepening its legitimacy in law and insulating itself from future challenges to this legitimacy. Time will tell whether this strategy will be effective.

This thesis has laid bare the dialectic nature of the role of scholars, and how their contribution can be harnessed by a religious group to serve its own aims.²⁰⁸ While we may have known that experts play a key role in the attribution of religious status in law, this thesis showed that religions can also be extensively involved in the conversation, by disseminating scholarship they agree with, attacking scholars they disagree with, and surreptitiously encouraging the production of favourable scholarship. Religions know that expertise is key in gaining legitimacy in law, and they act accordingly. This aspect of the participation of religious groups in the public conversation, at least in the context explored in this thesis, had not previously been studied.

²⁰⁸ On constitutive rhetoric in law, see generally James Boyd White, "Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life" (1985) 52:3 U Chicago L Rev 684.

Scholars therefore participate in a vital and complex conversation which unites scholars, court and government officials, religious organisations, and the public. They contribute to establishing the legitimacy of a religious group. However, their contribution can be harnessed, amplified, reduced, or distorted by Scientology, and ostensibly other religious groups, seeking to serve their own interests.

Parallel to the argument advanced in this thesis, we find another conducting thread: Scientology has come a long way. From its cultivation in the mind of an imaginative science fiction writer in the 1950s, it has blossomed into a worldwide organisation. Along the way, it has attracted, in equal measure, fascination and controversy. It is the only religion to have emerged as a part of the mainstream and of popular culture in the last century. Most recently, we have seen Scientology mature and adopt a more sophisticated approach to academic research. As an organisation, Scientology has shown an understanding of the role of academic research in establishing and protecting its legitimacy.

As members of a research community focused on Scientology, we, like the subject of our work, have come a long way. From Prof. Stephen Kent, an enterprising scholar who decided to take on a billion-dollar organisation, invariably at a high personal cost, we have blossomed into a worldwide, diverse community of scholars who ask and try to answer a wide range of questions about Scientology's organisational behaviour, theology, and praxis. In doing so, we have advanced, in our own small way, our collective understanding of what people believe, why people believe, and what it means to be human.

Being the first legal scholar to write on Scientology has been both a blessing and curse. It has been both exciting and challenging. My research over the past three years has put my long-standing (and frankly, hard-to-explain) fascination with Scientology to good use. I have found

purpose and satisfaction in the stories of the countless former members who encouraged me to keep on keeping on,²⁰⁹ and offered to help. I mentioned above the exceptional collegiality of Scientology scholars, who welcomed me with open arms and without whose generosity my research would not have been possible. Yet none of us could do this work we find so important without the help and support of current and former members. As we observe ethics rules, we can almost never quote them. When we do, we cannot acknowledge or thank them by name. Their unseen help underpins our research. Since we rarely have an opportunity to thank them, I want to do so now. While I cannot, on this point, speak on behalf of my colleagues, I want to underscore that the courage of these former members has been and remains my foremost source of inspiration. Many left the Sea Organisation in their late adulthood, having worked within Scientology for their entire lives, with only a high school diploma, no assets, and no connections. In doing so, many lost their spouse, children, and friends as a result of Scientology's disconnection policy. Their courage in subsequently charting their own path in a foreign world is extraordinary. While they could undoubtedly do my job, I would probably not have the courage to walk in their shoes.

While the academy affords great importance to “experts” of their respective fields,²¹⁰ members and former members are the true experts on Scientology. We scholars often merely engage in a process of translation, expressing what they know in a way that is intelligible and relevant in our respective fields. The generosity and great importance of members and former

²⁰⁹ See generally Funkonaut, “Curtis Mayfield - Keep On Keeping On” (28 January 2006), online (video): *YouTube* <https://www.youtube.com/watch?v=t-l91O9VxN0&ab_channel=Funkonaut> .

²¹⁰ See e.g. Caprice L Roberts, “Unpopular Opinions on Legal Scholarship” (2018) 50:2 Loy L Rev 365; William R Slomanson, “Legal Scholarship Blueprint” (2000) 50:3 J Leg Educ 431 and Michael S McPherson & Morton Owen Schapiro, “Tenure Issues in Higher Education” (1999) 13:1 J Economic Perspectives 85.

members to our research also acts as ongoing reminder that our work should be intelligible to them as well.²¹¹

This thesis has sought to advance, albeit in a necessarily limited and humble way, our understanding of how religious organisations exist both within and without the mainstream legal system, seek to be labelled in a *legally* relevant manner and avail themselves of existing privileges within the mainstream legal system, and compete for legitimacy in law and in the lives of their members.²¹² In doing so, it builds upon my prior work in this area.

