Religious and secular discourses in Twentieth Century Australian parliamentary debates

Josip Matesic

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UNIVERSITY OF WOLLONGONG

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Religious and Secular Discourses in Twentieth Century Australian Parliamentary Debates

Josip Matesic

"This thesis is presented as part of the requirements for the award of the Degree of
of the
University of Wollongong"

25 August 2016
DECLARATION

I, Josip Matesic, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy in the Faculty of Law, Humanities and the Arts, University of Wollongong, is wholly my work unless otherwise referenced or acknowledged. The document has not been submitted for qualification at any other academic institution.

Josip Matesic

25 August 2016
ABSTRACT

This thesis examines Australian debates over the legalisation of cremation in the late nineteenth and early twentieth centuries; the liberalisation of Sabbatarianism or Sunday entertainment in the 1960s; and the legalisation of ‘no fault’ divorce in 1975. In doing so it argues that from the late nineteenth century, through to the 1970s, there were a series of legal changes regarding social practices in Australian society. While each of these social practices had Christian roots the thesis argues that in each of the parliamentary debates, religious arguments could not ultimately convince the parliamentarians to preserve the laws. Instead religious appeals and arguments lost to practical utilitarian secular concerns and arguments in the twentieth century.

The three case studies are explored through discourse analysis, an examination of rhetoric, and the use of some statistics. These methodologies allow the analysis of Hansard (the record of Australian parliamentary debates), and for the various arguments and discourses to be categorised and examined. The thesis is informed by the theoretical works of Callum Brown and Danièle Hervieu-Léger, but also S. J. D. Green and Grace Davie. Brown’s theory highlights the complex nature of secularisation, while Hervieu-Léger’s work highlights the use of history and memory for continued social practice by claiming a connection to an imagined historical community. No methodology or theory is however perfect. Limitations in the thesis are the heavy reliance on Hansard as a primary source, and the fact that most of the theory concerns societies other than Australia. Such reliance can cause contextual issues. The Annales historical school provides justification for these methodologies and theories utilised by showing that similar work is possible and has been done.
There are many people that I am indebted to regarding this thesis. Without their support and help, this thesis would not exist. Obviously, I need to thank my mother and father for their support, but also my supervisors, Associate Professor Gregory Melleuish and Associate Professor John McQuilton. Without their guidance, there simply would be no thesis. Also, this research has been conducted with the support of the Australian Government Research Training Program Scholarship.

Along the way there are many people that I have met who have helped me with this thesis. First, there are the library staff in various libraries across the country who have helped me find the sources that I need. The staff in the archives and newspaper reading rooms at the National Library of Australia in Canberra were particularly helpful and important for me. I thank them for their help and support.

I have met numerous other people during the course of the thesis that I need to thank. There were those who helped me when I first began, such as Setyaningrum Rahmawaty and Nick Southall. This thesis has led me to travel across the country and without the support of the following people and their hospitality, this would not have been possible. These people are, Joshua Parker, Pramesh Hettiarachchi, Jennifer Anderson, and John Cramp.

There are also people that I need to, and want to thank, that I met along the way and who at various times, offered support in their own ways. These people are, Peter Lalli, Joakim Eidenfalk, Maria Pineda, Hanh Nguyen, Frank Huang, Paula Arvela, Cecilia Leong-Salobir, Kristine Santos, Tshering Yangden, Yeshi Choden, Marisa Gonçalves, Ida Puspita, Nga Pham, Michael Matteson, and Zhuoling Tian.

There are also people that I did not expect to meet along the way. These people are those who I met at an intellectual history reading group in Sydney. I need to thank Hugh Chilton specially for inviting me, and for Uraiwan Keodara for welcoming me and for doing most of the organising for the meetings as well! I would also like to
thank Greg Murrie, Peter Moor, Dorothy Kass, and Korshi Dosoo. Also someone who I did not expect to meet along the way but who helped me nevertheless in his own way whenever I was in the National Library was Frank Bongiorno.

The people above may not be aware of the help that they have provided but the following two do, and I would like to thank them especially. Both Amanda Anderson and Ryan Kernaghan were there from the beginning and know what it has taken. Their support simply has been invaluable and without them the undertaking of the thesis would have been demonstrably different. Both have helped and supported me in innumerable ways, and I thank them.
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CHAPTER 1 – INTRODUCTION I: INTRODUCTION AND LITERATURE REVIEW

In this thesis, I argue the claim that Australia has been historically a Christian society is open to question. This is especially the case if one looks beyond formal institutions and focuses on social practices. Religion has been compartmentalised in Australian history and society, limiting its integration with the rest of Australian history. In broader Australian society religion has not been paramount, and it has not been considered as an integral part or influence on other aspects of society. Religion has often been met with indifference from a large number of people. This indifference is seen in informal social institutions and this thesis seeks to show this through the law. This thesis provides a means to integrate religion with broader Australian history.

The first chapter is the introduction and provides an oversight of Australian religious history and historiography. It places this thesis in some local context. The second chapter examines the methodologies and theories in greater detail. The third and fourth chapters contain the first case study: cremation. The early success of legalised cremation in South Australia is examined in Chapter 3, while the lengthier process in New South Wales is examined in Chapter 4. The second case study of Sunday entertainment comprises Chapters 5 and 6. An introduction to the laws in place and their historical genealogy is given along with an examination of New South Wales in Chapter 5. Chapter 6 examines the debates and changes in Sunday entertainment laws in South Australia, Victoria, and Western Australia. ‘No fault’ divorce is the final case study comprising Chapters 7 and 8. In this case study, it is the Federal Government that is examined. Chapter 7 examines the debates in the Senate where the bill was introduced, while Chapter 8 examines the debates in the House of Representatives. The thesis ends with the Conclusion.

1.1 Thesis Statement and Goal

The aim of this thesis is to question some assumptions or statements that are occasionally made about Australian society and its history. One claim is that
Australia is a Christian country. This assumption is not supported by Australia’s formal institutions as the Australian constitution in Section 116 makes no reference to Australia being a Christian country. Furthermore, neither the Church of England nor any other church was ever formally established in Australia. Another claim is that the Australian Christian society is disappearing. Such comments are sometimes made by politicians. One goal of the thesis is to challenge these assumptions and show, regarding social practices such as burial, the nature of work, and marriage, that Australian politicians have for a long time been far more interested in practical considerations than in maintaining religious ideals. This pragmatic view helps to feed the general indifference that best describes Australians’ attitudes towards religion.

A second goal of this thesis is to integrate Australian religious history with broader Australian history. It is common for religion either to be marginalised in historical discussion or dealt with in predetermined ways. If religion is considered in depth it is usually considered in isolation from broader society and history, and it is researched in a narrow way. This thesis aims to incorporate religion more broadly into the study of as many aspects of society and history as possible. Additionally, the thesis shows new sources that are available for historical investigation. Records of parliamentary debates such as Hansard are used extensively via discourse analysis. This resource has been under utilised by religious historians in Australia.

1 For this point see Richard Ely’s Unto God and Caesar: Religious Issues in the Emerging Commonwealth, 1891-1906, Melbourne: Melbourne University Press, 1976. The book deals largely with how section 116 and the preamble referring to how God came to be in the constitution. Furthermore, Tom Frame in Church and State: Australia’s Imaginary Wall (Sydney: UNSW Press, 2006), at the end of his book gives a good introduction to a number of sources, articles and books, that deal with various religious issues in Australia, such as, the church and state, establishment, and the role of religion in the Australian constitution. See p.96.

2 Perhaps the most recent example of a politician’s claim that Christianity or Christian values were disappearing in Australian society was in the recent New South Wales state election where Christian Democratic Party’s candidate Adrian van der Byl at a Goulburn candidates’ forum linked the state’s financial situation to the legalisation of sodomy in 1984. Van der Byl claimed that “Legislation changes values.” [accessed 3 March 2015] http://www.smh.com.au/nsw/nsw-state-election-2015/nsw-state-election-2015-sodomy-decriminalisation-blamed-for-budget-woes-20150303-13swzg

The most prominent political party founded on the premise of religion is the Christian Democratic Party, which claims to be the only registered national Christian political party. [accessed 15 May 2015] Katter’s Australian Party makes the claim that Australian was founded on Christian values. [accessed 15 May 2015] Such political claims are common, the nature of section 116 of the Australian Constitution in known to politicians and members of the legal profession, and the non-establishmentarianism of Australian religious life if not known, is explored later in this chapter.
In summary, my thesis goal, statement or argument is: during the twentieth century, practical concerns trumped religious concerns regarding social practices in Australia. This is seen in the parliamentary debates which are used as the central primary sources for this thesis. This is contrary to certain religious histories that emphasise the strong bonds between church and state, and larger national histories that deal with religion in specified historical areas and time periods. These historical approaches do not provide an integrated historical approach, with the result that two different accounts of religiosity in Australian history and society have emerged. I argue that legally there was an unconscious loss of Christian social practice due to practical reasons. Each case study successively demonstrates this to have been the case.

1.2 Definition of Religion

A definition of religion is needed for the thesis. The difficulties and problems that surround the category of religion, and religious studies, such as those made by Timothy Fitzgerald in *On Civility and Barbarity* is recognised, and this is discussed at some length in the following chapter.

In this thesis, I have employed the definition of religion as defined by the High Court of Australia in 1983 in the *Church of the New Faith v. Commissioner for Pay-Roll Tax* case. The case determined the criteria for an organisation to be recognised as a religion in Australia. Gary Bouma in *Australian Soul: Religion and Spirituality in 21st Century* summarised the four points determined by the High Court to constitute religion.

A religious group is one that offers:

1. a belief in something supernatural, some reality beyond that which can be conceived by the senses;
2. that the belief in question relates to man’s nature and place in the universe and his relationship to things supernatural;
3. as a result of this belief adherents are required or encouraged to observe particular codes of conduct or engage in particular practices that have supernatural significance; and
While this is a modern Western definition of religion, which can cause some issues, there are three principal reasons for why I have chosen this definition. First, it is the legal definition of religion in the jurisdiction that this thesis is covers. Second, while the definition is not a definitive definition of religion, I believe that it comprises the characteristics that most people commonly associate with religion. Finally, I believe that the definition given by the High Court of Australia is a succinct summary of the common elements found in other definitions of religion. Nonetheless, the religion that Parliamentary Debates refer to the most is Christianity; and it is Christianity that is the focus of the thesis.

1.3 Religion and Australian Society

The literature review discusses first religion and Australian society, followed by an overview of the major themes of Australian history; the role of religion in Australian history; and then Australian religious historiography.

Despite Gary Bouma’s claim in Australian Soul that the term ‘a shy hope in the heart’ aptly expresses the nature of religion and spirituality in Australia, I contend that religion is largely marginalised in Australian society and is treated indifferently by most people. For example, the National Church Life Survey claims approximately only 8% of Australians are regular church attenders. Contrast this with the comment made by Mark Conner, a Christian pastor, that the figure in Melbourne in 2010 was 3 Bouma, Gary, (2006). Australian Soul: Religion and Spirituality in the 21st Century, Cambridge: Cambridge University Press, p.8.
4 I am aware of the problem that this definition was ‘announced’ in 1983, a date after the last case study finished in 1975. Retrospectivity or anachronistic issues aside, I do not think that this definition poses a fundamental theoretical problem to the thesis so I will use it.
5 Bouma, Australian Soul, op. cit., pp.2, 212. The term is attributed to Manning Clark and John Thornhill as a key characteristic and attribute of the ANZAC psyche or spirit, p.2.
6 The common percentage is referred to by several people who in turn refer to the National Church Life Survey. However, there does not seem to be a clear reference to it, unless the number of church attenders on a typical weekend is divided by the overall Australian population. Nevertheless, some of the sources are: http://craigmanderson.org/tag/church-attendance/ [accessed 20 May 2015] and http://www.mccrindle.com.au/the-mccrindle-blog/church_attendance_in_australia_infographic [accessed 20 May 2015].
8.4%, slightly higher than the Australian Football League (AFL) attendance.\(^7\) This echoes the proverbial and colloquial calls that sport is a religion in Australia. Sport is a more frequently discussed pastime in Australia than religious adherence and practice. An example that shows the greater importance that is given to sport vis-à-vis religion is the increasing amount of sports coverage over the Easter long weekend.\(^8\) The number of hours dedicated to sports programming increased in the 1990s and throughout the 2000s while religious programming dwindled. Whatever Australians believe privately is not necessarily reflected in broader social patterns, activities and displays. This indifference to religion I believe is longstanding in Australia as Allan Grocott noted that convicts in the early nineteenth century were generally irreligious.\(^9\) The next part of the chapter deals with key features of religious experience in Australian history.

### 1.3.1 Diversification and Christianity’s Decline

Demographically, Christianity has declined in the twentieth century. In terms of the census, it has lost ground principally to the ‘No Religion’ category since the 1960s, and since the 1980s, there has been an increase in percentage terms to non-Christian religions; there has been a diversification of religion in Australia.

Below are two tables taken from Hilary Carey’s *Believing in Australia: A Cultural History of Religions*. The first table notes the changes in religious affiliation via the censuses post-Federation, and the second table notes the changes of the major world non-Christian religions. Between the 1966 and 1971 censuses the number affiliating with ‘No Religion’ increased, and between the 1976 and 1981 censuses the percentage of Australians practicing a non-Christian religion increased to over 1% for the first time since Federation.

---


The Australian Collaboration lists similar statistics as Carey, and since 1991, the trends have continued, resulting in a less ‘Christian’ and more ‘multi-faith’ Australia.11

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10 Carey, Hilary M., (1996). *Believing in Australia: A Cultural History of Religions*, Sydney: Allen & Unwin, p.144. It is important to note that prior to the 1960s the Australian census was not a regular event. It is now a regular quinquennial event.

Examining the figures more closely, from the 2001 census there were more Scientologists (2,032) than Quakers (1,782), more Muslims (1.5%) than Lutherans (1.33%), more Buddhists (1.9%) than Baptists (1.7%), more Hindus (0.51%) than Salvationists (0.38%), more witches (0.05%) than humanists (0.03%), slightly more Jews (83,993) than Jehovah’s Witnesses (81,069), and slightly more Seventh Day Adventists (53,844) than Mormons (48,776). Thus, there is greater diversity in the number of denominations and religions, and they are all claiming a larger percentage, thus leading to the demographic decline of (traditional) Christianity in Australia.

Table 2 The Australian Collaboration’s Table on Religious Affiliation in Australia, 1901-2011. (a) includes respondents who objected to stating their religious affiliation.

<table>
<thead>
<tr>
<th>Census year</th>
<th>Anglican (Christian)</th>
<th>Catholic</th>
<th>Other</th>
<th>Total (Christianity)</th>
<th>Other Religions</th>
<th>'No Religion'</th>
<th>Not stated/inadequately described</th>
<th>Total '000</th>
</tr>
</thead>
<tbody>
<tr>
<td>1901</td>
<td>39.7</td>
<td>22.7</td>
<td>33.7</td>
<td>96.1</td>
<td>1.4</td>
<td>0.4</td>
<td>(a)2.0</td>
<td>3,773.8</td>
</tr>
<tr>
<td>1911</td>
<td>38.4</td>
<td>22.4</td>
<td>35.1</td>
<td>95.9</td>
<td>0.8</td>
<td>0.4</td>
<td>(a)2.9</td>
<td>4,455.0</td>
</tr>
<tr>
<td>1921</td>
<td>43.7</td>
<td>21.7</td>
<td>31.6</td>
<td>96.9</td>
<td>0.7</td>
<td>0.5</td>
<td>(a)1.9</td>
<td>5,435.7</td>
</tr>
<tr>
<td>1933</td>
<td>38.7</td>
<td>19.6</td>
<td>28.1</td>
<td>86.4</td>
<td>0.4</td>
<td>0.2</td>
<td>12.9</td>
<td>6,629.8</td>
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<tr>
<td>1947</td>
<td>39.0</td>
<td>20.9</td>
<td>28.1</td>
<td>88.0</td>
<td>0.5</td>
<td>0.3</td>
<td>11.1</td>
<td>7,579.4</td>
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<td>1954</td>
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<td>22.9</td>
<td>28.5</td>
<td>89.4</td>
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<td>0.3</td>
<td>9.7</td>
<td>8,986.5</td>
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<td>24.9</td>
<td>28.4</td>
<td>88.3</td>
<td>0.7</td>
<td>0.4</td>
<td>10.7</td>
<td>10,508.2</td>
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<tr>
<td>1966</td>
<td>33.5</td>
<td>26.2</td>
<td>28.5</td>
<td>88.2</td>
<td>0.7</td>
<td>0.8</td>
<td>10.3</td>
<td>11,599.5</td>
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<tr>
<td>1971</td>
<td>31.0</td>
<td>27.0</td>
<td>28.2</td>
<td>86.2</td>
<td>0.8</td>
<td>6.7</td>
<td>6.2</td>
<td>12,755.6</td>
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<td>1976</td>
<td>27.7</td>
<td>25.7</td>
<td>25.2</td>
<td>78.6</td>
<td>1.0</td>
<td>8.3</td>
<td>11.4</td>
<td>13,548.4</td>
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<tr>
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<td>26.0</td>
<td>24.3</td>
<td>76.4</td>
<td>1.4</td>
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<td>11.4</td>
<td>14,576.3</td>
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<td>1986</td>
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<td>26.0</td>
<td>23.0</td>
<td>73.0</td>
<td>2.0</td>
<td>12.7</td>
<td>12.4</td>
<td>15,602.2</td>
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<td>1991</td>
<td>23.8</td>
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<td>22.9</td>
<td>74.0</td>
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<td>10.5</td>
<td>16,850.3</td>
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<td>27.0</td>
<td>21.9</td>
<td>70.9</td>
<td>3.5</td>
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<td>17,752.8</td>
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<td>26.6</td>
<td>20.7</td>
<td>68.0</td>
<td>4.9</td>
<td>15.5</td>
<td>11.7</td>
<td>18,769.2</td>
</tr>
<tr>
<td>2006</td>
<td>18.7</td>
<td>25.8</td>
<td>19.3</td>
<td>63.8</td>
<td>5.6</td>
<td>18.7</td>
<td>11.9</td>
<td>19,855.3</td>
</tr>
<tr>
<td>2011</td>
<td>17.1</td>
<td>25.3</td>
<td>18.7</td>
<td>61.1</td>
<td>7.2</td>
<td>22.3</td>
<td>(a)9.4</td>
<td>21,507.7</td>
</tr>
</tbody>
</table>

1.3.2 Non-Establishmentarianism

It is important to note that there has never been an established religion in Australia. Section 116 of the Australian Constitution states:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.\(^{14}\)

This non-establishmentarian clause does not mean that the issue was not debated, nor has it prevented some in State Parliaments attempting to introduce religious observance laws as seen in the second case study. Section 116 much like the Australian Constitution as a whole is very much concerned with practical matters. Section 116 was added as a counterbalance to ensure that the Commonwealth was not religious or have an established church or religion, and that the mention of God in the Preamble had no practical consequences.\(^{15}\) Section 116 might also be considered a counterbalance in the sense that the push to have religion in the Constitution came from campaigns by the various churches, while the constitution delegates themselves were largely indifferent to the issue of including religion.\(^{16}\)

Pragmatism rather than religious belief motivated the delegates at the constitutional conventions. John La Nauze noted that religion did enter the preamble in the form of ‘Almighty God’, but only because “on balance, [it] was likely to gain votes for federation.”\(^{17}\) Patrick Glynn, a delegate at the 1898 Constitutional Convention, in an entry in his diary, explicitly referred to this political pragmatism.

\(^{2}\) March 98. Today I succeeded in getting the words ‘humbly relying upon the Blessing of ’Almighty God’ inserted in the Preamble. It was chiefly intended to

\(^{17}\) La Nauze, *The Making of the Australian Constitution*, op. cit., p.228.
secure greater support from a large number of voters, who believe in the efficacy
for good of this formal Act of reverence and faith.\textsuperscript{18}

No religion or particular church received constitutional recognition. While religion
was important to a significant segment of the population at the time of Federation,
and there were debates among the clergies as to who should receive the most
recognition at the Federation ceremony.\textsuperscript{19} There was recognition that God needed to
be acknowledged in the Constitution, but the finer details needed to be sorted.\textsuperscript{20}

1.4 Australian History

First, I want to discuss Australian history in general before examining Australian
religious history and Australian religious historiography. This section provides a brief
overview of the common ‘narrative’ or ‘story’ of Australian history as most
Australians are likely to conceive as their nation’s history. It is followed by an
exploration of major themes, and the work of some major Australian historians. The
section then explores aspects of Australian religious history, such as marginalisation.

1.4.1 The ‘Narrative’

A brief overview of Australian history as commonly understood by Australians
would be: the Aboriginal people inhabited Australia for approximately 50,000 years.
Portuguese, Spanish and possibly Chinese explorers explored large parts of the
Australian coastline. However, until the eighteenth century, the Dutch were the most
comprehensive in exploring Australia’s coastline. The English explored in the
eighteenth century claiming the land in 1770 and established a penal colony in 1788,
narrowly beating the French. Establishing a new society was difficult and there were
conflicts with the Aborigines.

\textsuperscript{18} La Nauze, \textit{The Making of the Australian Constitution, op. cit.}, p.226.
\textsuperscript{19} See Richard Ely’s \textit{Unto God and Caesar, op.cit.}, pp.111-117.
\textsuperscript{20} See Alan Atkinson’s \textit{The Europeans in Australia: Volume Three: Nation}, Sydney: NewSouth
Sydney eventually began to prosper and by the middle of the nineteenth century there were several major cities and a gold rush in the newly independent colony of Victoria. Around this time the transportation of convicts to the colonies gradually ended, except for South Australia which was established as a free colony, and the various colonies gradually became self-governing with their own parliaments. Towards the end of the nineteenth century at a time of increasing economic development, discussion began about federating the colonies and forming a nation. This eventually happened in 1901 after several constitutional conventions in the 1890s, when there was a serious economic depression.

World War I brought significant political and social changes to Australian life and it was soon followed by the economic difficulties of the Great Depression. World War II brought further political and social developments and after the war ended Australia entered a period of social stability and economic growth for two decades. The 1970s saw the beginning of a period highlighted by several significant social, economic and political changes that led Australia to its contemporary situation. It is fair to say that with the change of a few details, this is a commonly understood broad overview of Australian history.

1.4.2 Themes

The themes of Australian history are often associated with the major developments listed above. The most continuous theme is that of the Aborigines and Aboriginal culture. This includes their history and culture, their interactions with Europeans and their dispossession and the many conflicts that have affected them since. In recent decades themes have included aspects of Aboriginal activism such as the 1967 referendum and the 2008 apology, but also the recognition of the Stolen Generations. Aboriginality is a theme that expresses itself in major aspects of Australian history.

Immigration is a second theme. This theme begins with initial convict immigration and the desire to increase female and ‘free settler’ immigration in the nineteenth century. Fears associated with Asia and Asians immigrating to Australia led to the White Australia Policy after Federation which was in force in some form until the
1970s. Post-World War II immigration from southern Europe has been a theme in twentieth century history, along with significant Asian immigration since the 1970s.

Themes centred in the nineteenth century include various aspects of colonial life, and the adjustments people had to make to a new life in a new land. This lends itself to the various images of the ‘bush’ and the folkloric adoration of the ‘bushranger’ and the ‘swagman’ archetypes. The nineteenth century is largely seen as a time of great growth exemplified in the opportunities or possibilities of the gold-rushes and Australia developing an agricultural economy that allowed it to ‘ride the sheep’s back’.

A line in the sand of Australian political history was Federation in 1901. It added another level of government to Australia and was the source of some political and historical issues in the twentieth century as the Commonwealth Government steadily grew.

The twentieth century’s major themes have been Australia’s involvement in wars, and economic booms and busts. Regarding wars, it has principally been the World Wars and significant battles therein, Gallipoli in 1915 being the most famous example. The Gallipoli campaign is often described as the time and place where Australia as a nation was born, and it has entered into the Australian consciousness. The Great Depression is acknowledged as a difficult time especially when it is compared to the economic growth that followed the end of World War II. The economic success of this period resulted in misunderstood critiques of Australia such as Donald Horne’s *The Lucky Country*. There have been recent calls by some politicians to return Australia to such a time, and for Australians to be, “comfortable and relaxed” about their past, present, and future.22 The twentieth century was thematically a paradox of death and self-sacrifice contrasted with economic growth.

The themes of Aboriginality, immigration, colonial life and a new land, Federation, war and economics in Australian history leave little room for religion in the works of

most historians. A popular exception however is Manning Clark, who made religious allusions, and mentioned religion, especially in his first volume of History of Australia. He began the first part of his first volume by detailing the discoveries of Australia by various ethnic groups and nationalities. However, he called the chapters in this part: ‘The Earliest Time to Catholic Christendom’, ‘The Contribution of the Protestants’ and ‘The Sons of Enlightenment’.  

Religion played a role in all of these themes although it was not often acknowledged by historians. One goal of the thesis is to acknowledge and integrate the impact of religion in certain significant social changes in the twentieth century. While these are the themes that most people associate with Australian history, below is a brief overview of the themes in Australian history according to some prominent Australian historians.

1.4.3 Historians and History

Religion is a peripheral concern in Australian history and historiography. The historians who write general Australian history often marginalise it. Even as late as 2013 Anne O’Brien and Graeme Davison wrote a chapter each on religion for The Cambridge History of Australia, touching upon the major themes and trends in the twentieth century. Some of these social trends are examined in this thesis in the form of Sunday entertainment. Patrick O’Farrell was right when he wrote that historically the most significant aspect of religion in Australia was its weakness, “its efforts to achieve some strength, its tenuous and intermittent hold on the minds and hearts of the Australian people, its peripheral or subordinate relation to their main concerns.”

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Manning Clark was one of only a few general Australian historians who spoke and wrote about religion favourably; and at times, spoke about it explicitly, as briefly noted above. In the inaugural James Duhig Memorial Lecture in 1979, Clark claimed that Christianity along with human brotherhood were the two great hopes for ‘man’, and furthermore, religion was one of man’s great comforters. Great affection for religion and Christianity was coupled with a belief that history should be didactic, with historians not only writing to entertain but also to increase people’s wisdom of the human condition, and the historian could do this by creating a scene and telling a story. Clark incorporated the tone of religion into his histories. In his 1976 Boyer Lectures, Clark claimed that the historian was to history as Jehovah was to his creation: imposing order on the chaos.

There were other contemporary historians who wrote religious histories, such as Patrick O’Farrell, T. L. Suttor, and James Waldersee who all wrote in the 1960s and 1970s about Catholicism; J. T. Ross Border, and Marcus Lawrence Loane, who wrote about the Church of England, either in the form of doctoral theses or book-length general histories; but also others such as Alfred Brauer, or Allan

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26 Another example would be the work of Alan Atkinson.
29 Clark, Manning, (1980). The Quest for an Australian Identity. op.cit., p.16.
32 T. L. Suttor’s most notable work from the 1960s is Hierarchy and Democracy in Australia 1788-1870: The Formation of Australian Catholicism (1965), Melbourne: Melbourne University Press.
34 See his The Founding of the See of Goulburn (1956), Canberra: St. Mark’s Library.
35 See for example, A Centenary History of Moore Theological College (1955), Sydney: Angus and Robertson; and, Hewn from the Rock: Origins and Traditions of the Church in Sydney (1976), Sydney: Anglican Information Office.
Grocott, who wrote either about other Christian denominations and other aspects of religion and society.

While some historians wrote about religion, others did not. If they did write, it was in predetermined areas and issues, and far more critically. For example, Stuart Macintyre only noted religion as a matter of peripheral interest in his *A Concise History of Australia*. Macintyre’s approach to religion was far more critical, noting the social consequences of religion: the state’s use of religion to control the convicts; and details of convicts’ misuse of religious objects, such as the men using Bibles to make playing cards. The social impact of religion was not greatly explored. For example, the Catholic Social Studies Movement headed by B.A. Santamaria was briefly mentioned in passing along with its influence in creating the infamous ‘Split’ within the Australian Labor Party, which as Macintyre himself acknowledged, “ensured conservative dominance in national politics for more than a decade.” Yet, only a few lines were given to Santamaria and his influence.

In Anne Summer’s feminist classic, *Damned Whores and God’s Police: The Colonization of Women in Australia*, religion is critically explored in terms of how it shaped Australian women, in particular either to be considered as sexually and morally loose and sent to the colonies as punishment, or as the moral guardians of society.

In the section below, religion in Australian history is presented in terms of its marginalisation, both in terms of periodisation and its treatment as a topic of study. It should be noted that, in general, introductory histories of Australia, commonly only

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37 His work on convict history has already been referred to.
38 For an overview of religious literature written until the early 1980s, although largely social research, see *Religion in Australian Life: A Bibliography of Social Research*, by Michael Mason (ed.) and Georgina Fitzpatrick (compiler), Bedford Park, South Australia: the National Catholic Research Council and the Australian Association for the Study of Religions for the Study of Religions, 1982.
mention religion and religious issues in passing. Such historical representation is seen in Kenneth Morgan’s *Australia: A Very Short Introduction*,44 Martyn Lyons and Penny Russell’s edited *Australia’s History: Themes and Debates*,45 and Anna Clark and Paul Ashton’s edited *Australian History Now*.46 Clark and Ashton claimed that a chapter on the history of religion was not possible due to the realities of the editing constraints.47 Religion also appears, as noted above, in the new *Cambridge History of Australia* with chapters devoted to it written by Anne O’Brien and Graeme Davison.48 In the *Cambridge History of Australia* however, religion is treated as an add-on, with its own section, yet not necessarily comprehensively intertwined or integrated with the rest of the two volume work.

### 1.5 Australian Religious History

Australian religious history is explored in this section. The issue of its marginalisation in relation to broader Australian history is examined, along with some particular strands in Australia’s religious history and notable personalities. After Australia’s religious history is explored, Australian religious historiography and its issues follow suit. For the colonial period of Australian history at least, the impact of religion on social was central. Religion manifested its influence in such areas as Sabbatarianism and divorce, hence why these areas became case studies.

#### 1.5.1 Marginalisation

The historians that do include religion and religious history in their work often do so in relation to a small number of specific areas such as the Irish and Catholicism,

education, immigration or political topics such as Cardinal Mannix and the conscription referenda in 1916 and 1917, or Catholicism’s role in the ALP ‘Split’. It is also common for religion to be relegated in temporal terms almost exclusively to the nineteenth century.

1.5.1.1 The Irish and Catholicism

The Irish and Catholicism is the greatest example of how religion and ethnicity are related within Australian history. While the majority of Irish Australians and immigrants were Catholic, and Irish Protestants are appropriately identified, such as Governor Richard Bourke, when the nineteenth century is explored, the Irish and Catholics are almost treated as synonymous. In general histories of Australia the two groups are often referred to as Irish Catholics in passing. The historian John Hirst made references to religion in his general histories, and discussed the role of Catholicism in Australia’s history, noting the large Irish component. Hirst in his works incorporated Catholicism and the issues that Irish Catholics faced from funding for churches and schools; low-level tensions, public clashes, the Catholic Church under British rule and anti-Catholic societies; how Catholics and Protestants lived peacefully together; and Catholic involvement in the conscription debate during World War I. Other academic authors such as political scientist Michael Hogan have also written works which focus on Catholicism but do so in the context of a discussion of the Irish appearing throughout the work regularly. The issue of religion and ethnicity is discussed in some more detail in the section on Australian religious historiography.

49 See for example, Catriona Elder’s ‘Immigration History’ in Martyn Lyons and Penny Russell’s (eds.) Australia’s History: Themes and Debates, op.cit., p.103.
51 Hirst, Sense and Nonsense in Australian History, op.cit., p.14; and Australian History in 7 Questions, op.cit., p.147.
53 Hirst, Australian History in 7 Questions, op.cit., pp.148-149.
1.5.1.2 Education

Discussions of religion frequently overlap with those of education. This commences with the Church Act of 1836, as it was a central piece of legislation in early colonial society, due to the importance of religion to people’s lives at the time, and the issue of sectarianism. Consequently, religion has often been connected with education in Australian histories and Australian religious histories. The aim of the Act was to encourage construction of new churches and schools. The Act provided funding for subsidies to salaries for clerics. Religious communities that raised a minimum of £300 were eligible to receive pound for pound funding from the Government up to £1000. Originally the grants were for the Anglicans, Catholics and Presbyterians; Governor Richard Bourke in time extended the funding to Jewish, Baptist and Wesleyan communities.55 The Act remained in force in New South Wales until 1862 and in Victoria until 1870.56

The brief funding of churches by the state extended to the schools. Michael Hogan wrote that Governor Bourke’s attempts to establish a national educational system failed because of Anglican Bishop Broughton’s Committee of Protestants, and the Protestant opposition to public money being used to fund Catholic clergy.57 There was also opposition from the Catholic Church. While the population in general favoured the arrangement, the Catholic Church did not accept the proposition that a kind of “common Christianity” was to be taught, essentially the basics of faith agreed to by all the churches; and that the clergymen from different churches were allowed to enter the schools and teach their members.58 The result was that eventually the Catholic Church decided to form its own educational system. Despite the brief period of limited state funding for building and aid to schools, education was the arena for religious confrontation and sectarianism in nineteenth century Australian society, and this is reflected in religious historiography.

56 Hirst, Sense and Nonsense in Australian History, op.cit., p.13.
58 Hirst, Sense and Nonsense in Australian History, op.cit., p.15.
1.5.1.3 Immigration and Ethnicity

Immigration throughout Australian history has had implications in terms of both ethnicity and religion. As already noted, the Irish were regarded with suspicion because of their Catholicism and the fear of undue Catholic influence in the colonies. This was significant since the Irish formed a significant minority. It is important to note that the Irish were not the only immigrant group associated with a specific religion. The Scots were largely Presbyterians, and the Welsh often had a chapel background. The same can be said of non-Christian religions. The first Buddhist communities in Australia were principally either Japanese (in Broome) or Singhalese (in Cairns). Buddhism was also represented by the Chinese, which came to Australia during the gold rushes in the middle of the nineteenth century. However, their beliefs often were results of syncretism with Taoism, Confucianism and traditional Chinese folk beliefs, and effectively disappeared from Australia when the Chinese left, or were Christianised into Australian society.

The connection between immigration, ethnicity and religion carried into the twentieth century particularly in regards to Jews and Judaism, and Muslims and Islam. While Jews have been in Australia since 1788, their number increased after World War II. However, in recent history the Jews have been considered more as a people in terms of migrants, rather than a group who constitute a religion. It is the same for Muslims, despite Muslims not constituting an ethnicity, and Islam in Australia being extremely ethnically diverse. Thus, throughout general history and religious historiography, religion has often been marginalised to immigration, and ethnicity.

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59 Hogan, The Sectarian Strand, op.cit, p.33.
61 Croucher, A History of Buddhism in Australia, op.cit., p.4.
63 See, John Hirst’s Australian History in 7 Questions, op.cit., p.162, where Muslims are discussed as if they are a group comparable to Italians and Greeks.
1.5.1.4 Politics

There are some instances in Australian political history where religion played a significant role and religious history has a tendency to focus on these instances. Focusing on Catholicism in this section, politically the religion is portrayed as almost completely confined to a few historical episodes. One particular focus has been Archbishop Mannix and his involvement in the conscription referenda in 1916 and 1917. The influence that Archbishop Mannix had in the debate as a leader in the anti-conscription movement and that movement’s ultimate success varies. Some point out Mannix’s Irish heritage and the contemporaneous Easter Uprising in Dublin as a reason for Mannix’s opposition.64

The influence of Catholicism was equally strong in the Labor Party and amongst its parliamentarians. Michael Hogan noted the significance of the split that followed the conscription referenda with non-Catholics such as Prime Minister Billy Hughes leaving along with New South Wales Premier William Holman and their supporters. This caused a significant restructure in the parliamentary element of the party, initiating a rise in the percentage of Catholics in the parliamentary party.65 A consequence of this split in New South Wales was the short-lived Democratic Party in the 1920s. Hogan noted that a way to understand this party was as a mobilisation of moralistic middle-class Catholics “for whom the municipal base of Catholic Labor politics was completely foreign.”66

A more lasting and significant split involving Catholic influence and the Labor Party was the ‘Split’ of 1954, which was the culmination of a debate within the party about its stance towards communism.67 Some members left and formed the Democratic Labor Party. Those that left were influenced by the Catholic Movement, led by B.A.

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Santamaria, with some calling those that left, “Catholic Actionists”. Santamaria led the Movement which developed from the Campion Society, which was formed in 1931. The aim was to present an account of what was happening in the world, and was an alternative to communism. The main consequence of this, however, was that the Labor Party was in opposition for the better part of two decades.

Anne O’Brien is one historian who has written about women and religion in the field of politics. Her work *God’s Willing Workers: Women and Religion in Australia* examines the interactions between women, politics, and religion. It contains some characteristic tropes of Australian religious histories such as a denominational focus. It investigates traditional political institutions, but it also examines political activism. In the latter case, there is a particular focus on the period from the 1960s.

This section has indicated that religion is marginalised and confined to predetermined or popular topics in the writing of Australian political history. It is not considered as a broader influence in general histories and, even in religious works religion appears in such a manner that suggests marginalisation.

### 1.5.2 Popular Religious Sentiments and Personalities

While Australian historiography marginalises religion to the aforementioned topics, it occasionally examines religion more broadly, incorporating a non-institutional approach and examining what people thought, or new developments in Australia. This included the general irreligion of people, but also ‘freethinking’, such spiritualities as Theosophy and particular personalities.

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One common feature noted about religion and Australians in the nineteenth century is the significant level of irreligion. This dates even to the First Fleet. The first religious service was not held until eight days after the First Fleet arrived, which meant the first Sunday was not observed. However, as pointed out by various historians, religion in the new colony was considered useful by the authorities as a source of moral and public order. Nevertheless, religion did not always receive governmental support, even for public order. For example, by 1792 Rev. Richard Johnson’s services were still held in the open or in tents. Aboriginal religion was at times tolerated if it kept the Aborigines quiet. Thus, in relation to both the convicts and the Aborigines, religion had an utilitarian dimension for the authorities.

Allan M. Grocott in his book *Convicts, Clergymen and Churches: Attitudes of Convicts and ex-Convicts towards the Churches and Clergy in New South Wales from 1788 to 1851*, pointed out that convicts were generally irreligious and anticlerical. This was often exacerbated by the foreign climate, and no doubt had roots in religious ignorance born in Britain. Grocott’s work is filled with examples of convict irreligion and anticlericalism. Grocott cited a letter from Governor John Hunter who described how the clergy were allowed to be insulted in the street, and when the clergy attempted to perform services on Sundays, drunken sailors and convicts would gather around “and often engag’d in card-playing and riot.” Convicts also attacked each other in the Sydney barracks if a convict displayed religious behaviour such as prayer. In such cases the convicts would throw their canvas bags and items of their clothing at the religious convicts, and they would abuse and insult them.

In such conditions, along with shortages of appropriate religious authorities as experienced by the Catholics for example, it is perhaps surprising that by 1850

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78 See Grocott, *Convicts, Clergymen and Churches*, op.cit., p.64 for Governor Hunter’s letter.
80 It was not until 1820 that the first two Catholic priests arrived, although there was a Catholic priest briefly in the colonies from 1803 until 1804. See Hogan, *The Sectarian Strand*, op.cit., p.30.
approximately 25% of the colony attended church weekly.\textsuperscript{81} Michael Hogan in his conclusion to \textit{The Sectarian Strand} wrote that, through the course of Australian history, there had been relatively few individuals who could be classified as genuinely religious, as nominal affiliation to a Christian denomination and a “studied indifference to all but the most private aspects of religion” was the norm.\textsuperscript{82} While, in time, convict irreligion and anticlericalism may have given way to indifference, there was a time from 1850 to 1950 when religion mattered for many Australians, Australian religious history notes several native religious and quasi-religious developments. These topics may not feature in general histories, but the topics are known and acknowledged within the religious history field.\textsuperscript{83}

\textbf{1.5.2.1 Theosophy}

Theosophy was a philosophical and religious movement that was popular among some, mainly educated, Australians from approximately the 1890s until the 1920s. Jill Roe, a former student of Manning Clark, in her book \textit{Beyond Belief: Theosophy in Australia, 1879-1939} referred to the Macquarie’s Dictionary definition of Theosophy as “‘forms of philosophical or religious thought in which claim is made to a special insight into the divine nature or to a special divine revelation’”.\textsuperscript{84} A more detailed explanation would note that while the nuances of the declared objectives of the Theosophical Society changed during its earliest years, the objectives were to form a Universal Brotherhood without distinction to such divisions as sex, creed, caste or nationality; study and promote Aryan and Eastern literatures, philosophies, religions and sciences; and investigate the unexplored laws of nature and the latent powers of Man in order to gain new knowledge.\textsuperscript{85} Theosophy therefore sought to unify man via a new philosophical-religious movement that laid emphasis on the innate powers of the individual to succeed, and in answers lying in esoteric and ancient mysteries and knowledge. It featured mystical and occult elements, and these

\textsuperscript{81} Hogan, \textit{The Sectarian Strand}, op.cit., p.22.
\textsuperscript{82} Hogan, \textit{The Sectarian Strand}, op.cit., pp.286, 287.
\textsuperscript{83} For example, see C. R. Badger’s \textit{The Reverend Charles Strong and the Australian Church}, Melbourne: Abacada Press, 1971.
\textsuperscript{84} Roe, \textit{Beyond Belief}, op.cit., p.xii.
\textsuperscript{85} Roe, \textit{Beyond Belief}, op.cit., pp.21-22.
featured dominantly. Theosophy was a countercultural movement to the prevailing Christian orthodoxies of the day.

Roe noted that late Victorian culture was hospitable to radical religious thought, even inundated with such thoughts. It is important to note that despite this favourable climate, Theosophy in Australia was never popular. It was a noted movement among some of the intelligentsia in the major urban centres, and there was a steady urban middle class who travelled in and out of the movement. Roe noted in passing that there were more women attracted to Theosophy. Despite this microcosmic existence, Theosophy is important because many influential people in Australian life at one time were associated with Theosophy. Roe mentioned, and this is not an exhaustive list: Alfred Deakin, Christopher Brennan, C. E. W. Bean, Miles Franklin, and also Walter Burley Griffin and his wife Marion Mahony. Despite its limited appeal and inability to become a significant part of the religious landscape, Theosophy was important because it was a strand of religiosity that existed but was ignored by religious history. It was also a precursor to the religious diversification that occurred on a larger scale later in the twentieth century, particularly in the categories of ‘No Religion’ and New Age spiritualities.

### 1.5.2.2 Freemasonry

Another religious stream that has been influential in Australian history, even if it has not always been acknowledged, is Freemasonry. This religious stream is unorthodox to some degree due to its quasi-religious activities and ceremonies. Often shrouded in secrecy, Freemasonry arrived to Australia with the First Fleet, and the first Lodge was opened in Sydney in 1820. Membership peaked after World War II with 330,000 members, and by 1955 one in 16 Australian men were Freemasons. The list of famous Australian Freemasons includes 10 Prime Ministers.

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87 Roe, *Beyond Belief*, op. cit., p.xvi.
Bradman, Lawrence Hargrave, Charles Kingsford Smith, and Chips Rafferty to name but a few in other areas of public life.\footnote{Lazar, Peter (ed.) (2009). It’s No Secret…Real Men Wear Aprons, Sydney: Masonic Care, pp.56-57, 129-130 144-145, 182.}

While Freemasonry is neither a religion nor a substitute for religion, as Masons profess, the popularity of Freemasonry in Australia is an important point to remember for several reasons. Freemasonry has a long history of confrontation with the Catholic Church, and while the Masons were not inherently anti-Catholic, Masons did fill many positions in society that were or were perceived to be anti-Catholic. This was one of the reasons for the establishment of rival fraternal organisations, such as the Catholic the Knights of the Southern Cross.\footnote{Hogan, The Sectarian Strand, op.cit., pp.198-200.} Therefore, the Freemasons were indirectly involved in sectarianism in Australia during the early twentieth century. Freemasonry is also important due to its popular appeal at one stage, and the subtle cultural influence it had as a result. Freemasonry with its goals of making good men better influenced many of society’s leaders and in turn broader society. Therefore, Freemasonry was an important religious movement in Australian history and society at one stage, and it is only recently that the Freemasons have started to enter the public arena and talk about themselves.\footnote{Examples of this include public documentaries such as the one that aired on Compass in 2013, and also the Peter Lazar book already referenced, which was the first book written recently for a general, non-Freemason, audience, with the aim to dispel common myths associated with the Freemasons.}

1.5.2.3 Alfred Deakin

While Theosophy and Freemasonry were two religious sentiments that were influential in Australian history, they are ignored by general Australian histories, and only occasionally explored in Australian religious histories. There are some personalities who are often associated with religion or spirituality. One of the most common is Alfred Deakin.

The best summary of Deakin’s religious beliefs is found in Roy Williams’s In God They Trust?: The Religious Beliefs of Australia’s Prime Ministers, 1901-2013. Williams’s book provides an overview of the beliefs of each Prime Minister, noting
the difficulties that exist in establishing this, primarily, fragments or statements made across a broad number of sources, and whether it is possible to know what a person truly ever believes.\textsuperscript{95} As Williams noted, for Deakin the issue was somewhat easy as Deakin wrote about his faith throughout his life. Williams classified Deakin along with William McMahon and Kevin Rudd as ‘the ardent seekers’.\textsuperscript{96} While John La Nauze’s two volume biography of Deakin\textsuperscript{97} is the most comprehensive account of Deakin and his life, Williams’s book is the distillation of Deakin’s religious beliefs. For a greater examination of Deakin’s beliefs, the best source and one recommended by Williams, is Al Gabay’s \textit{The Mystic Life of Alfred Deakin}.\textsuperscript{98} La Nauze does discuss Deakin’s spirituality, but these matters are interspersed throughout his work with other issues in Deakin’s life. Williams noted Deakin’s involvement in Spiritualism in the 1870s and his presidency of the Victorian Association of Progressive Spiritualists. Williams also noted Deakin’s other activities such as his involvement in séances, his ‘dabbling’ at times with Theosophy, the Salvation Army, the Unitarian Church, the Australian Church, his wide reading on religious matters, his thoughts once of becoming a minister in the Unitarian Church, and his return to beliefs in metaphysical matters after reading Emmanuel Swedenborg.\textsuperscript{99} Williams even provided a summary of Deakin’s beliefs which he himself wrote out in September 1890.

He wrote a “Personal Testament”, in which he argued:
1. God is love – Infinite, all-embracing, eternal
2. God is a Spirit, though manifest in all nature and humanity, and specially in all life and mind.
3. God is our Father and our Mother, including all that in us is various or contradictory, or imperfect, complete and perfect to his perfection.\textsuperscript{100}

Deakin’s religious nature is acknowledged whenever a biography of him is written, and this is remarkable in a sense because the religion of an Australian politician is

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96 Williams, \textit{In God They Trust?}, op.cit., p.23.
99 For these details see Williams, \textit{In God They Trust?}, op.cit., pp.33-44 \textit{in passim}.
100 Williams, \textit{In God They Trust?}, op.cit., p.41. However, Williams quoted this passage from a larger passage which La Nauze’s \textit{Alfred Deakin}, op.cit., p.69.
\end{flushright}
usually not emphasised. Deakin is an example of a person who is subtly acknowledged as being religious. His religious beliefs and how they affected him as a subject that can therefore be written about in Australian religious history, and his religious beliefs can be mentioned in general Australian history. This is notable also because Deakin was not a representative of an institutional religion. Deakin’s religiosity may also be noted in general and religious Australian history because of his prominent place in general Australian history, especially political history, but also because of his general unorthodox and independent beliefs when compared to his contemporaries, such as his brief involvement with the ‘Australian Church’.

Thus, when Australian religious history is researched, it is usually marginalised to predetermined areas. These areas are topics such as the Irish and Catholicism, education and immigration. When a popular angle is adopted it is in such areas as general irreligion, or movements that were popular at certain times such as Theosophy or Freemasonry. If the religious beliefs of an individual are considered, they are typically a prominent person in some way. Marginalisation or predetermination however also occurs explicitly in Australian religious historiography, which is often written by adherents.

1.6 Australian Religious Historiography

The greatest feature of Australian religious historiography, is its focus on denominationalism. This has been recognised and there have been recent attempts to move beyond this. The historiography has also tended to be triumphalist, and at times tied to an ethnicity. These issues are discussed below along with the work of some prominent historians.

1.6.1 Denominationalism

The famous historian of Catholicism and the Irish in Australia, Patrick O’Farrell wrote in 1976 that “Until recently, the usual approaches to Australian religious history have been celebratory or triumphal, impelled by fervent denominational
loyalty.” This statement summarises the major problem in Australian religious historiography: denominationalism. However, O’Farrell is not innocent himself as he wrote or compiled such works as *The Catholic Church in Australia: A Short History, 1788-1967*,102 *Documents in Australian Catholic History: Volume One (1788-1884)* and *Volume Two (1884-1968)* with Deirdre O’Farrell,103 and *The Catholic Church and Community: An Australian History*.104

Catholic denominational religious historiography is not however limited to the work of Patrick O’Farrell. Before O’Farrell there was Eris O’Brien who wrote in two volumes, *The Dawn of Catholicism in Australia*.105 More recently there has been James Walderssee with *Catholic Society in New South Wales 1788-1860*, and *A Grain of Mustard Seed: The Propagation of the Faith and Australia, 1837-1977*.106 Nor are such religious works isolated to Catholicism. Within Christianity there is also the edited, *Anglicanism in Australia: A History* by Bruce Kaye;107 Alfred Brauer’s *Under the Southern Cross: History of the Evangelical Lutheran Church of Australia*;108 Rowland Ward’s *The Bush Still Burns: The Presbyterian and Reformed Faith in Australia, 1788-1988*;109 and Marjorie Newton’s *Southern Cross Saints: The Mormon Church in Australia*.110 This is not an exhaustive bibliography of the area.