My very first article on Scientology was largely descriptive.²¹³ It argued that Scientology scripture comprehensively sets out a “legal system,” with countless rules which are enforced through internal, court-like proceedings. Most significantly, Scientology also has what are essentially penal facilities, which are used to punish members of its ecclesiastical order.²¹⁴ My main goal was to lay out and summarise these aspects of Scientology scripture, which are generally misunderstood by both courts and scholars due to their complexity. Scientology scripture indeed encompasses many thousands of pages.²¹⁵ I briefly pointed out that, mostly as a result of constitutional protections of religious freedom, Scientology routinely enforces its scriptural rules through internal enforcement procedures, both with its public members and with members of its

²¹¹ Analogously, I can distinctly recall, when revising a paper on disability (Phil Lord, “Access to Inclusive Education for Students with Autism: An Analysis of Canada's Compliance with the United Nations Convention on the Rights of Persons with Disabilities”, (2020) 9: __ Canadian Journal of Disability Studies __ (forthcoming)) in light of the helpful comments of peer reviewers, being mystified by the fact that I was generally unable to understand at least one and often two words of the titles of the articles I was asked to consider. If I, with 11 post-nominal letters and years of university education, did not know these words, serious concerns could justifiably be raised as to their intelligibility to members of our society with disabilities. (Incidentally, my fiancé, a medical school student, could understand as few words as I did.)

²¹² On my use of the phrase “mainstream legal system,” see e.g. Lord, “The Eternal Commitment: Scientology's Billion-Year Contract”, *supra* note 4 at 16. Like other authors, I use it to refer to the secular legal systems in the jurisdictions where Scientology operates.

²¹³ See Lord, “Scientology’s Legal System”, *supra* note 14. This article finds its genesis in a term paper written during my time as an undergraduate student and supervised by Prof. Mark Antaki.

²¹⁴ *Ibid* at 22-24.

²¹⁵ *Ibid* at 13.

ecclesiastical order, with little oversight from secular courts. I also pointed out that the latter group is often subjected to ecclesiastical punishment at Scientology's penal facilities.

A few months later, I seized the opportunity to write another article on Scientology.²¹⁶ It focussed again on the legal system set out in Scientology scripture and analysed the billion-year contract, a legal instrument signed by members of Scientology's ecclesiastical order to signify their eternal commitment to the organisation. I analysed the significance of the contract in strengthening the relationship which unites Scientology and its most dedicated members. I argued that its invalidity within the mainstream legal system is significant in that it symbolically denies the primacy of the mainstream legal system:

Yet upon taking a closer look and albeit for a different set of reasons, we can think of [the billion-year contract] as far more than simply a contract. The billion-year contract can be thought of as an implicit yet significant affirmation of the legitimacy and independence of the legal system that exists within the Scientology religion. It can be thought of as rebellion of Scientology to the outside world and the legal system that regulates and defines it – a legal system that *legally* also regulates Scientology. The contract denies the primacy of the mainstream legal system. It appropriates a name from the traditional legal system to an instrument that challenges it.²¹⁷

About a year later, as I began my graduate studies in law, I wrote a third piece on Scientology: a case comment which analysed a recent United States decision that upheld a religious arbitration award.²¹⁸ I argued, among other things, that the decision narrows the scope of judicial review of religious arbitration award.²¹⁹ This piece also fits within the broad theme of religious legal systems and the extent to and ways in which they are allowed to exist independently

²¹⁶ See Lord, "The Eternal Commitment: Scientology's Billion-Year Contract", *supra* note 4. This article finds its genesis in a term paper written during my time as an undergraduate student and supervised by Prof. Omar Farahat.

²¹⁷ *Ibid* at 19 [emphasis in original].

²¹⁸ See Lord, "Case Comment: *Garcia v Church of Scientology Flag Service Organization*", *supra* note 7.

²¹⁹ *Ibid* at 216-18.

by the mainstream legal system. It demonstrates in a more concrete way how courts refuse to review the internal enforcement of religious doctrine.

This thesis has built upon this body of work. In a broad sense, it is indirectly concerned with the boundaries between the mainstream legal system and that set out within Scientology scripture. While my prior research focussed on the benefits, pitfalls, and consequences of allowing religious legal systems to exist, at least in part, independently from the mainstream legal system, this thesis has taken a step back and sought to analyse how the legal statuses from which these legal consequences flow are attributed. Indeed, religious organisations, and especially new religious movements such as Scientology, are aware of the significance of the consequences which flow from religious status and have therefore dedicated time and resources to developing strategies to obtain it. This thesis focussed on the role of expertise and scholarship in the attribution of these statuses, and demonstrated how Scientology has, in different ways and during different periods, sought to harness the power of scholarship and expertise to establish its legitimacy in law.

For religious organisations to benefit from the relative independence which the law affords their legal systems, they must engage with the mainstream legal system. Members of these organisations may consider that these legal systems intrinsically deserve autonomy, and the law may in part validate this belief by affording them some independence. Nonetheless, to gain this independence, religious organisations must establish their legitimacy in law by demonstrating that they fit the established criteria used to attribute religious status and tax-exempt status. In doing so, religious organisations tacitly recognise the primacy of the mainstream legal system, whose rules may be quite different, and at times opposed, to those of their legal system. Such is the price, and limit, of their independence.

The law is then a significant locus where religious and secular legal systems interact. It helps set the often shifting and characteristically permeable and elusive boundaries which define these interactions. If the law can reductively be understood as a set of rules, then the rules defining these boundaries are about co-existence: the co-existence of several legal systems in a given state and in the lives of the members of religious organisations.²²⁰ These rules are underlain by an apparent consensus as to the fact that being *free* in a country such as Canada must inevitably involve wide latitude to align one's actions with one's deeply held beliefs.²²¹ They also reflect the complex ways in which human behaviour is guided. The behaviour of members of religious organisations is only in part guided by the law. The mainstream legal system at times competes with and often joins religious legal systems to guide the behaviour of members of religious organisations.

Legal scholars are often criticised for engaging in esoteric research which is at times divorced from and irrelevant to the practice of law. United States Supreme Court Chief Justice John Roberts states:

Pick up a copy of any law review that you see, and the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in 18th Century Bulgaria, or something, which I'm sure was of great interest to the academic that wrote it, but isn't of much help to the bar.²²²

²²⁰ See generally H Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 5th ed (Oxford: Oxford University Press, 2014).

²²¹ This latitude must then mean tolerating behaviour which our society has outlawed long ago, such as discriminating against various groups in employment. (For instance, a religious organisation could refuse to hire a teacher who is homosexual, citing that very reason.) As mentioned in the main text, however, these limits are shifting and often elusive, and what we are willing to accept out of respect for the importance of freedom of religion may change over time. On this point, see Barry W Bussey, "Making Registered Charitable Status of Religious Organizations Subject to 'Charter Values'" in Barry W Bussey, ed, *The Status of Religion and the Public Benefit in Charity Law* (New York: Anthem Press, forthcoming in 2020), available online at <ssrn.com/abstract=3634776> .

²²² See e.g. Debra Cassens Weiss, "Law Prof Responds after Chief Justice Roberts Disses Legal Scholarship" (7 July 2011), online: *ABA Journal* <www.abajournal.com/news/article/law_prof_responds_after_chief_justice_roberts_disses_legal_scholarship/> .

While this is not a forum to more carefully deconstruct, as others have,²²³ the interesting assumption that legal scholarship should serve, or at least be relevant to, the bar, I may have concisely argued here that it is often concerned with a different set of issues. At least regarding religious organisations, it seeks to advance our understanding of the various sets of rules that guide human behaviour, and of how these sets of rules interrelate.

Legal research may be quite mystical to the average individual. Prof. Frédéric Mégret of our Faculty fondly recounts the humbling experience of being asked by friends whether his work involves “looking for the laws.” In response to similar questions, I have phrased my own conception of what we do as advancing our understanding of “why people do things.” Especially at McGill, a law faculty with a rich legacy of legal pluralism,²²⁴ we are concerned with the ways in which numerous legal orders guide the behaviour of legal agents. Our interest transcends positive law and construes law more broadly. We recognise that positive law is but one aspect of “why people do things.”

It is fit to conclude this thesis with an acknowledgement of my supervisor, Shauna Van Praagh. Her greatest contribution to my work has come in the form of countless provocative questions. She has, many times, reminded of why we do what we do: to uncover deep, broader truths about the human experience. Like, I believe, all great law professors’, Prof. Van Praagh’s

²²³ See e.g. David R Barnhizer, “Prophets, Priests, and Power Blockers: Three Fundamental Roles of Judges and Legal Scholars in America” (1988) 50:1 U Pitt L Rev 127; Sherman J Clark, “Drawing (Gad)flies: Thoughts on the Uses (or Uselessness) of Legal Scholarship” (2015) 49:1 U Mich JL Ref Caveat 63; Richard Brust, “The High Bench vs. the Ivory Tower” (1 February 2012), online: *ABA Journal* <www.abajournal.com/magazine/article/the_high_bench_vs_the_ivory_tower/> and Roger C Cramton, “Demystifying Legal Scholarship” (1987) 75:1 Geo LJ 1. But see Richard A Posner, “Legal Scholarship Today” (2001) 115 Harv L Rev 1314.

²²⁴ See e.g. Desmond Manderson, “From Hunger to Love: Myths of the Source, Interpretation, and Constitution of Law in Children’s Literature” (2003) 15:1 Law & Literature 87; Glenn, *supra* note 220; Martha-Marie Kleinhans & Roderick A Macdonald, “What is a *Critical* Legal Pluralism” (1997) 12:2 CJLS 25; and Daniel Jutras, “The Legal Dimensions of Everyday Life” (2001) 16:1 CJLS 45.

research is not ultimately about religion or even about law. It is about what they uncover about what drives human behaviour and how humans manage to, in a messy and imperfect way, live together and seek to flourish. Her former colleague, Desmond Manderson, once elegantly remarked, “I think that what we live in is like a myth, is like a spider’s web, it’s like this beautiful [interplay] of threads that we can’t even see. But you touch one part of it, and the whole thing vibrates.”²²⁵ Like both of them, I see law as a microcosm of what it means to be human. In addition to advancing our understanding of law and religion, then, I hope this thesis will also have done a little to advance our understanding of the human experience.

²²⁵ See Richard Sherwin, “Interview of Prof. Desmond Manderson” (30 January 2012), online (video): *Vimeo* <vimeo.com/35903169> .

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