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For non-Christian religions, it is much the same. During the 1980s, histories were written about different faith groups yet they were still denominational, celebratory and triumphalist. This is seen within Judaism with Hilary Rubinstein’s *Chosen: The Jews in Australia* and W. D. Rubinstein’s *The Jews in Australia: A Thematic History* in two volumes. Paul Croucher’s *A History of Buddhism* has already been mentioned. Hilary Carey however writes that Islam had not (by 1995 at least) attracted a religious historian to tell its story. Abdullah Saeed’s *Islam in Australia* published in 2003 changed this somewhat. When Australian religious historiography diversified to include Aboriginal and non-Christian religions, the historiography often followed the same historical classifications. Tony Swain, an acknowledged leader in the field of Aboriginal religious history, took his cue from anthropologists, with such works as *Interpreting Aboriginal Religion: An Historical Account*, and *A Place for Strangers: Toward a History of Aboriginal Being*.

Within the denominationalist framework there are at times other themes that accentuated the work. An ecclesiastical focus was one such common theme. It is seen in such works as Francis O’Donoghue’s *The Bishop of Botany Bay: The Life of John Bede Polding, Australia’s First Catholic Archbishop*. Or the histories were parochial such as Stuart Piggin’s *Faith of Steel: A History of the Christian Churches in Illawarra, Australia*.

This situation has been slowly changing. J.D. Bollen, A.E. Cahill, Bruce Mansfield and Patrick O’Farrell in a 1980 article in the *Journal of Religious History*, wrote that since 1960, the bulk of Australian religious history had been written by people with a Christian denominational allegiance. However, the change since 1960 had been a move from the clergy writing amateur histories to lay professionals writing the

histories. Furthermore, the change also incorporated non-historians writing history, such as Michael Hogan’s *The Sectarian Strand*. Hogan by training and position was a political scientist, with an interest in certain areas of history such as land history and colonial New South Wales politics.

The shortcomings seen for example in Hogan’s work extend to more contemporary researchers such as Marion Maddox who has written on Australian religious history, although she is not an historian, holding doctorates in theology and political philosophy. She has held positions in Religious Studies and Australian politics in universities in Australia and New Zealand. In 1999 she was the Australian Parliamentary Fellow and wrote *For God and Country*, which focussed on the beliefs of the Members and Senators in parliament from 1996 to 2001. While it contained history relating to the Australian Constitution and in particular section 116, it was not a historical work. As Maddox wrote, “Australian scholars of religion have produced some impressive studies of the relationship between religious faith and political positions on some recent and historical issues, but seldom attempted any more comprehensive synthesis.” It is a religious studies or political work and not history in the proper sense. Maddox’s second book was *God Under Howard: The Rise of the Religious Right in Australian Politics*, and it caused some controversy over the existence of a religious right in Australia at all, and its connection to politics and politicians.

The above list of denominational works is comprehensive; they are just a sample of the work that has been conducted in the area. While changes are happening, a good portion of Australian religious historiography is unconnected or unrelated to other areas in Australian history or society in a significant and meaningful way. It is one of

the goals of this thesis to attempt to integrate the law, social practices and religious and secular discourses. Another feature of Australian religious historiography has been its reliance on ethnicity.

### 1.6.2 Ethnicity

Ethnicity is a feature of Australian religious historiography not so much in the sense that religious histories have been explicitly tied to an ethnicity, although there are cases of this, but because the ethnicity is assumed to relate to a certain religion or denomination. Perhaps the clearest example of this is the aforementioned example of Catholicism and the Irish. Though Hogan might claim otherwise, the Catholicism in his book is often synonymous with Irishness. This is understandable due to the large presence of people with Irish heritage in Australia throughout its history, and their close links with the Catholic Church. Hogan does not mention Italians in his book, another ethnicity closely associated with Catholicism. A similar example is that of the Germans in South Australia and dissenting or persecuted Protestant denominations such as Lutheranism. Ian Harmstorf and Michael Cigler in The Germans in Australia, a general and secular history, devoted a chapter to religion and education, and began the chapter by saying: “The Lutheran Church played a vital role in the lives of the German settler and is the most important of the traditions they brought with them, for it gave a central system of beliefs, a focus for their lives, and helped preserve the German language.” While Lutheranism was not completely associated with German-ness, the importance of the religion to the early German immigrants in Australia is noted.

The connection between ethnicity and religion is also acknowledged with regards to Protestantism being largely Anglo-Saxon, in the form of the Church of England and the Presbyterian Church of Scotland being largely English and Scottish respectively, despite the Church of England being far more multi-ethnic nowadays. It is

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123 For example regarding Italians and Catholicism, see Giuseppe Visentin’s *Australian Parishes and Italian Immigrants* (1980), North Fitzroy, Victoria: Catholic Intercultural Resource Centre – Catholic Italian Renewal Centre.
125 Such assumptions appear in Michael Hogan’s *The Sectarian Strand*, where these two Protestantisms and ethnicities shared early Australian life with Catholicism and the Irish.
acknowledged in religious histories that a significant portion of Jews in Australia were from an Anglo-Jewish background. Hilary Carey noted that Australia’s Jewish population underwent significant changes in the twentieth century. There was a significant Polish migration in the 1920s, causing a Yiddish-speaking community to form, and then the population doubled due to immigration between 1933 and 1954. 126 Thus, in a world religion such as Judaism, at times associated with an unique ethnicity itself, the issue of ethnicity did not disappear in Australia nor in its religious and demographic history.

The situation is the same for other world religions such as Islam. The first Muslims in Australia were noted to be Afghans and Indians in the nineteenth century, 127 and the post-war migration of Muslims from Turkey and Lebanon formed the two largest ethnicities of Muslims in Australia today. 128 Buddhism is also closely tied with ethnicity. Hilary Carey noted that from 1901 when Chinese people were forced to leave under the White Australia Policy and 1947, the number of Buddhists in Australia dropped from over 3,000 to under 500 followers. It was not until the arrival of Asian immigration in the 1970s that the numbers increased. 129 The connection between religion and ethnicity is explicit since these notes came from a chapter in Carey’s book entitled, ‘Religion, Ethnicity, and Post-War Migration’. 130 It is important to note the closeness between ethnicity and religion, but this is not the central concern or aim of the thesis.

1.6.3 Triumphalism

A feature of Australian religious historiography which I seek not to emulate in this thesis is triumphalism. It is common in some religious histories, often those denominationally focussed, for the histories to recount how the denomination had survived against tremendous odds and difficulties, or the history is an account of the glory of its past. This is not so common in general religious histories due to their

126 Carey, Believing in Australia, op.cit., p.147.
127 Carey, Believing in Australia, op.cit., p.155.
129 Carey, Believing in Australia, op.cit., pp.148, 150.
130 Carey, Believing in Australia, op.cit., pp.140-171.
more general scope and nature. Nevertheless, this triumphalism is not something that I seek to replicate in the thesis. The thesis explores the religious and secular discourses in Australian parliamentary debates in the twentieth century, focussing on the legalisation of cremation (with some overlap into the nineteenth century), Sunday entertainment and ‘no fault’ divorce. The thesis does not seek to make an evaluative comment of these trends, but it does argue that religious arguments lost to secular, particularly utilitarian arguments. This is not a triumph of secular thinking, nor a failure of religious thinking. Triumphalism exists in some denominational histories, but this thesis is a different kind of history.

1.6.4 Journal of Religious History and Historians

A focal point for the writing of religious history in Australia since 1960 has been the *Journal of Religious History*. The journal recorded the changes in the literature especially in the 1960s and 1970s as it reviewed new books in Australian religious history or by Australian historians that became important. Some of these books included K. S. Inglis’s *Churches and the Working Classes in Victorian England*,131 John La Nauze’s biography of Alfred Deakin,132 Manning Clark’s second volume of his *History of Australia*,133 or Patrick O’Farrell’s *The Catholic Church in Australia: A Short History, 1788-1967*.134 The journal also noted important works in other fields such as Hans Mol’s *Religion in Australia: A Sociological Investigation*.135 Thus the journal noted important contemporary trends.

The journal has periodically published some articles that have been very useful for this thesis as they demonstrate clearly the changes in Australian religious historiography. The articles were ones which were historiographic surveys of work

from the previous twenty years. These articles were comprehensive. In the first review article in the journal in 1980, its authors noted in the first paragraph that the journal sought ‘religious history’ and not ‘Church history’. While a significant portion of religious history in Australia tended to be denominational and ecclesiastical, there were some who were trying to find a new way to do religious history. Throughout the article the authors pointed out features of the history the journal published in its first twenty years. The authors noted that in the 1960s with greater professionalisation, Catholic history became the greatest area of growth, with minor denominations suffering from not having substantial general histories. Catholicism was also on the way to becoming the religion in Australia with the largest number of adherents. The authors noted and stressed the foundational importance that many of the histories written were written by those committed to the specified Christian denominational belief. Importantly for the thesis, the authors noted that while some work had been done regarding Jewish Australian history, and also into Spiritualism and Theosophy, no non-Christian religious histories had been produced. The article also noted the possibility of Australia being a fertile ground to study the processes of secularisation, but it noted the decline of sectarianism and the continuation of hagiography.

The next major historiographical review in the *Journal of Religious History* occurred over two articles in 2000 and 2001, with the first article being devoted solely to non-Christian religions. The authors of the first article noted the extent of new writing since 1980. This included the establishment of new bibliographies and work from sociology, the extent of religion in non-religious Australian history, the issues surrounding Aboriginal religions and Christian missions, a devoted section to Judaism, and a concluding short section on ‘Other Religious Traditions’. The second article focused on Christianity, and had specific sections which overviewed

Anglicanism, Catholicism, non-Anglican Protestantism, and Orthodoxy, while noting the value of the works along the way. The article ended by examining areas for future research, noting that history had changed due to postmodernism and that there were still areas for future research. The article noted that the “analysis of the relation between religion and public culture is only in its infancy.”142 This thesis is an attempt to fill in a part of this gap.

John Gascoigne wrote a historiographical article for the journal’s fiftieth anniversary. Gascoigne noted that while time proved sympathetic to the journal’s founders’ intention of religious history moving beyond ecclesiastical and institutional bounds, church history had continued to play a role.143 In the article Gascoigne covered issues the journal had with being reliant on the articles that were submitted to it as some people had an ecclesiastical bent in mind, to the collapse of Marxist historiography with the fall of the Berlin Wall, the blurring of boundaries of the religious historian and the historian, and the increasing global focus of religious history.144

The *Journal of Religious History* as an example showed the trends in religious historiography. There was a general expansion to include various Christian minorities and then non-Christian religions; there was the move away from a sole ecclesiastical and institutional focus; a blurring of the historical boundaries; and an increased global focus. Some contemporary Australian religious historians, who have contributed to the journal are examined below, as their works exhibit the tendencies and at times shortcomings of Australian religious historiography.

An historian who has written in the traditional history of Australian religious historiography, and who is keenly aware of this historiography’s terrain is Hilary Carey. She has written cultural history works that form a part of the attempt to include non-institutional religious elements in their accounts of history, even for non-Christian religions. Such work is her aforementioned *Believing in Australia: A*

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*Cultural History of Religions*. Carey has been an editor for a denominational history book, namely her latest book, *Methodism in Australia: A History*, which she edited with Glen O’Brien. Carey’s work has a global focus as she has written extensively about religion in an imperial context. Carey therefore consciously exemplifies Australian religious historiography in her oeuvre: at times denominational, national and global, but also non-institutional and attempting to do cultural history in order to overcome the limitations of traditional history as noted by historians in historiographical articles in the *Journal of Religious History*.

Another historian who fits Carey’s mould is David Hilliard. Hilliard’s areas of interest are primarily Anglicanism in Australia (thus denominational), but also religious history more broadly in Australia and in particular South Australia. Hilliard is also interested in religious changes since 1945. Hilliard is similar to Carey as he was a co-author to the 2001 *Journal of Religious History* article, thus he is aware and critical of Australian religious historiography. Hilliard has written articles that deal with theoretical issues such as the secularisation thesis, which is discussed in the following chapter. Hilliard is similar to Carey as he has written critically about Australian religious historiography, yet he has also written works that exemplify the category.

### 1.6.5 Secularisation

Ian Tregenza is an Australian historian and political scientist who has recently written about secularisation in the Australian context. Tregenza wrote an introduction with independent scholar Stephen Chavura for a special issue of the *Journal of Religious History* in 2014. Tregenza and Chavura noted the re-conceptualisations of terms such as secularisation and secularism in Western society in recent times. They also noted

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the problem of where Australia fitted into this since it was settled by Europeans contemporaneously to the French and American revolutions, and the respective religious changes that occurred as a result.\textsuperscript{148} For Tregenza and Chavura this raises the question of what kind of secularity exists in Australia and its history, when compared with such comments as Patrick O’Farrell’s that Australia was the first genuine post-Christian society.\textsuperscript{149}

While the remaining content of the special issue of the \textit{Journal of Religious History} covered aspects of secularism, some of which are referred to below regarding Stuart Piggin, Tregenza wrote again with Chavura a chapter on the political history of the secular in Australia for Timothy Stanley’s \textit{Religion after Secularization in Australia}.\textsuperscript{150} Tregenza and Chavura noted the uncritical nature while many have observed secularisation in Australia, taking the decline of adherence to doctrinal Christianity as a sign of broader decline of Christianity; yet Christianity was influential in the creation of many state institutions.\textsuperscript{151}

This thesis examines social practices which had Christian roots, but, during the same period covered by Tregenza and Chavura, underwent fundamental change. Christian concerns and arguments were jettisoned by practical considerations. While acknowledging and accepting Tregenza and Chavura’s arguments regarding the nature of secularisation, implicit secularisation in Australia was more widespread in Australian society in the twentieth century than just the rejection of doctrinal beliefs. Social practices changed, with practical considerations overriding religious sentiments.

Stuart Piggin is a final historian to be examined. Like the above historians, Piggin has written histories that exhibit the tropes of Australian religious historiography.\textsuperscript{152}

\begin{footnotes}
\item[149] Chavura, Stephen and Ian Tregenza, ‘Introduction: Rethinking Secularism in Australia (and Beyond)’, \textit{op. cit.}, p.301.
\item[152] Such works include: \textit{Evangelical Christianity in Australia: Spirit, Word and World}, Melbourne: Oxford University Press, 1996.
\end{footnotes}
Piggin however is important because of his September 2014 article, ‘Power and Religion in a Modern State: Desecularisation in Australian History’.\textsuperscript{153} Piggin in the self-declared agenda setting article,\textsuperscript{154} argued that religion had been engaged in Australian history and that it did not have a negative impact, rather conversely, there were benefits such as helping to shape the nation.\textsuperscript{155} The article questioned much of the Christian part of Australian religious historiography, and sought to begin a re-examination of history, although the article itself was too short and too vague to do so successfully. In his five ‘nodal’ points, Piggin referred to many of the most popular points or episodes of Australian religious history. The article was an attempt to write religious history that did not necessarily conform to the religious historiography. The article referred to Christianity broadly, often synonymously with religion. However, such a criticism can be levelled at this thesis, but I have already noted why I focus on Christianity.

This chapter has stated the goal of the thesis; given a definition of religion at least for the purpose of the thesis; noted preliminary facts about religion and Australian society such as current diversification, Christianity’s dominance, non-establishmentarianism, and increasing commercialism of religion. The chapter has also noted the major points of Australian history and how religion is often marginalised in general Australian histories into predetermined areas. However, within religious history religion is also often relegated to certain topics. This shows itself in the history and historiography. Recently the literature has sought to remedy this situation and this thesis is an attempt to contribute to this unofficial historiographical project; namely, for Christianity not to be marginalised in Australian history. In the following chapter, the theory behind the thesis is examined, from social history to religious studies, gender and the theories utilised by individual theorists. The methodology of the thesis is also discussed, of which the case studies play a key part in achieving the goals and aims of the thesis.

\textsuperscript{154} Piggin, ‘Power and Religion in a Modern State’, \textit{op.cit.}, p.322.  
CHAPTER 2 – INTRODUCTION II: THEORY AND METHODOLOGY

This thesis is primarily concerned with religion as a social phenomenon. As a result, sociological and historical methodologies inform this thesis. This thesis explores part of the process of secularisation that has occurred in Australian society in the twentieth century. This chapter details the theory and methodology utilised for the thesis. The chapter is separated approximately into equal parts theory and methodology. The theory section examines social history in general and in the Australian context. The thesis is a history thesis and not a religious studies thesis. This chapter briefly discusses the influence of gender in religion and in this thesis. The final part details several theorists employed in this thesis. They are: Danièle Hervieu-Léger, Steve Bruce, Callum Brown, David Martin, S. J. D. Green, Grace Davie, Christian Smith and the French school of the Annales.

This mix of theorists includes both sociologists and historians, hence the thesis uses a multi-disciplinary approach, even though it is a strictly historical thesis. Below, the sociologists and historians used in the thesis are examined. The methodology section examines the use of Hansard, statistics, discourse analysis, and notes on rhetorical devices. I believe these methodologies make the research undertaken possible, as they help overcome the limited primary sources. These theories and methodologies relate to the thesis by individually providing techniques to conduct the research and ground the work. This is only possible when combining the disparate theoretical and methodological approaches. For example, discourse analysis provides the techniques to analyse Hansard and the debates contained therein. The work of Bruce, Brown, Green and the French Annales each in their own way set precedents for the type of work involved in the thesis, but also the aims of the thesis.

2.1 Theory

This thesis argues that traditional Western Christian practices in a number of areas in Australia declined over several decades in the twentieth century. The case studies
reflect an unconscious loss of Christian practice due to practical considerations which were justified by parliamentarians through utilitarian reasoning. It is not the case that the parliamentarians knew that they were secularising society, nor did they seek such a change. It is therefore important to mention the issue and theory of secularisation somewhat before engaging with individual theorists.

2.1.1 Secularisation

One of the foremost authors of secularisation and secularisation theory is Steve Bruce. In an essay with Roy Wallis, they provide details of the ‘orthodox model’ of the secularisation theory. Bruce and Wallis first note that the secularisation theory is one of the most enduring theories in sociology and that the multifaceted theory is difficult to accurately articulate due to the difficulty in defining religion, which secularisation is based upon. In its simplest form the secularisation thesis claims that modernisation brings a decline in the social significance, practice, and belief in religion. This decline occurs via social differentiation, societalisation, and rationalisation. Social differentiation refers to the rise of specific institutions that deal with specialised roles such as education or health care. Societalisation refers to life increasingly being organised at a societal, rather than local level. Rationalisation refers to changes in the structures of societies and the ways individuals behave as a result of the shrinking number of areas where religion provides the explanation or reasoning.

Despite this definition, Bruce is not convinced that secularisation is a straightforward matter, nor one that is necessarily easily tracked. Bruce noted that in every case, because of a society’s essential demographic and religious makeup, along with its history, a number of caveats can be made to his theory. This is compounded by such issues as common and implicit religion in society as well, or what is frequently

157 Wallis, and Bruce, ‘Secularization: The Orthodox Model’, op. cit., p.11.
158 Wallis, and Bruce, ‘Secularization: The Orthodox Model’, op. cit., p.12.
159 Wallis, and Bruce, ‘Secularization: The Orthodox Model’, op. cit., p.13.
referred to as ‘folk religion’.\textsuperscript{162} While dependent on official or institutional religion, it is not synonymous with institutional religion. Folk religion is inherently difficult to monitor.

Writing nearly 20 years later, Steve Bruce still noted the difficulties surrounding the secularisation theory; whether it was the non-linear and non-definite nature that secularisation and secularism were steadily progressing in teleological fashion, or the multitude of reasons why people lost their faith ceased to be involved in religious observance, and their inability to locate an approximate time when secularisation happened.\textsuperscript{163}

This thesis does not argue that parliamentarians were consciously secularising Australian society. Laws and social practices with religious origins were modified due to practical concerns which, in turn, added fuel to further secularisation of social practices. The process was also not uniform across Australia, as the different case studies show that each colony or state changed its laws at different times. Religion was taken into consideration and was not completely ignored, particularly in the case of Sunday entertainment. Once secular change was allowed regarding the dead in the form of permissible cremation, the lives of the living were affected first by calling into question the sanctity of Sundays and then the inviolability of marriage. Cremation was a significant secular social change as it allowed an option to burial. Burial was the social custom due to centuries of practice, influenced by Christianity and its beliefs and interpretations regarding the body and resurrection. With the advent of the legal changes, people if they did not believe in resurrection for example, could be legally cremated.

Each legislative change sought to make life easier for people and not to secularise Australian society. The entire process as portrayed in this thesis should not be seen as

\textsuperscript{162} ‘Folk religion’ is often conceived as the religious beliefs and practices of the population. The beliefs and practices tend to depart from the institutional beliefs and practices, whether in the form of the population’s rejection of certain specific beliefs, or the creation of entirely new beliefs and practices that have no orthodox theological or institutional basis or backing.

\textsuperscript{163} See Steve Bruce’s \textit{Secularization: In Defence of an Unfashionable Theory}, Oxford: Oxford University Press, 2011. Regarding people’s loss of faith and the multitude of reasons and inability to locate the time in their lives, see pp.74-75.
a single secularisation process, since as noted by Steve Bruce, there are many difficulties with the theory. The process of secularisation should not therefore be dogmatically at the forefront of one’s mind when considering this thesis, due to its complex and multifaceted nature. Theories and theorists are discussed below in light of this.

2.1.2 Social History

In the broad field of historical study, this thesis fits within the social history category or definition. It is social history that deals with religion as a social phenomenon. While some features of the thesis do not ideally fit within the social historical classification, overall the aims of the thesis do, and the definitions themselves are not rigidly codified. Social history is not isolated to a particular time period or subject matter. As Mary Fulbrook in *Historical Theory* noted, social history, despite having a long and distinguished history itself beside political and diplomatic history, is a perspective on history. Fulbrook quoted G. M. Trevelyan as saying that social history could be described as “the history of a people with the politics left out.”164 Peter N. Stearns writing some comments on social history for the new *Journal of Social History* in 1967 noted Trevelyan’s point, but claimed that it was necessary to deal with politics appropriately in studying any society and “finding the social factors that shape or influence political life.”165 In fact for Stearns, there was an over commitment to politics by some social historians, wherein the determination of a political position of a group was sought.166 Another characteristic of social history was for quantification, although while prevalent in theory it was not as common in practice.167 For Stearns, the essence of social history was “the description and explanation of styles of life, and while this demands assessment of physical conditions and other quantifiable material, it must deal with values and behaviour that can never be graphed or charted.”168

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165 Stearns, Peter N., ‘Some Comments on Social History’, *Journal of Social History*, vol.1, no.1, Fall 1967, p.4.
166 Stearns, ‘Some Comments on Social History’, *op. cit.*, p.4.
167 Stearns, ‘Some Comments on Social History’, *op. cit.*, p.4.
168 Stearns, ‘Some Comments on Social History’, *op. cit.*, p.5.
In the same inaugural journal issue, controversial German historian Werner Conze and Charles A. Wright defined social history as the history of society, of its structures, processes and trends. It was also involved with sociology, with social history being a bridge to close the gap between history and sociology. According to Conze and Wright, and importantly for the thesis, “There are no social structures which have not arisen from or been influenced by politics and which, conversely, have not had an effect on the structure of the state or on political affairs, once they have matured and become self-sufficient. Social history is, therefore, nothing less than “political” history, the history of events and decisions.”

Less controversial is Mary Fulbrook and her claims regarding social history’s development, especially in the twentieth century. Fulbrook noted that with the new perspectives that social history offered, new investigative areas emerged. Such histories included labour history and women’s history. This development extended to such areas as black history, ethnic history, urban and rural histories, history of education, and even religious history to name several areas. Additionally, there were theoretical or methodological developments within social history’s development. These included the ‘Bielefeld School’, which sought social and economic structures as giving a full explanation or at least identifying the constraining conditions for developments in politics. For the ‘Bielefeld School’, it was not the actions of a few individuals or even social classes, but entire social structures. More importantly for this thesis was the development of the Annales school at the beginning of the twentieth century. The Annales is dealt with below.

Social history in general thus examines society and social life, with an ambivalent relationship to politics and political history, perhaps due to it being a response to the dominance of political history in previous decades. Politics is consciously not the primary area of focus in this thesis, but it is nevertheless acknowledged as playing an important role in shaping society. Social history is sometimes referred to as ‘history of the ordinary people’, or ‘history of the masses’. Its popularity increased

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169 Conze, Werner, and Charles A. Wright, ‘Social History’, *Journal of Social History*, vol.1, no.1, Fall 1967, p.7.
throughout the twentieth century, particularly in the second half. There was a proliferation of research and books that claimed to be social history.\textsuperscript{173} Social history also influenced Australian historiography and historiographical development.

One way in which social history affected Australian historiography, alongside religious history,\textsuperscript{174} was through labour history. Labour history, religious history, and social history were able to influence each other for their overall improvement and benefit. An insight into the influence of labour history is seen in Raelene Frances and Bruce Scates’s 1993 journal review article, ‘Is Labour History Dead?’ Frances and Scates discussed whether labour history, like religious history, was in decline. In defence of labour history they highlighted that labour historians had gained a number of tenured positions in Australian history at major Australian universities in the preceding few years, which therefore showed that labour history was still “marketable”.\textsuperscript{175} Consequently, the influence of labour history on generations of Australian historians is considerable.

Another way in which social history has been influential in Australian historiography is through religious history. The issues to do with Australian religious history were discussed in Chapter 1, and it is clear that politics was a subject of study, at times the sole focus, and at other times in conjunction with, or through such issues as, ethnicity or immigration.

This section has indicated that this thesis is within the scope of social history as it focusses on social structures and the law that affect social life. Parliamentarians and their speeches provide the fundamental evidence for this thesis but it is not a thesis in political history. Rather, politics is the medium rather than the focus. As discussed below the thesis also utilises methodologies developed by social historians such as

\textsuperscript{173} Some famous social history works include Natalie Zemon Davis’s \textit{The Return of Martin Guerre} (1983), Cambridge, Massachusetts: Harvard University Press; or E. P. Thompson’s \textit{The Making of the English Working Class} (1963), London: Victor Gollancz. Some historians associated with the \textit{Annales} school are also considered social history. The works of Emmanuel Le Roy Ladurie, or Marc Bloch are therefore social history works. Le Roy Ladurie in particular features later in this chapter.

\textsuperscript{174} However, the shortcomings of traditional religious history in Australia were discussed in Chapter 1.

\textsuperscript{175} Frances, Raelene and Bruce Scates, ‘Is Labour History Dead?’, \textit{Australian Historical Studies}, vol.25, no.100, 1993, p.471.
those of the *Annales* school and it fits within the historical streams of religious history. It is at this stage important to emphasise that this thesis is not within the discipline of religious studies.

### 2.1.3 Religious Studies

This thesis is not a religious studies thesis for very important reasons. The aim and methodology of the thesis is historical. There are also particular reservations regarding the religious studies discipline. In essence it is an academic field with different interests and goals, and these interests and goals are not echoed by this thesis. Some of these concerns were drawn out by Timothy Fitzgerald in his book *Discourse on Civility and Barbarity: A Critical History of Religion and Related Categories*, even though he noted that he was not the first to make some of these criticisms.

Fitzgerald argued that there was a distortion of discourses inside and outside the areas of religious studies and religion, with ‘history of religion’ being disconnected from ‘history of political theory’. With roots in the seventeenth century, the paradigm of ‘secularisation’, the privatisation of religion, individualism, and the rise of capitalism, allowed for the development of modernity, religion was consequently seen as even more naturally embedded in the world.

While these are not all the objections that are made against religious studies as an academic discipline, even by Fitzgerald, they immediately highlight issues with which this thesis is not concerned. Such theoretical conceptions of religion of course lead to problems when studying religious phenomena in vastly different cultures and times, but this thesis is largely limited to the twentieth century, and in a Western country. The thesis does attempt a ‘history of religion’ in a very specific way, but it is simultaneously political insofar that its primary source is Hansard and the primary historical figures examined are all parliamentarians. Therefore, religion in this thesis is not considered in isolation from other discourses. The aims, goals, methodology

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and theoretical interests of the thesis are not those of the religious studies discipline. Some of the theoretical concerns about religion in religious studies are incongruous with this thesis.

2.1.4 Gender

The influence of gender in religion and the role of women in the thesis need to be addressed. It is known somewhat anecdotally, and academically particularly in the sociology of religion, that women usually have higher rates of religious observance than men, although D. Paul Sullins questions this assumption. This belief is not investigated in the thesis but it highlights the importance of gender in religion. The thesis does not focus on the religiosity of individuals directly, but somewhat indirectly in regards to whether religion influenced the parliamentarian’s vote. It therefore does not investigate women’s religiosity vis-à-vis men’s religiosity, nor does it attempt to investigate other issues regarding women and religion. There is a paradox in this and at the heart of the thesis therefore in that if women historically had higher rates of religious observance, and historically until quite recently the making of legislation was a domain preserved to men, men were making decisions that disproportionally affected women.

Women do not feature greatly in the parliamentary debates because there were not many female parliamentarians in those debates – some case studies occurred at times when women could not even vote. However, whenever a female parliamentarian spoke at length or made an important point, I have included their speeches in the thesis. This was mostly the case with the third case study where female senators made important points or observations. It was in this same case study that women as a topic of concern were most prevalent, often in the form of the hypothetical housewife who was recently divorced and was forced to support herself financially with little to no skills. This debate is referred to in the thesis. Therefore, while gender is important to religion, it is limited somewhat regarding the thesis although it is duly acknowledged. The secularisation that has occurred in the last thirty years is due, at

179 The cremation case study is an example.
least in part, to the changes that women have experienced. This is foreshadowed in some of the concerns for women in the third case study.

2.1.5 Theories

The argument of this thesis is that the changes seen in the parliamentary discourses did not constitute conscious, explicit secularisation. If the case studies are all examples of secularisation in Australian society, then it is clear that Australian society has been secularising for over a century. This, however, is an auxiliary issue and argument of the overall thesis. It is important to note however that secularisation has different meanings to different people, and what secularisation is for the thesis needs to be made clear, along with the theory that is utilised.

The sociologist of religion, David Martin is a leading theorist on secularisation. His views on secularisation first came to prominence in *A General Theory of Secularization*\(^{180}\) and his views have changed somewhat since, but they have always been complex. In *General Theory* Martin noted certain broad tendencies were already established as leading to secularisation: heavy industry; urbanisation; geographical and social mobility; and social and institutional differentiation.\(^{181}\) Martin’s general theory is general in the sense that it relates to a ‘universal process’ which can be empirically identified.\(^{182}\) Martin summarises a number of components that aid secularisation such as the ‘crucial event’ (e.g. the outcome of the French Revolution); the influence of Calvinism and the Enlightenment; and the relation of religion to the growth of nationalism and cultural identity.\(^{183}\) Martin then spends a significant portion of *General Theory* providing examples of these different variants of secularisation in different societies e.g. in ‘mixed’ societies with different religions, and Soviet bloc countries which usually had a dominant national religion (e.g. Orthodoxy) before communism.


\(^{183}\) Martin, *A General Theory of Secularization*, op. cit., pp.4-10. Martin also includes ‘resultant patterns’ in this section however it is more a case of a general overview of how several different nations and religions have secularised.
Martin admits that his views on secularisation are often oversimplified or mistaken by other scholars and then propagated. Martin freely admits that he has had to change his views of secularisation over time due to developments such as the fall of communism and religious resurgences in the developing world. A further complication that Martin acknowledged was that for any secularisation theory, historical timeframes made the findings susceptible or cast them in a new light, and by linking sociology of religion with the secularisation of politics and violence, it shaped the empirical findings as well.

If there are such problems with formulating a secularisation theory, especially within the realm of sociology of religion, and even for a leader in the field who acknowledges the existence of multiple theories, it is worthwhile to examine other academic scholars and disciplines. The historian S. J. D. Green’s *The Passing of Protestant England: Secularisation and Social Change, c.1920-1960*, is an example wherein work has been done similar to this thesis, but with the question of secularisation’s theoretical underpinnings being left unanswered. Green wrote in the second sentence of the book that he offered “no *a priori* definition of religious phenomena. Rather, [the book] conceives of its subject as including all…of those characteristic ideas about, and institutions dedicated to, explicit and significant notions of the sacred that have flourished in these islands during the last century or so.” Thus, if religion is not defined, description becomes the best course of action.

The importance of Green’s work is twofold. First, Green attempts to do in the aforementioned work one of the aims of this thesis but in an English context; namely, to give a social history of religion in a specific country and not be limited to ecclesiastical institutions and quasi-religious organisations. However, he admits that his book does follow some specific denominational beliefs. The similarity with
this thesis is clear although I deal with Christianity more specifically in the form of both Protestantism and Catholicism.

The second aspect why Green is important is in the way he discusses theoretical frameworks which show that the way secularisation and religion are seen in society is not clear-cut. Here he notes the work of the sociologist Grace Davie and the historian Callum Brown. Regarding Grace Davie, he highlights a schema that she devised regarding modernity and religion.\textsuperscript{189}

Davie’s Religion and Modernity: A Schematic Representation

\begin{tabular}{|c|c|}
\hline
MODERNISM & POST-MODERNISM \\
\hline
Industrialisation & Information technology \\
Urbanisation & De-urbanisation \\
Production & Consumption \\
\hline
\end{tabular}

Both modernity and post-modernity are problematic for religion but in different ways:

\begin{tabular}{|c|c|}
\hline
MODERNISM & POST-MODERNISM \\
\hline
The grand narrative: religious or anti-religious & Fragmentation/decentring of the religious narrative but also of the secular, i.e. of the scientific-rational or anti-religious narrative \\
Progress & Rationalism/communism \\
Secularisation & A space for the sacred but often in forms different from those which had gone before \\
God and Son & Holy Spirit \\
The institutional churches & Varied forms of the sacred \\
Medical science & Healing \\
Agribusiness & Ecology \\
\hline
\end{tabular}

Green points out that Davie’s schema allows for the acknowledgement of religious decline but also the possibility of religious renewal in a post-modern revival. Davie herself acknowledged regarding her schema that the type of society that preceded modernity is important, along with such issues as when a society moves from one stage to another, and the length of time it takes. Hence, the need according to Davie for a longer-term perspective when studying contemporary religion. Davie in her seminal book, *Religion in Britain since 1945*, clearly offered a schema for studying religion, principally in a sociological framework. However she acknowledged that her schema was not definitive.

Green noted historians are starting to theorise for themselves and acknowledged Brown as a preeminent figure in this area. Brown’s theory of secularisation has similarities to the complicated picture given by sociologists of religion. Brown claims that secularisation and religionisation in modern society have multiple factors. Brown lists the basic principles of his theory of the social significance of religion as:

1. can rise and fall in any social and economic context – pre-industrial, industrial, post-industrial;
2. does not decay automatically or irreversibly with the growth of human knowledge, rationality or technology;
3. does not decay automatically or irreversibly with industrialisation or urbanisation;
4. is not to be measured by unity of religious belief or uniformity of religious adherence in any given nation/region;
5. can be challenged by fundamental social and economic change, and can suffer short- to medium-term decay, but can adapt to the new context and can show significant long-term growth;
6. can change the ways, or the balance of the ways, in which it arises from one social and economic context to another.

Callum Brown in his work expands on these principles. In his book *Religion and Society in Twentieth-Century Britain*, Brown asked what secularisation meant: for someone in 1900 it meant disestablishment. Brown noted that at least in his case, and for this thesis too, secularisation meant and means effectively de-Christianisation. De-Christianisation refers most specifically to the decline of Christianity in society, ranging from institutional support and dominance in social affairs, but also in self-identification of the population. De-Christianisation can be thought of as a subset of secularisation but it is only limited to Christianity as during de-Christianisation in a society, it is not the case that the society becomes secular, since another, non-Christian religion or religious practice may be ascendant.

Brown noted how secularisation in Britain could occur within a specific timeframe in the twentieth-century; “It was the first century during which Christian behaviour became unenforceable by the state, with the repeal, liberalisation or effective collapse of traditional Christian-based laws on homosexuality, abortion, divorce, suicide, breach of promise (of marriage), censorship, blasphemy, and Sunday trading and entertainment.” The same can be said of Australia in the twentieth-century for the decline of similar laws, some of which feature in this thesis.

If the secularisation thesis is complicated and multifaceted, what positive theoretical contributions are utilised for the thesis? Other than Green’s work and the similarities and reinforcements that it can contribute, what historical theory and practice can support the thesis theoretically? The answer is the Annales school which is considered more below in the methodology section, and the work of French sociologist of religion, Danièle Hervieu-Léger.

The principal argument of Danièle Hervieu-Léger’s *Religion as a Chain of Memory* is that traditional religions derive their power from society and its members constantly reinforcing the religious memory of previous believers as a part of their self-identity. Aspects of modernity such as industrialisation and urbanisation have disrupted this

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process resulting in pluralised and fragmented memories. As Hervieu-Léger noted, once it was not possible to distinguish personal, familial, religious, or national memories.\textsuperscript{196} The result of this fragmentation is that tradition is gone, with complications for societies as they have problems with collective memory, not to mention the normative nature of memory.\textsuperscript{197} The diminishing power of a collective Christian memory is seen in the case studies as religion becomes progressively decreasingly present in wider society. With fewer formal and social institutions underpinned by religion, and a diffused religiosity, it is hardly surprising that religion would progressively become a weaker argumentative weapon. Any parliamentarians who did invoke religion at some level acknowledged that religion only survives with voluntary groups.\textsuperscript{198}

In summary there are no black and white rules regarding secularisation, or conversely, religionisation. It is a complicated process with many factors that need to be kept in mind. Each society is distinctive and a long-term approach needs to be taken when studying contemporary religion. This thesis uses a particular set of theorists, and as with all theorists, there are limitations. The thesis does not argue that an explicit hard form of secularisation occurred in Australia in the twentieth century. However, religion progressively weakened during the course of the case studies, in part, due to a diminished collective memory. Similar work has been conducted by other historians focussing on Britain during the same time period, such as Green’s work. The theory is complemented by the \textit{Annales} school and the use of certain methodologies.

\subsection*{2.1.6 Annales}

The French \textit{Annales} school offers theoretical and methodological support for this thesis, and other historians working under the \textit{Annales} masthead provide examples that the work undertaken in this thesis is possible. Theoretically, Fernand Braudel’s

\textsuperscript{198} Hervieu-Léger, \textit{Religion as a Chain of Memory}, op. cit., p.90.
durée was a conception of a particular unit of time. At one level Braudel believed that the past could be analysed by the interaction of three differing wavelengths of time. The shortest waves were the ones most readily observed as they constituted daily life, and because of their intimacy to us, they substantiated our consciousness. Events which occurred over a period of years, even a few decades, constituted the middle-length wavelengths, or conjonctures. These events were often studied by economists or economic historians and constituted such events as economic cycles, wage changes, or changes in interest rates. Because of the length of time, individuals do not notice this wavelength. Braudel called for a study of culture along the conjuncture time scale. The longue durée is the longest durée and it is concerned with such phenomena as land and weather, and it operates on a time scale of centuries to a millennium or more.

The durée is not a concept that all Annales historians have to follow. There is no point where one durée ends and another one begins: there is a continuum of durées. This is the problem and criticism of durées, and Braudel recognised it when he said that there were “three, ten, a hundred diverse durées”. A history with one hundred durées becomes impossible, and to make such a statement is an admission that it is not an iron law that there are only three durées. If there is no specific number of durées, then there is no specific way to conceptualise history with durées. The historian has as many options as he did before he conceptualised history in terms of durées. However, this thesis in social history can be considered as constituting a social conjuncture history of religion in Australia.

A second important Annales theory is the idea of the mentalité, and that it can and should be studied. Jacques Le Goff gave two indirect definitions of what the history of mentalités was. The first was that its object “is that which escapes historical individuals because it reveals the impersonal content of their thoughts,” and the

200 Hexter, op. cit., p.503.
201 Hexter, op. cit., pp.503-504.
202 Hexter, op. cit., p.506.
second was that the history of mentalities was “to the history of ideas as material
culture is to economic history.” The history of mentalités is the attempt to discover
the mentalities and changes in attitudes of “anonymous individuals”.

All sources can be useful in the study of mentalités since it is the approach to the
sources that is important. If a source reveals the marginal mentalities, it therefore
also reveals the mentality or mentalities of wider society implicitly. Art is a source
if it is not concerned with ‘objective’ phenomena directly, but with their subjective
representation. Le Goff mentions that when mentalities are being studied it is
important to note how the mentalities are produced, and Le Goff suggests such
examples as vocabulary, syntax, conceptions of space and time, and logical
systems. However, a problem that arises in the study of mentalités is the question
of where does one mentality finish and a second mentality begin.

Therefore theoretically, it is clear that the thesis fits within an Annales framework
and is a social history of social conjunctures in Australian twentieth century religious
history. It fits within this category because the thesis examines the mentalités of
Australian parliamentarians towards religion. Consequently this thesis offers a new
way to do religious history in an Australian context. This is possible through the
methodologies of the Annales.

A potential limit of the methodology in this thesis is that it rests on a select number
of primary sources, including Hansard. This use of sources is not unprecedented
within Annales research. Michel Vovelle in his work Piété baroque et

(Cambridgeshire); New York; Cambridge University Press; Paris: Editions de la maison des sciences
de l’homme.

205 Le Roy Ladurie, Emmanuel (1979), The Territory of the Historian, Hassocks: Harvester Press,
p.273. The reference is taken from a speech Le Roy Ladurie made in Paris in 1972 to an annual
meeting of Catholic intellectuals. Le Roy Ladurie was talking in particular about new historical
research by such historians as Pierre Chaunu, Lebrun and Michel Vovelle in determining people’s
attitudes to death. Nevertheless, it is the same “anonymous individuals” in this example that are
referred to in the Annales attempt at and belief in, the history of mentalités.

déchristianisation en Provence au XVIIIème siècle, relied on a number of wills to document the religious and secular lives and worlds of people in eighteenth-century Provence, along with their views on death. Vovelle noted how rich wills could be and described them as equivalent to marriage contracts for historical purposes.

Vovelle did however warn against showing excessive enthusiasm in reading the wills and reading into them what we want to read, and mentioned the case of Charles de Ribbe who at the end of the nineteenth-century found confirmation of the ideal Provençale family type. Bearing these reservations in mind, Vovelle argued that examining wills allowed historians to determine the values of the people who wrote them and determine such things as hierarchies, but also how broader society functioned and what it valued. Vovelle sought to illustrate the genuine religious beliefs of a group of people in a particular region during a particular time period; just as I am trying to show the mentalités Australian parliamentarians had towards religion.

Perhaps the most famous example of an Annales historian using one major primary document was Emmanuel Le Roy Ladurie in his work, Montaillou: Cathars and Catholics in a French Village, 1294-1324. In his introduction Le Roy Ladurie noted how he used the ledgers of testaments from local residents from an inquisition

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211 Vovelle, Piété et déchristianisation, op. cit., p.23. A translation in English is, “Who was trained in the discipline of quantified history, the need is felt quickly when the history of mentalities is discussed, this dangerous “third level” where there are countless fortunes but where one analyses the vital attitudes, to find a source equivalent as much as to wedding contracts, since its social representativeness, suitable for a rich and nuanced exploitation. We expected to find that source in wills: after announcing, perhaps somewhat prematurely, today we bring proof of our claim.”
212 Vovelle, Piété et déchristianisation, op. cit., p.25.
in the Comté de Foix. These were compiled, and while some had been lost, Le Roy Ladurie was still able to use the surviving folio.\footnote{Le Roy Ladurie, \textit{Montaillou}, op. cit., pp.xv, xvii. Le Roy Ladurie mentions that while one of the lost ledgers or folios contained the sentences given to some of the residents deemed heretical, the punishments survive in a separate document and therefore are known. See p.xvii.} Le Roy Ladurie’s \textit{Montaillou} despite the possible paucity of primary sources became one of the most popular works of \textit{Annales} history especially outside France, in part because of his unique and novel use of the primary source and associated theory.\footnote{For the success of \textit{Montaillou}, see David Herlihy’s review in \textit{Social History}, vol.4, no.3, (October 1979), pp.517-520.} In this way, Le Roy Ladurie showed how it is possible to do a new kind of history in a specified time period with only a few documents as primary sources. Le Roy Ladurie was able to show the genuine beliefs of the people of Montaillou through their recorded confessions. The speeches of parliamentarians in Hansard is in essence a similar kind of confession since most case studies occurred during a time before strict party lines were established, or the case study was an issue that had a conscience vote and the parliamentarian was able to speak freely, without fear of reprimand. Using similar techniques and those of others, such as Vovelle, I am able to derive the religious and secular discourses that appeared in Hansard in my three case studies. The methodologies employed are explored in greater detail below.

\section*{2.2 Methodology}

The primary source used for the thesis is Hansard. Hansard is the accurate record of the speeches and debates in parliament. Documents can also be ‘tabled’ in parliament which means that they will appear in Hansard, as well as in supplementary documents. Consequently the methodologies used in the thesis are associated with this particular text. The principal methodology is discourse analysis. There is some small use of statistics as well, however these are not extensive and are explained below. In this section there is also a brief discussion about the \textit{Annales} school as historians from that theoretical and methodological approach have utilised similar approaches and they are mentioned as a form of justification. Hansard is used for all three case studies. The first two case studies use Hansard from different colonial and state parliaments while the third case study uses only the Commonwealth
Parliament’s Hansard, and the case study is far more circumscribed in its time period. As explained below, Hansard is a legitimate resource for research and this thesis.

2.2.1 Hansard and Discourse Analysis

There are several reasons why Hansard was utilised as a primary source for this thesis. These are that Hansard is an accurate record of the parliamentary debates; it is comprehensive and relatively easy to access without the need for ethics approval. The use of Hansard is also not unprecedented, and political rhetoric is becoming an important field of study. The use of Hansard is legitimate as it has been used by several other researchers in their examination of political rhetoric, such as Anna Crabb, John Uhr, and James Curran. Hansard is a body of public debate and it is a good source for examining public attitudes to matters of great importance. In some of the case studies, especially the first and third case studies, party lines were either not firmly established or there was a conscience vote. As a result, the parliamentarians were able to speak freely on the issues. This means they expressed their genuine views. These views were unfiltered unlike what happens in other media such as newspapers, where an editor or editors decide what is published. In this sense, Hansard is more representative than the media.

Anna Crabb’s article ‘Invoking Religion in Australian Politics’\(^\text{217}\) is an example of work utilising Hansard along with other speeches made by prominent Australian parliamentarians. Crabb sought to discover how, despite religious decline in Australia, religion was still being invoked by politicians between 2000 and 2006. She studied 2,422 speeches by prominent members of Commonwealth Parliament to discover the frequency with which Christian terms appeared.\(^\text{218}\) She mentioned that speeches were utilised because they were “one of the few unmediated formats of communication available to politicians. They enable politicians to decide the tone, structure and content of their message.”\(^\text{219}\) Crabb noted hypotheses for why religion had not been invoked greatly before in Australian politics, such as John Warhurst’s

belief that party discipline overruled individual conscience with the exception of periodic conscience votes. In light of this, it is important to note that these conscience votes are involved in the thesis, especially in the third case study.

While Crabb is interested in finding the frequency of certain terms, this thesis is more concerned with the specific arguments that are made and the various rhetorical devices used, such as argumentum ad populum (appeals to the populace), ad hominem arguments, appeals to authority or expertise, and other such rhetorical devices. Nevertheless, Crabb’s article and John Warhurst’s show that Hansard and other speeches made by politicians are viable historical and political primary sources within the Australian context.

It should be clear that speeches reveal a great amount about what people explicitly, and more importantly, implicitly, think and believe. For example, Ian McAllister and Rhonda Moore claim in Party Strategy and Change: Australian Electoral Speeches Since 1946, that in theory the leaders’ policy speeches express the issues that divide the political parties. In a similar way, analysis of Hansard reveals what parliamentarians as a whole thought about in legalising cremation, Sunday entertainment, and ‘no fault’ divorce, even if it was different parliaments that considered each of these issues. In their analysis of speeches, McAllister and Moore used various techniques, such as classificatory codes to classify and analyse the sentences of the speeches for their policy content. The same methods are employed in this thesis concerning Hansard via rhetorical device classification, or the classification of unique, and common, arguments.

Recent research in political rhetoric has increased. John Uhr, a professor at the Australian National University has written extensively about political rhetoric in Australian politics in recent years. Uhr has written about the rhetoric surrounding

Federal budgets; 224 and rhetorical reasoning standards. 225 Uhr was also the co-editor and published a number of pieces with Ryan Walter in *Studies in Australian Political Rhetoric*. 226 The study of public rhetoric is also found in James Curran’s successful work, *The Power of Speech: Australian Prime Ministers Defining the National Image*. 227

Therefore, there is a body of literature that exists on contemporary political rhetoric in Australia, whether it is about the Federal budget, Prime Ministerial imaginings of the national image, or the invocation of religion in Australian politics. This thesis adds to this literature as well, but examines secularisation in greater depth or, more correctly, religious change, since secularisation is a complex phenomenon.

Complementing all this there is the critical discourse analysis of Norman Fairclough. Not all aspects of Fairclough’s critical discourse analysis were used, as Fairclough wrote that the critical discourse analysis led in part to emancipatory change,228 a goal that is inconsequential to this thesis. Nevertheless there are aspects of Fairclough’s discourse analysis that are beneficial to the thesis. These include, at the theoretical level, the ideological effects that a text has in inculcating and sustaining certain ideologies,229 to what is said in the text and what are the ‘unsaid’ assumptions.230

Critical discourse analysis involves the analysis of several aspects of text which are used to determine the attitudes of parliamentarians and the public through Hansard. Some of these aspects are: social events, whether the debate is influenced by social practices and whether the debate forms a part of a chain of texts pertaining to the

228 Fairclough, Norman. *Analysing Discourse: Textual Analysis for Social Research*. London: Routledge, 2003, p.209. While I am not calling for it, the nature of the case studies means that I am dealing with change if not emancipatory change. Some parliamentarians of course wanted to see this kind of change.
debate, not to mention the social representation of such social events and actors;\textsuperscript{231} difference, the way difference is handled, whether accepted and debated or polemical and rejected;\textsuperscript{232} intertextuality, whether other texts and voices appear in Hansard, the significance of these other texts and voices, and whether they are attributed or not;\textsuperscript{233} assumptions, the assumptions that are made and whether they are ideological or not;\textsuperscript{234} semantic and grammatical relations, whether sentences are conditional or consequential for example, along with whether there are such structures over larger parts of speeches;\textsuperscript{235} discourses, what discourses are brought into the debate and how are they used;\textsuperscript{236} modality, the level to which the parliamentarians commit themselves to epistemic and deontic modalities;\textsuperscript{237} along with the type of grammatical mood that is expressed in the speeches, and what values the parliamentarians commit themselves to.\textsuperscript{238} Such features are examined in the thesis and it is possible to portray such statements and analyse them to determine the attitudes of the parliamentarians to legislative changes to cremation, Sabbatarianism, and divorce. This in turn shows their wider social attitudes.

Fairclough noted that critical discourse analysis was not to be used in isolation. Fairclough himself admitted that critical discourse analysis was a method that can appropriate other methods, such as corpus linguistics.\textsuperscript{239} Fairclough wrote that while textual analysis was an important part of discourse analysis, discourse analysis was not solely concerned with a linguistic analysis of text, since a ‘micro’ textual analysis should be coupled with a ‘macro’ organisational analysis of the text.\textsuperscript{240} The aforementioned corpus linguistics is not be utilised in the thesis as the aims of the thesis are better fulfilled via other methods such as the use of simple statistics, and use of the \textit{Annales} school and their interpretation.

\begin{footnotesize}
\begin{itemize}
\item[231] Fairclough, \textit{Analysing Discourse, op. cit.}, pp.191, 193. This is usually seen in parliamentarians making references to external events such as letter-writing campaigns.
\item[232] Fairclough, \textit{Analysing Discourse, op. cit.}, p.192.
\item[233] Fairclough, \textit{Analysing Discourse, op. cit.}, p.192. Again, the letter-writing campaign.
\item[234] Fairclough, \textit{Analysing Discourse, op. cit.}, p.192.
\item[235] Fairclough, \textit{Analysing Discourse, op. cit.}, pp.192-193.
\item[236] Fairclough, \textit{Analysing Discourse, op. cit.}, p.193.
\item[237] Fairclough, \textit{Analysing Discourse, op. cit.}, p.194.
\item[238] Fairclough, \textit{Analysing Discourse, op. cit.}, pp.193, 194.
\item[240] Fairclough, \textit{Analysing Discourse, op. cit.}, pp.3, 15-16.
\end{itemize}
\end{footnotesize}
Therefore, using the insights of discourse analysis I will analyse Hansard and determine the religious and secular discourses found therein. This is legitimate research as it is not unprecedented, and similar research has been conducted in Australian politics. I will do my discourse analysis by grouping the arguments and appeals that are made into the broad categories of the secular and religious, but I will also have subdivisions. In each of the three case studies this effectively meant arguments based on progressivism and modernity; utilitarian arguments focussing upon society, women, children, and youth. These were the groups that were appealed to the most in needing protection. The limits of classifications is unavoidable as otherwise the research becomes impossible. Thus I use discourse analysis to analyse Hansard and gather the information from my primary sources.

2.2.2 Rhetorical Devices

Some rhetorical devices have already been referred to in this chapter. Here I outline what these rhetorical devices are. There are several that appear in Hansard and in the discourse analysis. The most common is the argumentum ad populum, or ad populum arguments. These are arguments that appeal to emotion. It is a fallacy if and only if in its attempts to support its conclusions it appeals to a person’s feelings rather than their reason.241 This most commonly appeared in the case studies by parliamentarians making appeals that a significant portion of the population agreed with their respective position.

A second rhetorical device was ad hominem appeals. Ad hominem appeals are arguments which aim to discredit someone’s argument by personally attacking the arguer and not the argument.242 There were instances in the case studies when a parliamentarian simply attacked another parliamentarian personally, and did not discuss their arguments or ideas.

A final common rhetorical device in the case studies was appeals to authority or expertise. This is when a person appeals to an authority or an expert to support their

242 Seay, and Nuccetelli, How to Think Logically, op. cit., p.306.
argument, as the authority or expertise adds certainty that the conclusion is correct.²⁴³ Appeals to authority were seen in all the case studies, from appeals to medical authorities, to religious authorities, and other respected individuals. With discourse analysis, it was possible to note and analyse these rhetorical devices.

### 2.2.3 Statistics

Simple statistics are employed in the case studies in the thesis. This is most commonly the case when trying to determine the religious affiliation of the parliamentarians and analysing the voting in light of these religious affiliations.

There are no sources where these statistics exist so therefore I had to collect them, although this in turn caused some methodological problems. The religious affiliations were principally determined by examining the Australian Dictionary of Biography and determining how the Dictionary classified the parliamentarians. The problems with this were firstly not all parliamentarians were listed, and when they were their religious affiliation was not always listed. Even if their religious affiliation was listed, affiliation is no guarantee of genuine belief and this belief affecting how they voted. New South Wales parliamentarians, along with their high profile national parliamentarians, were the most likely to feature in the Dictionary. Some biographies were consulted for some parliamentarians to determine their religious status. Some Dictionary biographies made it clear that the parliamentarian was religious, and some parliamentarians made it clear in their parliamentary speeches. Thus the problems with determining the religious affiliations of parliamentarians and then conducting some statistical analysis derived from a paucity of sources, and an understanding that intensive research to determine the religious affiliations may have been of limited use in some cases. Such problems were also noted by Roy Williams for his book on the religious beliefs of Australian Prime Ministers.

Such problems with statistical analysis even at a simple level do not discount the validity nor the value that statistical analysis provides for the thesis. Such problems are common in all historical research. For example, L. L. Robson in the first appendix in his 1965 book, *The Convict Settlers of Australia* examined a number of

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difficulties to do with statistical sampling. These difficulties do not discredit statistical sampling, they are complexities which the researcher needs to be aware and for which answers are required. The first is data volume and sample. Robson had data for over 150,000 convicts; however he only examined data for five per cent. The reason Robson examined a smaller amount of data was because it was the “maximum possible to handle and analyse”.

L. L. Robson noted: “A statistical sample is not a specific that can conclusively prove or disprove anything, but it can enable probabilities to be adduced.” Thus, the statistical analysis in the thesis reveal possible information about the parliamentarians, and since there are some difficulties surrounding the statistics, the information gathered from the statistics should be taken with a grain of salt. I use statistics to gather insights into how religion may have influenced how parliamentarians voted.

2.3 Conclusion

Methodologically, this thesis is not unprecedented in the work that it sets out to do and it is supported by a French historical school of thought. Hansard is an acceptable primary source especially when it is coupled with discourse analysis and some use of statistics. Theoretically, the thesis is social history and acknowledges the complex nature of the secularisation thesis and makes no definitive statement whether the process documented in the thesis is evidence for either secularisation or religionisation. This thesis sees these levels constantly changing in society for a number of reasons, subject to medium- to long-term social and economic conjunctures. While the aims and goals of this thesis were made clear in the first chapter, along with the historical and historiographical context of this thesis, the

245 Robson, *The Convict Settlers of Australia, op. cit.*, p.161. Robson in Appendix 1, Sampling and Statistics, explains the statistical sampling methodology that he used for the book, but he also discusses some of the more general problems that exist in regards to statistical analysis.
theoretical and methodological aspects of the thesis have now been articulated, with theoretical and methodological objections or problems duly noted and resolved.

The subsequent chapters of this thesis pertain to the case studies; two chapters each for each case study: the legalisation of cremation; the legalisation of Sunday entertainment; and the legalisation of ‘no fault’ divorce. The first case study refers to the legalisation of cremation in South Australia and New South Wales. The following chapter contains an introduction to the subject and explores South Australia. The theorists and methodologies discussed in this chapter appear in subsequent chapters. Discourse analysis is used in the first case study to determine the religious objections to cremation when they occurred, although Chapter 3 shows that this was not the case in South Australia at all. Discourse analysis also shows the secular arguments for cremation, effectively relying on utilitarian grounds of public health and sanitation. The debate in New South Wales in Chapter 4 featured both religious and secular arguments and it was possible to determine the religious affiliations of some parliamentarians. The points made by the theorists and previous researchers are pointed out in Chapters 3 and 4. Chapter 3 begins with an overview of the literature regarding cremation.
CHAPTER 3 – CREMATION I: INTRODUCTION AND SOUTH AUSTRALIA

The first case study is the legalisation of cremation. The colonies and states of South Australia and New South Wales are examined. This chapter provides an introduction and it examines the case of South Australia. Chapter 4 examines the case of New South Wales. This first case study, and this chapter, is structurally different to the other case studies and chapters. This is because the debate regarding cremation in colonial South Australia was straightforward compared to debates in later case studies. Nevertheless, the legalisation of cremation is a legitimate case study regarding religious and secular discourses in Australian parliamentary debates. Peter Steans was cited in the previous chapter, as noting that the disposal of the dead would constitute one of our ‘styles of life’. The disposal of the dead in other words is one of the characteristic ways in which members of Australian society live. Cremation was, however, presented as an option to the centuries’ old Christian tradition of burial and not as a complete replacement. This choice fits with Callum Brown’s work noted in the previous chapter, regarding the difficulties and flexibilities surrounding secularisation. If secularisation is argued to have occurred in Australian society, in one sense, the secularisation of life in this world began with the secularisation of death and the world to come. I argue however that any secularisation that did occur was unintentional. A social practice rooted in a Christian tradition made way for a new practice due to practical and utilitarian reasons. This is both the case in South Australia and New South Wales.

The outline of this chapter begins with an introduction to the literature of death in Australia, and then more specifically, the literature surrounding cremation in Australia. Reference is also made to influential contemporary journal articles that were mentioned by some parliamentarians prominent in the debates. The parliamentary debates then follow, however, since in South Australia it was quite straightforward, most of the analysis is saved towards the end and it is largely the secular discourse that is analysed. As a result, this chapter, and this case study, are not subdivided into secular and religious discourse parts as the latter two case studies are. The chapter contains an analysis of the religious affiliations of the South
3.1 Literature Review of Death and Cremation in Australia

3.1.1 General

The literature on the history of death in Australia is disparate, with few monographs detailing or providing a comprehensive overview. Some book length works are essay collections. One such example is *The Unknown Country: Death in Australia, Britain and the USA*, edited by Kathy Charmaz, Glennys Howarth and Allan Kellehear. Not only is the book an essay collection, the collection includes Britain and the United States. Even when Australia is concerned, *Unknown Country* covers topics as diverse as a general overview, the representation of death in painting and literature, war memorialisation, suicide, and natural disasters.

There are book length works that are not so disparate and provide some comprehensiveness. Graeme M. Griffin and Des Tobin’s *In the Midst of Life...: the Australian Response to Death* is one such work. Griffin and Tobin begin with statistics and an introduction about death in Australia, but then move on to histories of cemeteries in New South Wales and in particular Sydney; an examination of headstones and epitaphs; and a lengthy discussion on the changes in funeral services. While it is a noble attempt at a comprehensive overview of the subject matter, it is essentially an introduction, and as Robert Nicol noted in his doctoral thesis, the earlier version of the book at least contained errors such as poor research.

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248 Graeme M. Griffin, and Des Tobin (1997), *In the Midst of Life...: the Australian Response to Death*, Carlton, Victoria: Melbourne University Press. What was mentioned is a rough summary of the outline of the book.
on South Australian burial grounds, and incorrect dates for the first European cremations in New South Wales.

Pat Jalland in her work offers the comprehensiveness that extends beyond a mere introduction. While she has written on death and grieving in Britain, it is her two books on death in Australia that offer more than introductory research. The first of these two books is *Australian Ways of Death: A Social and Cultural History, 1840-1918*. Jalland encompasses in her history the fears of early colonial immigrants to a sudden death at sea to the desire of a ‘good Christian death’; the beginnings of the institutionalisation of death in the late nineteenth century; and various approaches to death in the bush. Jalland discussed cremation for only one and a half pages in her chapter on funerals and undertakers. While her treatment was short, the simple details as to the cremation debates that Jalland offered were correct.

In Jalland’s next book, *Changing Ways of Death in Twentieth-Century Australia: War, Medicine and the Funeral Business*, cremation received an entire chapter, entitled ‘Cremation in Australia since 1914’. The focus however in this chapter was not the parliamentary obstacles that had to be overcome, but the eventual social uptake of cremation among Australians. Legislative activity in New South Wales in the 1880s is referred to only in passing. There is little offered to explain why South Australia was the first colony to legalise cremation, although it is implied the colony’s religious composition was a factor. The most significant explanation for cremation’s eventual success given by Jalland was timing as seen in the following extract.

> The significant forces for change were the impact of the Great War and the decline in Christian faith. Before 1914 religious beliefs still made cremation impossible for people who thought in terms of material resurrection and clung

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249 Nicol, Robert. ‘Aspects of Death and Burial in the Colony of South Australia, 1836-1901’ (PhD dissertation, University of Sydney, 1987), pp.3-5.
to a centuries-long tradition of earth burial. The Great War further weakened a
Christian faith which was already under severe strain. Moreover, the horrors
of trench warfare violated faith in the sanctity of the body and the grave.
Many soldiers were sickened by memories of make-shift burials in the earth at
the front, and piles of unburied rotting bodies in no-man’s-land. Corpses
could be buried and later uncovered again as advancing armies fought across
former burial sites, no longer sacred. Indeed some former soldiers requested
cremation in the inter-war years as soon as facilities existed. 255

The passage shows the reasons why Jalland believed cremation was ultimately
accepted, however nothing is said concerning the legislative or parliamentary process
for this change, nor an attempt to determine what influenced what: did social changes
influence the parliamentarians or were the parliamentarians ‘ahead of their time’ and
influenced society before other social events occurred? It is clear also from the
passage that Jalland planned to focus on the period after the Great War, while the
majority of debate concerning cremation and its full legalisation occurred before
1914 – at least regarding South Australia and New South Wales.256

3.1.2 Cremation

The two principal authors on cremation in Australia are Robert Nicol and Simon
Cooke. Nicol in particular is the authority since he wrote a doctoral thesis on
cremation and has published some monographs.

3.1.2.1 Robert Nicol

Robert Nicol provides significant explanations as to why cremation was marginalised
in Australia. Nicol is also significant for this case study as his doctoral thesis
concerned colonial South Australia and its approaches to death. Nicol in his doctoral
thesis was concerned with two questions: what mechanisms were adopted in South

256 As will be seen, the minority of post-1914 debate concerned its full legalisation in New South
Wales in 1923 and a short discussion about compulsory cremation in South Australia in 1918.
Naturally of course, discussion continued after its legalisation as there were periodic changes to
legislation pertaining to public health, cemeteries, and the zoning of land.
Australia to deal with the impact of death on the community and the individual; and, how did the colonists deal with the problem of disposing human remains?257

These concerns are reflected in the contents of Nicol’s doctoral thesis and consequently, in the two major works he has produced since. Nicol’s doctoral thesis contained two chapters on the establishment of cemeteries, but he also had a chapter on burial outside of Adelaide; a lengthy chapter on funeral practices in colonial South Australia at the time; and finally, a chapter on funeral reform which preceded an entire chapter on cremation.258 Despite publishing small works based on the early chapters,259 it is the last two chapters which are Nicol’s prime interests.

Nicol’s interests are funeral reform and cremation as he has published two full length monographs on these topics. Nicol’s At the End of the Road: Government, Society and the Disposal of Human Remains in the Nineteenth and Twentieth Centuries appeared in 1994, and focussed on South Australia, and is the published version of his doctoral thesis. There are three dedicated chapters to individual cemeteries, along with chapters on reforms and broader cultural and social ideas and preferences on cemeteries. There are two chapters on cremation. The first concerned cremation in the nineteenth century, and focussed more on the earliest intellectual and public espousals for cremation such as those by John Le Gay Brereton Snr. in the 1860s in New South Wales and Sir Henry Thompson in England in 1874. It covered the lack of adequate facilities for cremation once it had been legalised.260 The parliamentary endeavours of Dr John Mildred Creed in New South Wales and John Langdon Parsons in South Australia were short, with Creed’s extra-parliamentary endeavours receiving more attention.261

257 Nicol, Aspects of Death and Burial in the Colony of South Australia, op.cit., p.3.
258 Nicol, Aspects of Death and Burial in the Colony of South Australia, 1836-1901, op.cit., p.iii. Chapter 6 is entitled ‘Funeral Reform’ and begins on p.382, and Chapter 7 is entitled ‘Cremation in South Australia’ and begins on p.425.
261 Nicol, At the End of the Road, op.cit., pp.174-175, 176-178, 182-185.
The pinnacle of scholarship on the history of cremation in Australia is Nicol’s 2003 monograph, *This Grave and Burning Question: A Centenary History of Cremation in Australia*. Nicol covered the process that cremation underwent to become legalised in all states, and at times detailing the unsuccessful early attempts in New South Wales.\(^{262}\) While Nicol covered parliamentary aspects of cremation history, the bulk of the monograph covered extra-parliamentary history. This history included open air cremations in pre-legalised times; research on contemporary beliefs surrounding medicine, diseases and germs; the difficulties in establishing crematoria once cremation was legalised; and the role that mysticism, for example, had in the background to all of these developments.\(^{263}\)

Therefore, while the premier historian on cremation in Australia, Nicol’s works tend to focus on cemeteries with regard to burials and death. When it is concerned with cremation, parliamentary history is only one history among many. This case study focusses on the parliamentary history and from the perspective of trying to understand the interaction of religious and secular discourses, in order to argue that any religious sentiments or arguments ultimately succumbed to secular or practical utilitarian considerations. Nicol’s work is undoubtedly important however as he undertakes the work from a different angle. The much smaller opus of Simon Cooke covers much the same area as Nicol’s work.

### 3.1.2.2 Simon Cooke

Simon Cooke wrote the article ‘Death, Body and Soul: The Cremation Debate in New South Wales, 1863-1925’, in the *Australian Historical Studies* journal in 1991. In the article Cooke began by stating that examining the debate made it possible to see changing attitudes to Christian belief, although the article itself focused on the debate to do with the nature of a corpse and the corresponding practices that surrounded it.\(^{264}\) This focus on the body concerned the bodily resurrection, the status

\(^{262}\) See Chapter 2 in, Robert Nicol’s *This Grave and Burning Question: A Centenary History of Cremation in Australia*, Clearview, South Australia: Adelaide Cemeteries Authority, c.2003, pp.11-28.

\(^{263}\) Various chapters in Robert Nicol’s *This Grave and Burning Question, op.cit.*

of the corpse, discovering the cause of death, and how to record the cause of death for future reference.\(^{265}\)

Cooke’s research, however, at times was more extra-parliamentary than parliamentary. This was seen in his discussion of the origins of the debate before 1874, especially in New South Wales with the Swedenborgian John Le Gay Brereton in the 1860s.\(^{266}\) After Creed’s failed attempts in 1886-1887, Cooke covered Creed’s attempts to form the Cremation Society of New South Wales, and subsequently the establishment of the Cremation Society of Australia; along with the propaganda campaign in the Sydney papers to garner support for cremation.\(^{267}\)

Cooke’s article on cremation in New South Wales is relatively straightforward, without a great amount of analysis as to why such people as Creed were interested in cremation. While the secondary literature establishes a timeline, further research is required to discover the causes for these events. While Cooke’s work has some similar goals, and its subject matter is therefore quite similar to Chapter 4, there are some important differences. Cooke attempted to understand changes in religious thought that centred on the corpse and how it was viewed by society. The case study in this thesis is concerned with ‘how’ and ‘why’ religious arguments and sentiments were utilised when a social practice or ‘style of life’ with religious roots such as disposal of the dead was discussed and debated. The thesis as a whole also examines a series of such practices whereas due to the nature of his article, Cooke was limited to just one social practice.

### 3.1.3 Sir Henry Thompson and the *Contemporary Review*

An important piece of the literature review is the article Sir Henry Thompson, then the Queen’s Surgeon, wrote in *Contemporary Review* in January 1874 advocating cremation. It is important as it was frequently mentioned by parliamentarians who were pro-cremation. The article also caused a debate in the journal. P. H. Holland, the Medical Inspector of Burials in England and Wales, responded to Thompson’s


\(^{266}\) Cooke, ‘Death, Body and Soul’, *op.cit.*, pp.324-325.

article the following month, which in turn generated a reply from Thompson. This exchange is important as many of the tropes that featured in the journal exchange appeared subsequently in parliamentary debates.

In January 1874 Sir Henry Thompson published the article ‘The Treatment of the Body after Death’ in *Contemporary Review*. Thompson advocated cremation as a method to dispose dead bodies. Any affection or sentiment for the deceased was removed as Thompson referred to their bodies as “animal bodies”. Thompson wrote in concern for the harm that the dead had on the living when they were buried.

> The process of decomposition affecting an animal body is one that has a disagreeable, injurious, often fatal influence on the living man if sufficiently exposed to it. Thousands of human lives have been cut short by the poison of slowly decaying, and often diseased animal matter. Even the putrefaction of some of the most insignificant animals has sufficed to destroy the noblest. ²⁶⁸

Thompson’s article was also the first to distinguish between utilitarian and sentimental arguments, noting that they were not necessarily equally important.²⁶⁹ Thompson proceeded to claim that urban expansion ultimately would encroach on cemeteries no matter where they were and as a health hazard this needed to be prevented.²⁷⁰ In order to support his case, Thompson also produced an utilitarian-economic argument whereby the remains of a cremated person could be used as fertiliser for use, and he listed figures in support of his argument.²⁷¹

These are statements that were thematically pursued by pro-cremationists. Thompson was different from them as that he made vague deistic references. Thompson claimed that the answer to the health evils of earth burial was to do the work of Nature but to improve on it: “…follow Nature’s indication, and do the work she does, but do it

better and more rapidly.”\(^{272}\) A furnace and modern science were able to do this with positive utilitarian consequences.

Modern science is equal to the task of thus removing the dead of a great city without instituting any form of nuisance; none such as those we tolerate everywhere from many factories, both to air and streams…To treat our dead after this fashion would return millions of capital without delay to the bosom of mother earth, who would give us back large returns at compound interest for the deposit.\(^{273}\)

The remainder of Thompson’s article provided some information on the contemporary cremation work of Professor Brunetti at the University of Padua, and a diatribe against contemporary funeral costs.\(^{274}\)

P. H. Holland’s reply in the February 1874 edition of *Contemporary Review* was a forerunner of the responses that anti-cremationist parliamentarians were to give against cremation as his arguments were minor and wide ranging, with no great connection between them. Holland argued in his article all of the following: that an activity should not be stopped because there was a risk of one bad apple causing problems;\(^{275}\) the real problem was not earth burial but disturbances to the soil;\(^{276}\) the difficulty in finding people who would supervise cremations;\(^{277}\) and, if cemeteries were properly managed and not overpopulated and time was given for the bodies to properly decompose, cemeteries then would not be harmful to the living.\(^{278}\) Holland also criticised Thompson’s economic argument,\(^{279}\) then disclosed at the end of his article that he was not as opposed to sea burial, but he was still dismissive of it.\(^{280}\)

Thompson responded in the March 1874 issue of *Contemporary Review* with an article, ‘Cremation: A Reply to Critics and an Exposition of the Process’. As the title

\(^{275}\) Holland, P.H. (1874) ‘Burial or Cremation?’, *Contemporary Review*, vol.23, February, p.479.
\(^{276}\) Holland, ‘Burial or Cremation?’, *op.cit.*, p.479.
\(^{277}\) Holland, ‘Burial or Cremation?’, *op.cit.*, p.480.
\(^{278}\) Holland, ‘Burial or Cremation?’, *op.cit.*, p.480.
\(^{279}\) Holland, ‘Burial or Cremation?’, *op.cit.*, pp.482-483.
\(^{280}\) Holland, ‘Burial or Cremation?’, *op.cit.*, pp.483-484.
suggests, the article was largely a detailed explanation of how cremation could proceed.\textsuperscript{281} Thompson also lambasted the general state of cemeteries,\textsuperscript{282} and noted how cremation would be a safeguard against the living being buried as a certificate would be needed to confirm that the person had actually died, something that did not exist in England at the time.\textsuperscript{283}

Thompson again made vague references to religion, unlike subsequent pro-cremationist parliamentarians.

> Seeing that the Great Power which has ordained the marvellous and ceaseless action which transmutes every animal body as quickly as possible into vegetable matter, and \textit{vice versa}, and has arranged that this harmonious cycle should be the absolute and necessary law for all existence…\textsuperscript{284}

Thompson claimed that if someone had a problem with this they should take it to “the Highest Court of the Universe”, where it could be asked whether “the Judge” was doing right.\textsuperscript{285} While not necessarily deistic in nature, such comments were not altogether Christian as Thompson could have used more specific Christian language if he desired.

Discourse analysis is possible in Thompson’s work. The assumptions made were that an old practice of life had failed and a new approach was needed. Cremation provided the new approach along with several utilitarian advantages. The voice of the author was someone from a high social position, who would be informed of the latest medical thought and trends as a result of his position. In order to support himself Thompson made opaque references to religion. Thompson’s work fits the overall argument of progressive modernity. Unlike in subsequent case studies, there was no clear distinction between religion and secular discourses as both were utilised for and against cremation. There would be far greater polarisation in latter case studies. Below is the South Australian cremation debate. The course of the bill is

\begin{itemize}
\item Thompson, ‘Cremation’, \textit{op.cit.}, pp.555-560.
\item Thompson, ‘Cremation’, \textit{op.cit.}, pp.567-569.
\item Thompson, ‘Cremation’, \textit{op.cit.}, p.564.
\item Thompson, ‘Cremation’, \textit{op.cit.}, p.565.
\end{itemize}

73
viewed and then analysed. It is then placed in some context with reference to earlier and later bills on related issues. An analysis of the religious affiliations of the parliamentarians then follows along with how the parliamentarians voted. The findings are then summarised for both the pro- and anti-cremation discourses.

3.2 The Cremation Debate in South Australia

3.2.1 Cremation Bill, 1890-1891

The legalisation of cremation in the South Australian colony occurred over a period of thirteen months, from November 1890 to December 1891. The bill’s progress was only interrupted by the end of the parliamentary session at the end of 1890, and it was not pursued until parliament resumed in June 1891. The bill itself underwent minor revisions, and it passed both houses of parliament without any major issues. References to Christianity were kept to a minimum as the bill was viewed by parliamentarians from within an utilitarian framework. Objections to cremation were based on the effect that it would have on crime investigation, and personal sentiments of the living to the dead. It was recognised that cremation should be allowed because of public health concerns. The kind of cremation to be allowed was permissive cremation, and there were restrictions so as to safeguard the practice. It was introduced into the House of Assembly by the Honourable John Langdon Parsons, one of two members for the Northern Territory.286

Having obtained leave on 19 November 1890, John Langdon Parsons introduced his a bill to legislate for cremation.287 According to the bill, cremations were to occur in licensed crematoria; could only be conducted for those who had chosen, when alive, to be cremated; for those who had died by natural causes as verified by two medical

286 By the time of the cremation bill John Langdon Parsons (1837-1903) had lost his Biblical faith to a certain degree and was no longer a Baptist minister. He had served in New Zealand before accepting a post in North Adelaide. He worked as a merchant before entering Parliament. In Parliament he was interested in the development potential of the Northern Territory, and he sought to improve the educational opportunities of poor children. He was the consul for Japan from 1896 to 1903. See Elizabeth Kwan’s entry in Australian Dictionary of Biography, http://adb.anu.edu.au/biography/parsons-john-langdon-7966 (accessed 29 February 2016).
287 South Australia, House of Assembly 1890, Debates, volume 1, 19 November, p.2055.
practitioners who were to provide certificates as documentation; these medical practitioners were not to have a financial interest associated with the deceased; conditions were put forth under which a family member could object to the cremation; and the Attorney-General or any Stipendiary or Police Magistrate was allowed to stop any cremation indefinitely if they put the request in writing or until an autopsy could be conducted.288

The first reading of the bill was uneventful, attested to in Hansard by three-and-a-half lines. The second reading of the bill occurred on 17 December 1890. Parsons began by saying that he would not have brought such a bill to notice so late in the session if he did not believe that it was such an important matter, since, “Cremation [i]s a subject of great practical importance, invoking the question of hygiene”.289 For Parsons, “Two great questions [a]re connected with this subject – deaths and decay.”290

Parsons began to explain the reason for his bill by referring to Thompson’s aforementioned 1874 article. Parsons framed the debate by claiming that practically, the question was about the best way to dispose of dead bodies with regard to decay.291 According to Parsons, for the South Australian colony, it had only two options to consider in disposal of the dead: burials in the earth or cremations.292

Mindful of not wanting to upset his fellow parliamentarians, Parsons outlined in his history of burial practices, that it was with Christianity that we began to think of burial and the resurrection so closely together, and that other burial methods were sacrilegious.293 For South Australia, the practice of earth burials was tied with the romantic idea of the deceased sleeping, yet Parsons noted that this was only something that we told ourselves to make ourselves feel better, and that if we thought about what really happened we would find it “loathsome”.294

288 Original bill of the Cremation Act, 1890 (South Australia).
289 South Australia, House of Assembly 1890, Debates, volume 1, 17 December, p.2483.
290 South Australia, House of Assembly 1890, Debates, volume 1, 17 December, p.2483.
291 South Australia, House of Assembly 1890, Debates, volume 1, 17 December, p.2483.
292 South Australia, House of Assembly 1890, Debates, volume 1, 17 December, p.2484.
293 South Australia, House of Assembly 1890, Debates, volume 1, 17 December, p.2484.
294 South Australia, House of Assembly 1890, Debates, volume 1, 17 December, p.2484.
At one point in his speech, Parsons expanded on the “loathsome” earth burial, and claimed that cremation was more humane. He said: “The process of earth burial is loathsome to the thought and the imagination, whereas in consuming the body by fire everything is rapid and in accordance with the laws of nature.” The meaning of the laws of nature was left unexplained, although Parsons made reference to numerous continental European countries which allowed cremations, and a recent attempt by Dr. Cameron the Member of Parliament for Glasgow in the United Kingdom to legalise cremation there, which while defeated “received considerable support”.

Parsons summarised his first point in favour of cremation by appealing to sanitary authorities and the need to be mindful of public health. Members agreed with Parsons’ statement that, “It is a matter of notoriety that the vicinity of graveyards is unhealthy.” Parsons also claimed that cremation “occupied the attention of scientific and medical men in different European countries and is regarded with extreme favour by the most advanced sanitary authorities in the world.”

Christian objections to cremation were not left unanswered by Parsons. He referred to the late Canon Liddon’s claim that it would be equally as miraculous to be resurrected from ashes as from a corpse; the Earl of Shaftesbury’s claim of what would be the case of the early saints, and the rhetorical question of it only bring presumably a spiritual resurrection. Parsons also referred to the late Bishop Frazer of Manchester, who claimed that no one of intelligent faith supposed Christianity was affected by this. After this rebuttal to Christian objections, Parsons provided statistics from England and Wales to show that cremation was inconsequential in preventing the investigation of crimes, particularly those involving poisoning.

295 South Australia, House of Assembly 1890, Debates, volume 1, 17 December, p.2485.
296 South Australia, House of Assembly 1890, Debates, volume 1, 17 December, p.2484.
297 South Australia, House of Assembly 1890, Debates, volume 1, 17 December, p.2485.
298 South Australia, House of Assembly 1890, Debates, volume 1, 17 December, p.2485.
299 South Australia, House of Assembly 1890, Debates, volume 1, 17 December, p.2486.
300 South Australia, House of Assembly 1890, Debates, volume 1, 17 December, p.2486.
Parsons concluded by saying that if there was no discussion, the Standing Orders ought to be suspended and the bill to go through immediately due to its great importance.\textsuperscript{301} Three parliamentarians spoke.

The Chief Secretary, Sir John Cox Bray spoke first. Bray noted that they were “all anxious to pay respect to the dead, but a still higher duty was to respect and look after the living”, and if the present system contained dangers to the living, Parliament undoubtedly had to consider how best to ameliorate the situation.\textsuperscript{302} Bray then acknowledged that Parsons had dealt with the issue of cremation preventing crime detection and investigation.\textsuperscript{303} Bray said that the Government intended to support the bill as it was purely permissive cremation and that such a practice would need to be “under the strictest control on the part of the Government.”\textsuperscript{304}

The Honourable James Henderson Howe followed but simply mentioned that since sentiments were involved, time was needed to hear the public’s sentiment as it was an important matter. In this way, public sentiment would not be disturbed. He agreed with Parsons’ sanitary argument.\textsuperscript{305}

Lastly, Robert Caldwell said he believed the public had been consulted considering that it was permissive cremation. He also expressed his pleasure at society returning to the old natural practice and that the Government was also in favour of the practice.\textsuperscript{306} Debate on the issue was then adjourned by Lawrence O’Loughlin until the next day.

23 December was the last day of discussion of cremation in 1890. Joseph Colin Francis Johnson remarked that opposition to cremation after Parsons’s speech could only be based on sentiment, however he supported the bill on the understanding that

\textsuperscript{301} South Australia, House of Assembly 1890, \textit{Debates}, volume 1, 17 December, pp.2486-2487.
\textsuperscript{302} South Australia, House of Assembly 1890, \textit{Debates}, volume 1, 17 December, p.2487.
\textsuperscript{303} South Australia, House of Assembly 1890, \textit{Debates}, volume 1, 17 December, p.2487.
\textsuperscript{304} South Australia, House of Assembly 1890, \textit{Debates}, volume 1, 17 December, p.2487.
\textsuperscript{305} South Australia, House of Assembly 1890, \textit{Debates}, volume 1, 17 December, p.2487.
\textsuperscript{306} South Australia, House of Assembly 1890, \textit{Debates}, volume 1, 17 December, p.2487.
it would go no further that session.\textsuperscript{307} Parsons agreed not to pursue the bill further until the next session in the committee meeting.\textsuperscript{308}

On 11 June 1891, the Honourable Charles Cameron Kingston, Q.C., obtained leave from the House of Assembly on behalf of Parsons who was unavoidably absent, for the bill regulating cremation be introduced. Leave was granted.\textsuperscript{309} On 16 June Parsons introduced his bill and it passed its first reading.\textsuperscript{310}

On 19 August during the second reading, Parsons defended his bill by reiterating the main points of his defence from December 1890. This time he referred to a hygiene conference in London four days previously, which determined that cremation was “a rational method of disposing of the bodies of the dead”, especially after a battle.\textsuperscript{311}

Chief Secretary Bray spoke once again and said after claiming that the public would eventually warm to the idea of cremation, that:

\begin{quote}
It was the duty of every one to pay all possible respect to the dead, but still the living should not be forgotten, and if it was proved that the present plan of disposing of the dead was injurious to the health of the public, no doubt another system would have to be adopted.\textsuperscript{312}
\end{quote}

Joseph Hancock Jr. echoed these feelings when he added that the only reason cremation was opposed was because of a romantic view that we had of the dead and our attachment to them.\textsuperscript{313} For Hancock therefore, “Cremation was proposed for a twofold reason – to spare the feelings of the friends of the deceased and to preserve the living,” from impurities of gas emitted by decaying corpses and the pollutants

\textsuperscript{307} South Australia, House of Assembly 1890, \textit{Debates}, volume 1, 23 December, p.2637.
\textsuperscript{308} South Australia, House of Assembly 1890, \textit{Debates}, volume 1, 23 December, p.2637.
\textsuperscript{310} South Australia, House of Assembly 1891, \textit{Debates}, volume 1, 16 June, p.91.
\textsuperscript{311} South Australia, House of Assembly 1891, \textit{Debates}, volume 1, 19 August, p.810.
\textsuperscript{312} South Australia, House of Assembly 1891, \textit{Debates}, volume 1, 19 August, p.810.
\textsuperscript{313} South Australia, House of Assembly 1891, \textit{Debates}, volume 1, 19 August, pp.810-811.
which seeped into the nearby water streams from the bodies. In summary Hancock said that he would support the bill since it was for permissive cremation.

16 September 1891 saw the first seven clauses of the bill pass the committee stage. The eighth clause saw only mild controversy. Sir Edwin Thomas Smith enquired whether the Attorney-General would have the power to prevent any cremations even if the cremation was requested before the person’s death. Parsons replied that this would only occur if the death was suspicious. Minor amendments were suggested but the bill was eventually agreed to without difficulty. Only the eighth clause caused any disagreement or debate, and the bill passed its third reading in the House of Assembly on 30 September 1891.

The progression of the bill in the Legislative Council was rapid. The bill was received from the House of Assembly and read for the first time on 1 October, one day after it passed the House of Assembly. On 7 October the bill was read for a second time. The Honourable John Hannah Gordon acknowledged that contemporary burial practices could lead to problems in the future, and he saw no reason to oppose cremation if it was legal in England and other countries, and especially if it was to be optional in South Australia. Hansard recorded the Honourable Samuel Tomkinson as saying, “It was high time that such a reform should be introduced into such a progressive country as ours…” The Honourable Fredrich E. H. W. Krichauff was satisfied with the requirement of two medical practitioners to verify natural death. All clauses of the bill were passed in the committee meeting without any amendments.

314 South Australia, House of Assembly 1891, Debates, volume 1, 19 August, p.811.
315 South Australia, House of Assembly 1891, Debates, volume 1, 19 August, p.812.
316 South Australia, House of Assembly 1891, Debates, volume 1, 16 September, p.1187.
317 South Australia, House of Assembly 1891, Debates, volume 1, 30 September, p.1371.
318 South Australia, Legislative Council 1891, Debates, volume 1, 1 October, p.1375.
319 South Australia, Legislative Council 1891, Debates, volume 1, 7 October, p.1437.
320 South Australia, Legislative Council 1891, Debates, volume 1, 7 October, p.1437.
321 South Australia, Legislative Council 1891, Debates, volume 1, 7 October, p.1437.
322 South Australia, Legislative Council 1891, Debates, volume 1, 7 October, p.1437.
The bill passed its third reading in the Legislative Council on 21 October 1891 where it warranted one line in Hansard.\(^{323}\) The bill received royal assent by the Governor on 19 December 1891.

Discourse analysis of these events, mostly in the House of Assembly, show the rhetorical techniques used to help pass the *Cremation Bill*, and in turn, show the parliamentarians’ and parliament’s thoughts regarding a religious social practice. This is excluding such clear statements as made by Robert Caldwell and his pleasure at society returning to older methods of disposal of the dead, to the cost of Christian burial.

The first rhetorical technique that is noticed by discourse analysis was the way the debate was framed with a sense of urgency. Parsons claimed that the issue was urgent, yet this is seemingly false. Robert Nicol and Pat Jalland noted that once cremation was legalised in South Australia and elsewhere, it was decades before it rose in popularity and was no longer a fringe form of disposal.\(^{324}\) This was a deliberate attempt by Parsons to skew the debate in his favour.

A rhetorical device that was common in all the debates in the case studies was the appeal to authority, and also *ad populum* appeals. Parsons did not refrain from referring to eminent scientists and the leading medical men to support his utilitarian sanitary argument. Parsons also kept up to date with the latest developments by referring to an international hygiene conference in one of his speeches. In this regard Parsons did not limit himself to Thompson and his work. Other parliamentarians such as John Gordon appealed to England as an imperial authority and seemingly as an *ad populum* appeal by saying if it was acceptable there it was acceptable in South Australia. In contrast to this was Samuel Tomkinson’s independent claim that cremation reform was appropriate for a progressive place such as South Australia. This clearly illustrates how at least some parliamentarians saw themselves and their colony.

\(^{323}\) South Australia, Legislative Council 1891, *Debates*, volume 1, 21 October, p.1638.

Such appeals were combined with dismissals and reworking of religious arguments to support cremation. Parsons appealed to several important ecclesiastical figures who made statements that were not theologically dismissive of cremation. Christianity was dismissed by Parsons when he claimed that earth burials only began with the rise of Christianity. In his references to religion, Parsons either side-lined it, thereby attempting to eliminate it, or he tried to co-opt it into his pro-cremation discourse. This helped to ensure that in South Australia, a colony that was religiously diverse, the religious discourse played a small role in the debates, and when it did feature it was utilised by both sides of the debate. In South Australia however there was only one side.

The last rhetorical discursive feature of the debate, and a common one in all the forthcoming debates, was the use of emotive language. Parsons in particular referred to earth burial as ‘loathsome’; to the deceased’s body as an ‘animal body’; and he placed emphasis on words with negative connotations such as ‘decay’. Parsons usually did this to emphasise the sanitary and hygienic consequences for society.

It is clear therefore that there were several rhetorical or discursive techniques used in the debates, techniques that Fairclough noted in his explanation of discourse analysis. These included the way the debate was framed to create a false sense of urgency, appeals to authority, the use of emotive language, and the dismissal and co-option of religion. Assumptions parliamentarians made about themselves and their colony were also visible in the debates. A deeper analysis is limited by the debate being effectively one-sided. This is not the case in subsequent case studies. Despite these limitations, discourse analysis is still possible and is no different to the techniques that Anna Crabb, John Uhr or James Curran used in their research and analyses. One of the assumptions present in the debate was that South Australia was a progressive colony. Wider contextualisation of South Australia on the issue of death shows this to be the case.
3.2.2 A Wider South Australian Context: 1871 and 1918

When examined in a wider context the progressive nature of the South Australian Parliament on cremation is not an isolated incident. For example, William Bundey, the Minister of Justice in a speech on a new cemetery for Adelaide in 1874 read extracts from Thompson’s January 1874 *Contemporary Review* article. 325 A more significant example of a change to a law dealing with religion occurred in 1871 with the Felo de Se *Verdicts Bill.* 326

In August 1871, Chief Secretary William Milne in the Legislative Council introduced the Felo de Se *Verdicts Bill* with the intention that someone declared *felo de se* by a Coroner’s Jury could still have Christian rites and burial, at any time of the day, and the deceased’s property would not be forfeited to the Crown. The bill was needed as the status quo was a “barbarous state of things” according to Milne. 327 During his second reading of the bill on 7 September he called it a “barbarous law”. 328 The closest statement to an objection was when Henry Ayers said he agreed with the aim of the bill but wished for the committee process to be on another day as he did not have a copy of the bill with the changes he wished to suggest. 329

The bill passed through the committee process on 10 October, 330 passed its third reading without incident on 12 October, 331 and was introduced to the House of Assembly on the same day. 332 The Attorney-General Charles Mann spoke on the bill during the second reading on 25 October. Mann claimed that the bill sought to fix what was “a very great hardship”, 333 since the law “was a relic of barbarism, and it was hardly creditable that it should remain on the Statute-book.” 334 Mann stated that Coroner’s Juries often brought forth verdicts of temporary insanity when the

325 South Australia, House of Assembly 1874, *Debates*, volume 1, 12 August, pp.1273-1274.
326 *Felo de se* is an old legal term meaning suicide. Deceased judged ‘felo de se’, ‘felons to themselves’ would often be given a burial at night, without mourners or clergy present, and in unmarked graves. Their property would be forfeited to the Crown.
327 South Australia, Legislative Council 1871, *Debates*, volume 1, 15 August, p.173.
328 South Australia, Legislative Council 1871, *Debates*, volume 1, 7 September, p.398.
329 South Australia, Legislative Council 1871, *Debates*, volume 1, 7 September, p.398.
330 South Australia, Legislative Council 1871, *Debates*, volume 1, 10 October, pp.678-679.
331 South Australia, Legislative Council 1871, *Debates*, volume 1, 12 October, p.721.
332 South Australia, House of Assembly 1871, *Debates*, volume 1, 12 October, p.730.
evidence scarcely supported the verdict. 335 Hence he supported the bill in order to rectify this problem. The bill passed its third reading on the same day and there was only one line in Hansard to record this. 336 The bill received royal assent on 23 November 1871. 337

From Hansard, there are no positive references to religion, and the general approach was pragmatic. If anything the references to religion were negative with *felo de se* referred to repeatedly as barbaric. There was also no opposition recorded to the bill as well. Coupled with Bundey’s 1874 reading of Thompson, there is ground to call the South Australian Parliaments of the 1870s socially progressive, at least in regards to death. This progressivism still existed when the cremation bill was introduced in 1890, and it is clear that the progressivism had practical concerns. Death was also the style of life that from an early period began to undergo changes with religious influences steadily losing power to contemporary thinking, even on suicide.

This South Australian parliamentary progressivism, however, may have been ahead of the general South Australian population as an example from 1918 demonstrates. When discussing the *Cremation Act Amendment Bill* in order to make it easier to get the necessary documents so that a cremation could occur, the Honourable John Lewis made an appeal during the second reading to make cremation compulsory, citing the health dangers that earth burial posed to the living. 338 The only objection recorded to Lewis’s initial proposal was by the Honourable John Cooke who objected that such a proposal would require the building of so many crematoria that it would make contemporary expensive burials even more so, and therefore as a result, the proposal should only be confined to Adelaide. 339 Such a pragmatic consideration was duly accepted by Lewis. 340

During the committee stage Lewis proposed three amendments. The first made it unlawful for any dead body to be buried in the ground; the second established a fine

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337 *Felo de Se* Verdicts Act, 1871 (SA).
338 South Australia, Legislative Council 1918, *Debates*, volume 1, 17 September, pp.526-528.
339 South Australia, Legislative Council 1918, *Debates*, volume 1, 17 September, p.527.
340 South Australia, Legislative Council 1918, *Debates*, volume 1, 17 September, p.527.
of £50 for anyone involved in the disposal of a dead body in any way other than cremation; and the third amendment allowed objections to the above two amendments if the Attorney-General, a Special Magistrate or two Justices signed in writing for a body to be buried. Cooke once again replied to Lewis and stated that while he thought cremation might be the right way to dispose of a body, cremation for society at large would be “somewhat unpopular”.

Debate on Lewis’s proposals continued and he did receive some, if limited, support. The Commissioner of Public Works conceded the main principle behind Lewis’s proposals. However, he had practical objections. The Commissioner said: “We should not try to advance too rapidly in matters of this sort, especially when we consider that although a Cremation Act has been in operation in Adelaide since 1891 less than 3 per cent of dead bodies have been disposed of by cremation.” The Commissioner added that there were British subjects who were “Mohammedans”, and they had written to him protesting against the move for compulsory cremation.

The Honourable James Jelley objected to cremation because of perceived high costs, and there was some debate about this, even though Jelley thought the public should be educated so as to be disposed towards the necessity of cremation.

While Lewis’s proposal for compulsory cremation was accepted at a theoretical level due to sanitary reasons, there were objections that the public was not inclined to cremation. Lewis’s proposals did not receive the necessary support in the end due to pragmatic and practical reasons. There were no other calls for compulsory cremation during the passing of the Cremation Act Amendment Bill. These two examples from 1871 and 1918 show that the South Australian Parliament was socially progressive, at least with regard to death, when compared to other contemporary local parliaments. This example from 1918 also highlights that most people were apathetic towards cremation since so few people adopted it, as was noted by the Commissioner of Public Works. If the Christian practice of earth burial was to be completely destroyed, it could not be, due in part to practical reasons. If this was secularisation,

341 South Australia, Legislative Council 1918, Debates, volume 1, 24 September, pp.612-613.
342 South Australia, Legislative Council 1918, Debates, volume 1, 24 September, p.613.
343 South Australia, Legislative Council 1918, Debates, volume 1, 24 September, p.613.
344 South Australia, Legislative Council 1918, Debates, volume 1, 24 September, pp.613-614.
345 South Australia, Legislative Council 1918, Debates, volume 1, 24 September, p.614.
there were clearly limits to how much people could accept at least in religiously
diverse and tolerant, progressive South Australia. This proves Callum Brown’s point
that secularisation is not a steady process as it can be challenged. In this case, there
was a clear limit despite the overall progressivism of Parliament. This however raises
the question of the religious affiliations of the parliamentarians.

3.3 Parliamentary Religious Affiliations

The difficulties in determining the religious affiliations of the parliamentarians were
noted in the previous chapter in section 2.2.2. For the case of South Australia it is
compounded by the fact that the Parliament has never kept a record of the religious
affiliations of its members.346 As a result, the findings below are what I was able to
determine principally from the use of the Australian Dictionary of Biography. The
religious affiliation findings below are incomplete. Nevertheless, the religious
diversity of the Parliament is seen in that a broad representation of denominational
Christianity was present, along with in some instances, non-Christian religions such
as Judaism and Theosophy.

Below are four tables: two for the religious composition of the Legislative Council in
South Australia, and the other two for the religious composition of the House of
Assembly. There are two tables each due to changes in composition of the Houses
with new parliamentarians entering. Since Parsons’s cremation bill passed without
any objections, there is no need to analysis the religious affiliation of the voters as it
is done with the New South Wales case in the following chapter. It is also not
possible because Hansard did not provide a voting list so it is unknown how people
voted, and therefore how close the vote was. Presumably however it was not close as
no one objected to the bill during the parliamentary process.

346 Private email correspondence from the Clerk’s Office at the Parliament of South Australia, 5 May
2014.
Figure 1 South Australian Legislative Council Religious Composition in 1890

The pie chart figures are: 13 unknown, five Anglicans, two Congregationalists and two Presbyterians, and with one Catholic, Unitarian, Congregationalist/Methodist, and Baptist/Congregationalist each.

Figure 2 South Australian Legislative Council Religious Composition in 1891

The pie chart figures are: 11 unknown, four Anglicans, three Presbyterians, two Congregationalists, and with one Catholic, Unitarian, Protestant, Congregationalist/Methodist, Baptist/Congregationalist, and Baptist/Anglican each.
Despite only half of the religious affiliations being known, it is clear that the Legislative Council was a religiously diverse group, at least regarding Christianity. Non-conformist denominations featured predominantly, no doubt due to South Australia’s historical religious liberalism. People with hyphenated religious markers is due to them either being married in one denomination and then receiving funeral rites later in a different denomination; or receiving their education in one denomination and then the only other reference to religion in their biography mentioned a different denomination. This is one of the difficulties of this analysis, alongside with determining their level of religiosity.

Figure 3 South Australian House of Assembly Religious Composition in 1890\textsuperscript{349}

\textsuperscript{349} The pie chart figures are: 30 unknown, seven Anglicans, three Catholics and Methodists each, two Jews, and with one Churches of Christ, Unitarian, Lutheran, Congregationalist, Theosophist, and Baptist/Anglican each.
As a result of being larger than the Legislative Council, from what is known, the House of Assembly had greater religious representation: not only a greater representation of Christian denominations but also the existence of non-Christian religions: Judaism and Theosophy. It is unclear whether the Jewish parliamentarians were present at the debates or not, since there were no objections. The smaller representation of Catholics may have also contributed to their being no objections to cremation as cremation was not allowed to Catholics until the Second Vatican Council in the 1960s.

The religious affiliations of parliamentarians showed that the permissibility of cremation received some amount of broad Christian support as many Christian denominations were represented in the South Australian parliament and there were no religious objections. Given the times, it is unlikely that there were any figures who were completely irreligious. South Australia however was a free colony founded on the idea of religious tolerance. Perhaps the smaller percentage of Catholics needs

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The pie chart figures are: 29 unknown, seven Anglicans, four Methodists, three Catholics, two Jews, and with one Churches of Christ, Unitarian, Lutheran, Congregationalist, Theosophist, and Baptist/Anglican each.

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350 The pie chart figures are: 29 unknown, seven Anglicans, four Methodists, three Catholics, two Jews, and with one Churches of Christ, Unitarian, Lutheran, Congregationalist, Theosophist, and Baptist/Anglican each.
to be noted but the most important observation to note is the broad representation of Christianity in the South Australian Parliament.

3.4 Conclusion

With its debate limited due to there being no objections, the legalisation of cremation in South Australia nevertheless highlighted several features important to this thesis. It was the first time that a social practice or an example of a style of life when sought to be changed by parliamentary or legislative methods, was promoted by secular discourses and ultimately won. The secular discursive reasons were practical and utilitarian. Hygiene was an important issue. Discourse analysis showed that several different rhetorical techniques were utilised to control the debate, from the way the debate was shaped to the way people were encouraged to think about it with the use of emotive language. Analysis of the religious affiliation of the parliamentarians, even though limited, showed that there was a broad representation of Christianity. Despite possible theological or doctrinal opposition, cremation was not objected. The limitations regarding South Australia should not dismiss it from the case study. As it was noted in the previous chapter, various *Annales* historians such as Michel Vovelle were able to do significant history with limited sources. The same case applies here.

In the following chapter the legalisation of cremation in New South Wales is examined. While South Australia was the first to legalise, New South Wales was the first colony to try to legalise cremation. The chapter is structurally similar to this chapter. The next chapter demonstrates more strongly that when it came to a choice between religious and secular motives, Australian parliamentarians ultimately overwhelmingly chose secular motives and reasons. Brown’s theory that secularisation is not linear and is indeed a complex process of flux is true since the secularisation of one aspect of life by parliamentarians did not mean it was accepted by broader society. It was nevertheless the first in a series of social practices to be secularised.
CHAPTER 4 – CREMATION II: NEW SOUTH WALES

This chapter examines the legalisation of cremation in New South Wales. Since the process took several decades, it is the unsuccessful attempt in 1886 that is principally examined. This attempt is significant because it was the very first attempt to legalise cremation in the Australian colonies.

This chapter follows the previous chapter in showing that the disposal of the dead was the first social custom or style of life in Australia that was challenged by a secular discourse. A counterbalancing religious discourse existed although it was ultimately unsuccessful. While the bill passed the Legislative Council in 1886, it never received a hearing in the Legislative Assembly, thus ending its course. This case study is important since it was the first, but also because the debate among the parliamentarians was one of the most polarised in terms of religious and secular discourses. Chronologically earlier, not only to the South Australian cremation case but also to the other case studies in this thesis, New South Wales here foreshadowed the progressivism and utilitarianism of the secular discourse, along with the failings of the religious discourse. Other features of the debates such as rhetorical devices also featured.

New South Wales as a case study is justified for the same reasons as South Australia and cremation were justified in the previous chapter: disposal of the dead constitutes an example of Peter Stearns’s ‘styles of life’ and it also highlights Callum Brown’s claims about the complexities and non-linear nature of secularity and religiosity in society. Methodologically the case study is justified by the works of the *Annales* school and the use of discourse analysis. This overcomes the possible pitfalls of relying on a specific set of documents such as Hansard.

The structure of this chapter contains a short overview of the debate, followed by an examination of the arguments for the cremation bill and then the arguments opposed to the bill. A majority of the religious arguments were opposed to the bill. The rhetorical devices used along with analysis of the religious affiliations of the
parliamentarians are then examined. In this way, this chapter much like Chapter 3, is slightly different to the subsequent case study chapters as the religious and secular arguments and discourses are not completely polarised. This is due to religion featuring both for and against the bill. Most likely this was because it was the first time such a social change was debated, and there was so much debate, a secular and religious discourse had not had the time to develop into separate, distinct, discourses.

4.1 Overview of the Debate in the Legislative Council, 1886

The debate in the New South Wales Legislative Council was initiated by Dr John Mildred Creed. The first reading occurred on 3 June. It was followed by a second reading on 24 June and 7 July. There was debate in the committee on 22 and 29 July, with a final third reading on 5 August. Arguments for cremation were: the utility of cremation; progressivism; sanitation; the emphasis that the bill concerned regulation and not legalisation; and finally, religious rebuttals. Arguments against cremation were: the need for cremation to be compulsory for the sanitation arguments to stand; the question of petitions; concerns about the procedure in which Creed’s bill was introduced; followed by religious acknowledgements and arguments, with what can also be called ‘tombstone morality’.

On 3 June 1886 Dr John Mildred Creed began his parliamentary case for cremation by saying: “I ask for this leave with a deep sense of the solemnity of the matter with which the bill is intended to deal. It is a question which must necessarily be considered some day by the community, and sanitary science has demonstrated already the extreme advantage of cremation in preference to internment.”351 Within this opening there was the acknowledgement of the social, sacred, and symbolic significance of the proposed change in a social custom, along with a foreshadowing of the issues proposed by the pro-cremationists: functionality and necessity of the issue, with a belief that science, public hygiene and utilitarianism were more important than the sacred or the symbolic.

351 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2371.
Creed proceeded to state several points in favour of his cremation proposal. First, his bill allowed for permissive cremation and it was not compulsory in any sense. Cremation would be legal if it was performed under certain regulations and with the proper apparatus, approved by the appropriate authorities, and with the crematorium licensed by the Governor-in-Council. Creed cited the recent case of Dr Price in Wales, where it was determined that cremation was not illegal in itself so long as it did not cause a nuisance to people. Hence Creed claimed: “A similar sad state of things may happen in this colony from the absence of proper apparatus, and to guard against any such outrage upon public sentiment is one of my reasons for bringing forward this measure.” Creed’s public concern was supported by his belief that the weight of evidence was in his favour along with the belief that allowing cremation would enable those who wished to be cremated to respectfully do it, “and so by their example educate the prejudiced persons up to the method.” Creed’s education required no public money.

A series of parliamentarians then briefly spoke on the bill in general terms. Some recognised that while the bill might not pass, there would be a time in the future when it would be necessary. There was already a debate about whether the bill was for compulsory cremation. Other points that arose were: appeals to authorities, famous people, or nations that had publicly mentioned opinions on cremation; the question of whether one’s disposition was a matter of sentiment or prejudice; public outbreaks of diseases; the idea of cremation being seen as progressive; the use of visual descriptive language; and a concern about the proper procedure for introducing such a bill.

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352 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2371.
353 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2371.
354 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2372.
355 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2372.
356 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2372.
357 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, pp.2372, 2373.
358 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, pp.2372-2373.
359 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, pp.2374.
360 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, pp.2373, 2374.
361 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, pp.2373-2374.
362 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, pp.2373, 2374.

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Creed was allowed to reiterate his argument. He began by saying his aim was really to “cultivate the sacred sentiment of respect for the dead in the highest degree,” which was as religious as Creed ever came in his speeches. Creed listed inevitable urban growth as a reason for cremation. Furthermore, Creed fervently believed that from a “sanitary point of view the advantages are unquestionable.” Creed reiterated the point that he was not attempting to legalise cremation but simply to regulate it. Creed finished by claiming that he had many supporters.

On 24 June the debate comprised of Creed speaking in favour of the bill and then William Piddington, Creed’s chief opponent, attacking the bill. Creed once again began with an acknowledgement of “a deep sense of the solemn nature of the subject”. After admitting that it was unfair to expect a custom held for centuries to change suddenly regardless of powerful arguments, Creed claimed that it was nevertheless the time to guarantee certainty to the individual that he could safely build a crematorium. Creed dismissed religious objections by claiming two points: Christians had largely always buried because the first converts were Jewish and they had buried; and it allowed them to differentiate themselves from contemporaries who largely cremated. Secondly, in his personal opinion, the earliest Christians buried because they had to practice their religion in secret. Creed proceeded to discuss the real problems of urban growth, which eventually would reach the cemetery causing the corpses to become a health hazard to the living. Creed cited examples of disturbed cemeteries in Modena where a plague was still effective after 300 years, and London in 1854 when a cholera epidemic ensued because sewer excavations

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363 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2374.
365 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2375.
367 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2375.
368 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, pp.2375-2376.
369 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2376.
disturbed soil where victims were originally buried in 1665. The sanitary argument largely continued until the end of his speech.

Piddington, an Anglican of unknown level of religiosity, in response questioned and in subtle ways pilloried the arguments proposed by Creed. Piddington questioned who Creed’s sympathisers were and how the health hazards associated with cemeteries affected people in New South Wales since there was ample land. Piddington suggested other modes of disposal to Creed, even suggesting the slippery slope argument that if cremation was legalised, eventually someone would come along attempting to legalise cannibalism. Piddington appealed to what had occurred in 1884 in the House of Commons in England on a similar bill, and that cremation would make graveyards obsolete. Debate was then adjourned.

The second reading debate resumed on 7 July. This time, Creed only spoke briefly at the end, and Piddington did not speak. The debate alternated between those who supported and opposed the bill. Frederick Darley (Anglican) commenced the debate and he spoke in favour of the bill. In support of the bill, Darley was followed by: Samuel Charles, James Norton (Anglican), Henry Dangar and John Smith. In opposing the bill, Alexander Dodds followed Darley’s opening. Dodds was followed by: John Macintosh (Presbyterian) and Philip King (Anglican, and was known to support the building of churches). Archibald Jacob (‘devout’ Anglican) seemed neutral and in the middle of the debate.

The bill entered the committee stage and was discussed there on 22 July and 29 July. Hansard records that on 22 July largely technical debate occurred concerning clauses

375 If the religious affiliation is known it will appear in brackets after the person’s name. The religious affiliation is based upon their biography in the Australian Dictionary of Biography, if it is there at all.
381 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, pp.3126-3127, 3129-3131, 3131-3132.
382 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3135.
within the bill and the effects that this would have on the actual practice of cremation; whether the bill would make cremation legal although effectively impossible to do.\textsuperscript{383} Discussion on 29 July was effectively monopolised by Piddington where he mentioned all his major arguments against the bill.\textsuperscript{384} Brief comments were given by John Stewart (religious affiliation unknown, but it was known that he disliked Roman Catholicism), Dodds and John Smith.\textsuperscript{385}

The third reading of the bill occurred on 5 August. Debate began with Piddington and was notable for his ancient Egyptian argument: that as a civilisation we are richer due to the ancient Egyptians mummifying their dead leading us to know about them. If we stopped earth burial, civilisations in a few thousand years will know nothing about us.\textsuperscript{386} This was ridiculed by Creed at the end where he stated that if Piddington felt so strongly about future civilisations, Piddington should have himself embalmed at death.\textsuperscript{387} With this brief overview of the parliamentary debate surveyed, specific arguments and tropes for and against the bill are detailed and analysed below.

4.2 Arguments for the Cremation Bill

The pro-cremation arguments used did not divide into secular and religious discourse camps as easily as in the Sabbatarian and divorce case studies examined later in this thesis. In those case studies, the secular discourses were effectively for the prospective changes, and the religious discourses were opposed. In this case study, secular and religious arguments are utilised by both sides, and as a result, it was the debate with the greatest amount of discussion on the actual opponents’ points. The secular arguments were largely pro-cremation. They were utilitarian in nature and had a progressive element; features that appeared in the secular discourses in the

\textsuperscript{383} New South Wales, Legislative Council 1885-1886, Debates, volume 4, 22 July 1886, pp.3531-3538.
\textsuperscript{384} New South Wales, Legislative Council 1885-1886, Debates, volume 4, 29 July 1886, pp.3670-3672.
\textsuperscript{385} New South Wales, Legislative Council 1885-1886, Debates, volume 4, 29 July 1886, p.3673.
\textsuperscript{386} New South Wales, Legislative Council 1885-1886, Debates, volume 4, 5 August 1886, pp.3828-3829.
\textsuperscript{387} New South Wales, Legislative Council 1885-1886, Debates, volume 4, 5 August 1886, p.3831.
latter case studies as well. In New South Wales in 1886 in particular, the pro-
cremation arguments were largely based on utilitarianism, progressivism, and
religion. The utilitarian arguments were that cremation had social utility and it was
sanitary. The arguments are examined in greater detail below.

4.2.1 The Utility of Cremation

The principal argument made in favour of cremation was its utility to the living,
principally due to sanitation. Creed made this a major reason for the Council to allow
the bill to pass in his speech at the end of the debate during the first reading on 3
June. Creed said that even though the country was young, there had been instances of
burials “being necessarily taken for public purposes.” 388 The location of the Town
Hall was previously a cemetery said Creed, and he had no doubt that a similar fate
would occur to the Devonshire Street cemetery. 389

Creed continued on this theme in his second reading speech. The inevitability of
urban growth in the New South Wales colony was an example, according to Creed
that proved the utility of cremation. No matter how far away from people a cemetery
was built, eventually urban growth would reach the cemetery and the dead would
then become a danger to the living. Creed claimed that the cemetery that was
formerly located at Town Hall, which was founded close to the beginning of the
colony, would have been deemed to be outside “the possible limits of the future town
for all ages”, yet it was the centre of the city. 390 For Creed, there was no way to
overcome this problem unless cremation was accepted as an alternative.

The issue of urban growth was continued by other parliamentarians. John Smith in
the second reading debate claimed that there was still ample land for the use of
cemeteries for years to come, and suggested that the Blue Mountains, then according
to Smith unoccupied, could be used for earth burial. 391 Smith claimed that cremation
was more suited to England which had a far greater population density than the New

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388 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2375.
390 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2376.
391 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3135.
South Wales colony. Such a view was not shared by George Cox (Anglican, lay preacher) who noted that while it might not be necessary to pass the bill then, he was able to see a time when such a proposition would come to pass because of Sydney’s continued rapid growth. Regardless of the amount of land available, there were nevertheless people living in close proximity to cemeteries and this raised the sanitation question.

4.2.2 Sanitation

Sanitation was the main argument within the utilitarian discourse to legalise cremation. It was argued that cremation overcame the sanitary problems associated with cemeteries. The most severe was that cemeteries were depositories of diseases, and occasionally when people died of a disease and were buried, the disease via the decomposing body could enter the water supply underground and affect the living. For Creed, the sanitary advantages of cremation were unquestionable.

Creed expounded the sanitary argument during his second reading speech. He cited a number of cases where an outbreak was believed to have been caused by the disturbance of a cemetery or a buried corpse, or there was a curious similarity involving a disease. The cemetery was a repository of diseases and thus a threat to the living, and the length of time did not greatly matter. For example, Creed referred to the aforementioned examples of Modena and London, and he proceeded to cite examples from New York and New Orleans, and also locally with Leichhardt.

For scientific support Creed referred to Professor Selmi as someone who had proved that if the air remained calm around a cemetery for a time, it would then contain organisms that caused disease. Creed claimed that Professor Selmi had proved this several times by injecting a pigeon with this air. This miasma theory of disease in Creed’s mind made it “impossible to imagine that such a state of things is not

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392 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3135.
393 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2373.
394 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2375.
productive of disease, or that it is improbable that germs of disease may not be conveyed from the body of a person having died from a specific disease to give that disease to other persons still living.”\textsuperscript{397} In contrast, cremation offered society an alternative that did not offend the living and a certainty that the remains would remain harmless to the living “for all time”.\textsuperscript{398}

As a medical doctor Creed was in a good position to make such statements on contemporary science. Creed was supported in parliament on this point by Samuel Charles who spoke during the second reading about his personal experiences while he was in San Francisco. According to Charles, the cholera outbreak was so severe that it killed “considerably more than half of the total population of San Francisco”.\textsuperscript{399} As a result, trenches were dug and the deceased were thrown in wrapped in the blankets in which they had died. Hundreds of corpses were placed in trenches and they were covered only by a thin layer of soil. The burial ground was close to the city and Charles commented that many thought that this contributed to the spread of cholera.\textsuperscript{400} The scale of death was so large that if open air cremation was to occur many medical men believed the smoke would have been a health hazard to the living. Charles believed that if there were proper facilities then cremation could have occurred, and the spreading of cholera would have been limited.\textsuperscript{401}

\section*{4.2.3 Progressivism}

The philosophical belief behind the confidence in sanitation and the utility of cremation was progressivism. Those who supported the cremation bill held a progressive notion that societal ills could be, and in time would be, remedied. As a result, society was progressing on a path to a better and more enlightened future. Progressive beliefs were clearly evident from Creed’s first reading, and they were echoed by James Norton, a supporter of Creed’s bill. At times the self-belief in the progressive nature of the bill was condescending to those who opposed it. Another

\textsuperscript{397} New South Wales, Legislative Council 1885-1886, Debates, volume 3, 24 June 1886, p.2928.
\textsuperscript{398} New South Wales, Legislative Council 1885-1886, Debates, volume 3, 24 June 1886, p.2929.
\textsuperscript{399} New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3127.
\textsuperscript{400} New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3127.
\textsuperscript{401} New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, pp.3127-3128.
feature of the progressivism in the debate was the need to somehow ‘keep up’ with
the rest of the world, an *ad populum* appeal.

In terms of condescension, Creed was the only parliamentarian in favour of the bill
who repeatedly condescended to other people. As mentioned earlier, in his first
reading speech, Creed said that legal and regulated cremation would allow those who
wished to cremate to do so “and so by their example educate the prejudiced persons
up to the method.” 402 Here Creed attempted to establish the progressive enlightened
few, and the ignorant masses. In his concluding remarks in the very same debate,
after being questioned who in society wanted cremation, Creed commented that in
private he had been thanked from “our most intelligent citizens” for the actions that
he had taken concerning cremation. 403 Creed concluded that: “The intelligent portion
of the community are [sic] certainly in favour of cremation being made permissive.” 404
Was Creed genuinely claiming that all intelligent people in the
colony were in favour of cremation and those who were opposed were unintelligent?
It would be a genuinely unfounded *ad populum* appeal on Creed’s behalf.

Creed’s condescension continued into his second reading speech. Here Creed
followed a similar thread and claimed that the “educated and thinking portions of the
community” would be shocked if they discovered that cremation was currently
unregulated. 405 This seems in contrast to his previous statement about these people
thanking him for his initiative. In contrast, the “ignorant and unthinking” would be
opposed to cremation because of the superstitious paradigm in which they would
view it. 406 It is clear that for Creed cremation was positive, and by rational reflection
an intelligent person would come to the same conclusion. A progressive future,
synonymous with a better future, was hindered by a large number of people because
of their erroneous worldviews filled with superstitions.

James Norton took a similar position as Creed. In the second reading debate, Norton
said that regarding cremation, “The first thing to be done is to get the people

accustomed to it. When they see its beneficial effects they will probably adopt it voluntarily, and ultimately it may become the law of the land.” As a result, he did not see why cremation should not be trialled at least. Cremation was portrayed by supporters as a piece of enlightened progressive legislation that would benefit society.

One way to establish the progressive nature of the New South Wales colony was to distinguish it with a conservative England. For example, John Macintosh claimed that Creed’s bill should be allowed to be introduced so that it could be discussed. If the bill proved to be successful, then Creed would be able to enjoy the satisfaction of being the “leader of public opinion for the whole empire”. A second example occurred in the second reading debate after Piddington’s ad populum criticism that a similar cremation bill had been defeated recently in England and as a result, a similar result should occur in New South Wales. Norton was the first to counter this argument and claimed that the cremation bill in England was defeated because of the conservative parliament: “In England the parliament used to be, if it is not now, very conservative. It does not like to introduce changes in the existing laws or customs of the people, therefore great opposition is shown to any innovation, and that is probably the reason why the bill for regulating cremation was thrown out.” In contrast to the conservative English parliament, the New South Wales parliament had recently passed a bill allowing a man to marry his dead wife’s sister, when the same bill had failed in the English parliament year after year. The philosophical contrast between English conservatism and New South Wales progressivism was clear.

This view of English parliamentary conservatism was extended to the entire English people. Henry Dangar in the second reading debates claimed that he believed in a few years cremation would be adopted in many countries in which it was now considered “obnoxious”, justifying himself by saying that all “reforms are very

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407 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3128.
408 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3128.
409 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2374.
411 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3129.
412 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3129.
difficult of execution, especially when you have to deal with Englishmen committed to old traditions and customs. The pertinacity of Englishmen is almost marvellous." The adoption of cremation was therefore a sign of the progressive nature of the people in the New South Wales colony as opposed to the restrictions of their English leaders. This desire for distance from England was accompanied by a desire to be like other ‘progressive’ or ‘enlightened’ places in the world.

Early in the debate a feature of the progressive theme was the claim that other countries that were ‘modern’ allowed cremation. By implication, if the colony was to be considered modern or ‘abreast with the age’, cremation needed to be allowed. John Stewart began this theme in the first reading debate when he claimed that France had a crematorium near Paris and that Italy also had one. John Lackey (Anglican/Catholic) continued by claiming that the French legislature recently discussed the matter and passed a bill. In his opinion, if cremation was good enough for that “great nation”, there was no reason to object to the measure in New South Wales. Creed, as usual, was the most comprehensive in his account of places where cremation was either legal or customary. According to Creed, cremation was legal and practiced in the German state of Gotha; in Milan; and that it was “an established custom” in America. Furthermore, cremation was compulsory by law in Brazil if the person died of yellow fever.

What is essentially clear from the progressive argument and more specifically the resistance that it met was that a very significant portion of the Legislative Council at least was opposed to cremation. This was recognised by pro-cremationists when they claimed that people would eventually become accustomed to the new practice, or style of life. The opposition may not have been religious in nature, but the novelty was not automatically accepted by everyone.
4.2.4 Regulation, Not Legalisation

In the tumult of parliamentary debate, it was often forgotten that Creed’s bill actually sought the formal regulation of cremation in New South Wales, and not its legalisation, since its legality was established a few years before by an English judge. Regulation not legalisation was pointed out from the very beginning.

In his opening speech Creed mentioned the case of Dr Price, who in Wales in 1884 cremated a person in an ad hoc furnace.\(^{417}\) Dr Price was charged although the judge, Sir James Stephens ruled that cremation in itself was not illegal so long as it was done in a manner that did not cause a nuisance to the public. Creed cited this case and claimed that “A similar sad state of things may happen in this colony from the absence of proper apparatus, and to guard against any such outrage upon public sentiment is one of my reasons for bringing forward this measure.”\(^{418}\) As a result, legal ambiguities and uncertainties were avoided and innocent people were protected.\(^{419}\)

In his concluding remarks on the first reading, Creed reiterated and emphasised:

…I do not propose to introduce any new principle. I do not propose to make that legal which is illegal now, because, according to law, as laid down by the judges of England, it is perfectly legal for persons to cremate the bodies of their deceased friends, their only liability being to the penalties for creating a nuisance, if a nuisance be created by the operation being performed in an improper and inefficient manner.\(^{420}\)

According to Creed, by introducing the bill he was attempting to avoid the social outrage that would come from unauthorised people conducting unauthorised cremations with inadequate resources.\(^{421}\)

\(^{417}\) Nicol, *This Grave and Burning Question*, op.cit., p.9.
\(^{418}\) New South Wales, Legislative Council 1885-1886, *Debates*, volume 3, 3 June 1886, p.2372.
\(^{419}\) New South Wales, Legislative Council 1885-1886, *Debates*, volume 3, 3 June 1886, p.2372.
\(^{420}\) New South Wales, Legislative Council 1885-1886, *Debates*, volume 3, 3 June 1886, p.2375-2376.
\(^{421}\) New South Wales, Legislative Council 1885-1886, *Debates*, volume 3, 3 June 1886, p.2376.
The theme of appropriate sources continued in the second reading debate. Creed noted that without “the provision of apparatus specially designed for the purpose such a proceeding [cremation] by any citizen could not fail to be an outrage on public decency which would not fail to rouse the strongest protests from all classes of our population.”422 When debate resumed, Creed’s sentiments were echoed by Frederick Darley when he claimed that the bill merely sought parameters so that cremation, a legal act, could be done with certain safeguards.423

Throughout the debate there were occasions when parliamentarians mentioned that the bill was to regulate and not to legalise cremation. This was done by John Stewart424 and James Norton.425 Such calls were made because some of the arguments made by Piddington and others who claimed that the cremation bill was to make cremation compulsory, were misrepresenting Creed’s bill, leading to a straw man argument that was attacked by the bill’s opponents.

4.2.5 Religious Arguments

The above arguments were the secular arguments for the bill. Supporters also used religious arguments, or made religious rebuttals to support their cause. The religious arguments comprised the minor arguments for cremation.

At the beginning of the chapter Creed’s opening words noted the solemn nature of the subject and his desire to cultivate a sacred respect for the dead. These quasi-religious acknowledgements were Creed’s sole religious allusions until his second reading speech where he explicitly acknowledged Christianity and refuted Christian arguments against cremation. Here, Creed made his claims regarding Christian burial: Christians buried due to the first converts being Jews, who buried their dead; and in order to differentiate themselves from pagans who cremated.426 Creed added that he was not an expert in the matter but it was his personal opinion that the earliest Christians buried their dead because they had to practice their religion in private, and

423 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3125.
424 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2373.
425 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3129.
therefore cremation was an impossibility. Creed nevertheless recognised that it was too much to expect to change the centuries’ old customs quickly by reason alone.

These statements or arguments from Creed were the only ones he made in support of cremation, or to refute religious arguments made against cremation. Creed was only aided in this topic by Darley who posed the hypothetical: what if the Christian custom was to cremate and someone had proposed to legalise earth burial, what would the feelings be of the parliamentarians then? Norton added that most people were opposed to cremation probably because churches taught against it, which was wrong since “the Almighty who created the body can as easily collect the particles when destroyed by cremation, as when destroyed by corruption.” This rebuttal from Norton did not appear again in the parliamentary debates in 1886, although it frequently appeared in the cremation pamphlets which Creed wrote.

The religious arguments of the bill’s supporters were therefore largely dismissive of the religious arguments of their opponents. When religious arguments were genuinely debated, it was largely speculation by people who acknowledged that they were not experts, e.g. Creed. The majority of arguments for cremation were secular, and they were largely utilitarian and progressive in nature. New South Wales in 1886 also noted the legal technicality that the bill was to regulate cremation as it was already technically legal. The arguments against the bill were both secular and religious in nature, and this dual nature does not allow an easy separation of secular and religious discourses as in the subsequent case studies.

4.3 Arguments Against the Cremation Bill

The principal arguments against the cremation bill were sanitation, an utilitarian argument, and the utility of religious instruction from cemeteries, which is both a

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429 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3125.
430 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3128.
religious and utilitarian argument. There were also some minor arguments regarding public petitions.

4.3.1 Sanitation

The basic and sole sanitary argument against the bill was that any perceived sanitary benefits from cremation would only be effective if cremation was compulsory, since so long as there was earth burial, the risks decried by Creed remained. This argument was principally propounded by William Piddington, but also Alexander Dodds.

It was not until the second reading debates that Piddington attacked Creed on the sanitary arguments. Piddington claimed that Creed’s second reading speech was one of the longest and most laboured speeches that he had ever heard for a compulsory system of cremation. Piddington asked what benefit the bill would give if it did not make cremation compulsory since the medical ills which Creed claimed to exist would still exist if cremation was optional. Compulsory measures would be needed to effectively combat diseases. While Piddington was correct on this point, it raised a straw man which anti-cremationists could attack.

Alexander Dodds perhaps surpassed Piddington’s opposition on the sanitary point. In his second reading speech, Dodds mentioned his belief early “that to bury the dead [was] in no way injurious to the living.” Dodds continued and claimed that it was known “that the earth had the power of rendering any perishable body innoxious to the living.” Dodds went further and challenged Creed to prove that disease had never been known to arise from dead bodies, thus shifting the onus of proof. To prove his point, Dodds claimed, reading from a memorandum, that gravediggers were not unhealthy or short-lived despite the fact that they worked in cemeteries and

431 William Piddington’s very first objection upon hearing Creed’s opening speech on the bill was questioning what specifically were the sanitary reasons which Creed alluded to in his opening address. If it was a case of land, Piddington claimed that there was still an abundant amount in Australia, however this was a short statement by Piddington rather than an argument. See New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2372.
434 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3126.
435 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3126.
436 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3127.
often lived close to them. Dodds also claimed that he knew it to be a fact that up to 500 bodies had been buried in a churchyard in a town of approximately 15,000 to 20,000 inhabitants with no negative consequences to the living. This town however was not named by Dodds. Dodds nevertheless implicitly appealed to authority and expertise, such as the burial industry and gravediggers to argue his point. These appeals were not unique to either side of the debate as it helped both discourses. This rhetorical device is analysed in the next section.

Dodds suggested fumigation as an alternative to cremation. Dodds believed by adopting the practice the spread of disease was preventable on land in much the same way as the practice was adopted by ships. In this way, cremation would become unnecessary. All of this was despite the fact that Dodds rejected the harmful nature of earth burial: albeit with a notable exception. Dodds admitted while he was reading from the unnamed memorandum that it had only been proved that anthrax and splenic fever in sheep were communicable by dead bodies, while Dodds remained agnostic on whether earthworms could spread disease.

The crux of the sanitary argument for the anti-cremationists was that for it to be effective cremation needed to be compulsory. This was summarised most succinctly by George Thornton (Anglican) who in his third reading speech claimed Creed had yet failed to overcome Piddington’s argument that the bill would need to be compulsory by saying, “If it is not compulsory what is the good of the bill at all?”

### 4.3.2 Public Petitions

One way Creed and his supporters were attacked was by claiming that there was no support in the community for cremation. They claimed that if there was support there would be petitions in favour of cremation made to the Parliament, however there were none. This is a recourse to the rhetorical device of an *ad populum* appeal. The very first person to speak after Creed’s opening speech for the bill was Alexander

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Campbell (Anglican), and his very first words were: “I think that the proposed bill is a very novel one. Who has asked for it? Have any petitions, or any suggestions been made to Parliament for this change – a change which conflicts with the religious sentiment of the community, and which no one wants?” The religious element of this quote is considered below. Nevertheless, the question of petitions featured as a debating point in the second reading of the bill.

The issue of petitions was discussed at some length on 7 July. John Macintosh inverted the direction of the argument by claiming that there were no petitions against the bill because people did not expect the bill to go beyond the Legislative Council. Macintosh claimed that people thought, “that we are simply amusing ourselves with the discussion of a new-fangled notion, and that when the bill goes to the other House it will be thrown under the table, which I think is the best place for it.” Archibald Jacob added to Macintosh’s statement claiming that if people were really opposed to the bill, then the Council would be inundated with petitions, however at the moment there were no petitions.

There were some parliamentarians who considered the bill a significant social change, and that community support was needed in the form of petitions. Philip King said that he believed that there should be some petitions before the second reading was passed. This did not happen. George Thornton said he opposed the bill because it was not asked by the people, and it was the first of four reasons for which he opposed the bill: “I object to the bill because the public have not asked it, because it is unnecessary and useless, and because it is repugnant to our feelings of common humanity.”

Such arguments were rebuffed by pro-cremationists claiming that if they waited for petitions, the development and advancement of the world would either slacken or

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442 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2372.
443 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3129.
444 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3131.
445 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 5 August 1886, p.3830.
446 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 5 August 1886, p.3831.
The element of progressive thought behind such a statement is clear, and that maybe cremation did not have as much popular support as claimed. The major religious argument against cremation was the utilitarian argument that earth burial provided moral education opportunities.

4.3.3 Religious Arguments and ‘Tombstone Morality’

The religious arguments used to oppose the cremation bill were largely made by Piddington, who made at least two distinct arguments. One argument was a form of ‘tombstone morality’, or the belief that the existence of cemeteries had didactic moral and religious benefits to people. The other argument was largely one of Christian custom. A few other parliamentarians also made religious arguments.

For Piddington, the Christian custom of burial came from the very beginning and from the highest authority. Piddington cited the Field of Macpelah, where Abraham and his family were buried according to legend, and Moses’s unknown burial location in Moab as reasons for why Christians buried and for why it was justified and good. The practices of Antiquity were a source of justification, especially when compared to cremation which Piddington claimed was only centuries old and was associated with pagans.

For Piddington there was a clear and continuous line from the past to the present day concerning burial. Piddington argued this point when the cremation bill was in the committee stage. Piddington said: “A bill of this kind is hostile to the traditions that we find in the Bible from the time of Abraham down to the birth of Christ, and also the birth of the Saviour to the present day.” According to Piddington society was aligned to God. This was being jeopardised by contemplating the possibility of cremation. As Piddington claimed: “Are we to follow such a heathen practice as cremation, and shock the feelings of the people of New South Wales by attempting

448 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, pp.3132, 3136.  
450 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 24 June 1886, p.2932.  
for one moment to ask the authority of the Government for an idolatrous and most objectionable practice? Talk about its being a permissive bill!"\(^{452}\)

One of the lengthiest religious arguments that Piddington provided was a kind of religious *argumentum ad populum* involving the entire world, and it was an attempt to portray cremation as something that would shock the feelings of any normal person, something that was contrary to seemingly all established religions, and something that was only associated with pagans. Piddington claimed that there were eight million Jews in the world, and wherever they were they found cremation hostile to their feelings.\(^{453}\) Creed interjected claiming that the Jews were the first to practice cremation but Piddington dismissed this claiming that there was no proof on the matter.\(^{454}\) Piddington then continued by listing all the people in the world who by their religion opposed cremation.

But it is not only the Christians belonging to the two great churches of Rome and Alexandria who object to the practice of cremation, but there are also the whole of the Protestants….But I can go still further, and cite the Mahometans….Again, I throw in another branch of the people of the world, numbering no less than 400,000,000, namely, the Chinese, who are distinguished for their veneration for the dead and for the manner in which with the utmost reverence they bury the bones of their dead relatives….It is only amongst the Hindoos that the practice prevails to any extent, and, in fact, it is almost wholly confined to idolaters.\(^{455}\)

Piddington in his very first speech on the bill asked whether Creed was supposing people convert to Hinduism and dispose of their dead by cremation and release them on the Ganges.\(^{456}\) This was a clear misrepresentation of Creed’s bill however it was the tone of the defence of Christian custom which Piddington argued.

It is clear that Piddington constructed a broad religious *argumentum ad populum* in order to differentiate and isolate cremation from contemporary society in order to

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\(^{452}\) New South Wales, Legislative Council 1885-1886, *Debates*, volume 4, 29 July 1886, pp.3671-3672.

\(^{453}\) New South Wales, Legislative Council 1885-1886, *Debates*, volume 4, 29 July 1886, p.3671.

\(^{454}\) New South Wales, Legislative Council 1885-1886, *Debates*, volume 4, 29 July 1886, p.3671.

\(^{455}\) New South Wales, Legislative Council 1885-1886, *Debates*, volume 4, 29 July 1886, p.3671.

\(^{456}\) New South Wales, Legislative Council 1885-1886, *Debates*, volume 3, 3 June 1886, p.2372.
protect the status quo social custom. The only other parliamentarian who argued in a similar vein and extent as Piddington on this point was George Thornton.

George Thornton in his third reading debate speech argued that earth burial was sanctioned by God. Thornton however, was interrupted and the exchange recorded by Hansard was the lengthiest amount of debate among parliamentarians on the cremation bill. The exchange in full is:

First of all, I beg leave to say that it is contrary to the divine law and authority.

HON. MEMBERS: Oh!

Mr. THORNTON: Honourable gentlemen may say “Oh!” but I recollect having read in a very good work, which no doubt all hon. members have read, that the Almighty says of the human body, “Of dust thou art, and to dust thou shalt return;” but the hon. member in charge of this bill says “No! My authority is better than that—

Mr. CREED: I did not say that!

Mr. THORNTON: He says, “I will put you into ashes. You shall not be converted to dust. To dust you shall not return.”

Mr. PIDDINGTON: But to minerals!

An HON. MEMBER: What does the burial service say about ashes? “Ashes to ashes, dust to dust”!

Mr. THORNTON: I repeat that the bill is contrary to that divine law, which we must all respect.457

It was not considered improper to interject someone when they were speaking on a sacred subject, however this was coloured by the misrepresentation of an opponent’s position, along with the provision of banal witticisms from Piddington. Overall, religion must not have been an extremely sacred subject that it could be discussed in such a way. Nevertheless, the exchange sought to argue the point that earth burial was a part of Christian custom.

There were several other parliamentarians who made religious arguments against cremation. John Macintosh made the argument most akin, but not identical to Christian custom. Like Piddington, Macintosh portrayed earth burial as Christian and

457 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 5 August 1886, p.3830.
cremation as Hindu. He says, “So far as I am aware, it has only been customary among Hindoos.” Macintosh supported his claim and cast cremation in a negative light by quoting extensively a passage of Baron von Schonberg’s travel writing about open air cremations on the Ganges river, specifically about how a young boy as head of the family, was responsible for cremating his own father. Macintosh concluded by saying that that was a Hindu and not a Christian custom.

At times certain parliamentarians explicitly stated their views on the intersection of religion and burial. Frederick Darley claimed that he did not personally care a great deal how he was disposed of: whether under a gum tree or in consecrated ground, or as his wish was, at sea. Alexander Dodds claimed that in history there were thousands of people who had consented to being cremated, however that was different as they agreed to cremation in order to save their souls: clearly a reference to European religious persecutions. It is clear that such a statement is riddled with possible objections.

A distinctive religious argument against cremation was made by Piddington and it was his ‘tombstone morality’ argument. Piddington in a second reading speech said:

I have often wandered in the country churchyards in England, and certainly, although some of the inscriptions may be uncouth, others are of the highest moral character…If cremation were adopted where would be such opportunities as are now afforded in church-yards for the enjoyment and improvement of people who choose to wander there?...I regard the bill as being likely to undermine the true morality of the people...

It was Piddington’s belief that a person walking in a churchyard or cemetery, reflecting on the epitaphs, could benefit morally. Cremation would not provide such an opportunity to the living. This morality from tombstones was only utilised by Piddington, and it was either ignored by the other parliamentarians, or there was limited acknowledgement that people existed who derived some pleasure from

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458 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3130.
459 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3130.
460 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, pp.3125-3126.
461 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3126.
pondering the dead while walking through cemeteries and churchyards. This is the reason why Piddington thought the Rookwood Necropolis was a credit to the colony, as it offered this opportunity for many people.

Piddington in his final speech on the bill on 5 August argued a similar point, except from the point of view of ancient Egypt. Piddington asked the hypothetical question what would have happened if Antiquity, or ancient Egypt at least, had practiced cremation? What would there be for posterity? It was by the physical preservation of the deceased that a record was kept of the time, which benefitted people in posterity. As it was mentioned, this belief was ridiculed by Creed.

While a religious discourse was present in the argument against cremation, it was the minor discourse. Practical utilitarian or secular concerns were utilised. Religious concerns were answered by pro-cremationists along with offering their own secular, utilitarian reasons for cremation. Therefore, there was no straightforward division of discourses as can be found in the subsequent case studies of this thesis. The discourses and their rhetorical aspects are analysed below.

4.4 Discursive Analysis of the Cremation Bill Debate

Rhetorical devices and certain other aspects of the secular and religious discourses have been touched upon above. These are examined and analysed further below. Fairclough’s discourse analysis techniques are used to do this. These techniques were discussed in greater detail in Chapter 2. The analysis of this debate is important since it was the beginning of attempts, and successful attempts in the future, to reorganise the structures and influences of life and politics as Conze and Wright termed them. In other words, the styles of life were beginning to change and its beginning was the disposal of the dead. Since the secular and religious discourses overlapped in the sense that both were used to support and oppose the bill, common features of the discourses such as rhetorical devices are analysed.

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463 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 29 July 1886, p.3673.
465 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 5 August 1886, p.3827.
4.4.1 Appeals to Authority and argumentum ad populum

Throughout the debates, it was clear that the issue of society’s customs, appeals to various authorities, and argumentum ad populum were used in order to justify a parliamentarian’s position. These three features are examined below.

The use of custom as a justification was essentially utilised by the anti-cremationists, and often it had a religious dimension to it. Society’s customs were acknowledged by the pro-cremationists. In his opening speech, Creed said that he believed earth burial was simply a long-held custom that had until then proceeded unquestioned.\textsuperscript{466} Alexander Campbell in the debates replied that the suggestion of cremation was a departure from a national custom.\textsuperscript{467} Reference to custom is a form of ad populum argument invoking history and bygone generations and society. This is an example of what Danièle Hervieu-Léger said regarding society constantly trying to reinforce the historical continuity of memory from previous generations. In this case it is not strictly making an argument, rather an assertion. The assumption of this assertion is that the status quo and what went before was good. In other words, ‘As a society we have buried until now, due in part to religious reasons, and it is a part of who we are.’ Since religion had a greater influence in the past, religious elements in the debate were self-referential at times.

Another common feature of the debates was appeals to authority, which overlapped with the ad populum arguments at times. Each side in the debate appealed to its own specific authorities, and by extension, argued its own unique ad populum arguments. For example, the pro-cremationists often appealed to science and scientists. Creed in his second reading debate speech spoke at times on certain individuals who were at the forefront of the cremation movement elsewhere in the world. Such individuals included Dr Julius Le Moyne, the first person to build a crematorium in America, or the aforementioned Professor Selmi of Mantua and his research. This was capped by

\textsuperscript{466} New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2371.
\textsuperscript{467} New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2372.
Creed also citing Louis Pasteur and his research.\textsuperscript{468} Creed also utilised intelligence as an appeal to authority when he condescended to those who did not then support cremation, claiming that when they saw the practice and became enlightened they would support it. Science and intelligence, or rationalism, were appealed to as authorities by pro-cremationists.

Unsurprisingly then, religious and conservative figures were appealed to as authorities by the anti-cremationists. In terms of religion, the best example was the aforementioned claim by Piddington in his second reading speech that earth burial was justified because both Abraham and Moses were buried.\textsuperscript{469} As it was discussed when it was first mentioned, this was tied to elements of religion and antiquity as sources of inherent justification, deeming the practice of earth burial as good. Piddington however also appealed to conservative figures in England’s parliament when he referred to a debate in the House of Commons in April 1884, where a cremation bill was beaten almost two votes to one. Piddington quoted remarks from the Chancellor of the Exchequer in opposition to the bill and claimed that that was “the opinion of a gentleman who holds high office in England.”\textsuperscript{470} A parliamentarian was portrayed as being a gentleman and holding high office in the English parliament, factors that would lend his opinion greater credence to some people.

Here the religious elements of the debate become self-referential again by referring to religious figures, while the pro-cremationists referred to secular scientific figures. The pro-cremationists were in short establishing the false dichotomy between science and religion, and reason and faith; that is was only one or the other. The religious elements also refer to judicial authority and conservative figures in order to forestall change, along with implicit references to social class. The anti-cremation discourse therefore in its appeals to authority and \textit{ad populum} arguments sought to continue the current social custom by resisting the false dichotomies the pro-cremationists sought to create, and in turn appealed to tradition.

\textsuperscript{468} New South Wales, Legislative Council 1885-1886, \textit{Debates}, volume 3, 24 June 1886, pp.2927-2928.
\textsuperscript{469} New South Wales, Legislative Council 1885-1886, \textit{Debates}, volume 3, 24 June 1886, p.2932.
\textsuperscript{470} New South Wales, Legislative Council 1885-1886, \textit{Debates}, volume 3, 24 June 1886, p.2933.
There were examples of both sides listing countries and societies to prove their *ad populum* point. Pro-cremationists cited places where cremation was being considered such as in Europe, particularly continental Europe, but also America and Brazil.471 This was tied to the idea of progressivism. As a result, if the colony of New South Wales colony did not legalise cremation, the rest of the world would consider it not to be modern, or progressive, and consequently, backward and possibly stupid or ignorant. The clearest example of anti-cremationist *ad populum* arguments was Piddington’s long account of the different religions in the world and how they all, with the exception of one Hindu group who Piddington called “idolaters”, practiced earth burial.472 These references effectively cancelled each other out, resulting in no discursive gain for either side.

Analysing the appeals to authority and *ad populum* arguments in the cremation debate results in pro-cremationists trying to establish a false dichotomy regarding science and religion, with science linked to progressivism. Anti-cremationists when they referred to religion effectively asserted historical links to past society, resulting in social conservatism. Anti-cremationists’ use of religion also invoked class and the political and judicial élite.

4.4.2 Emotive Language and Imagery

Emotive language and imagery were used by both sides throughout the debate. The most common way was by the use of the word ‘evil’, which clearly contains many associations, some of which are religious; a particularly salient point in a nineteenth century debate on cremation.

Creed referred to earth burial as a sanitary evil in a false dichotomy, in his concluding first reading speech. As Creed said: “All the evidence taken in other parts of the world goes to show the immense sanitary advantages of cremation, or, to speak more correctly, the immense sanitary evil of burial.”473 This was followed by

the reiteration of a report that had recently been mentioned by George Cox on these ‘sanitary evils’ in the local vicinity.474

The anti-cremationists accepted the portrayal of the negative consequences of earth burial from a sanitary perspective as ‘evil’ or ‘evils’, and such terms were utilised in turn in their questioning on the sanitary arguments. As Piddington questioned Creed on the point: “The hon. member considers that he has shown that a great many evils arise from the present method of disposing of the dead; but in what way did he show that with regard to this country?”475 This was not an isolated instance. Alexander Dodds questioned how the ‘sanitary evils’ of earth burial would be eliminated unless cremation was compulsory.476

The emotive language of ‘evil’ was therefore used in the parliamentary debate in relation to earth burial and sanitation, and it was a term of reference that was accepted by both sides of the debate. While the term was used differently by the two camps, its effect overall on the debate was to polarise and cast one group in a negative light. Conversely it also implicitly acknowledged the seriousness of the issue. This benefitted the anti-cremationists more since it emphasised the magnitude of the change in a social custom that the bill and cremation represented.

Imagery was used by both sides. For the pro-cremationists, earth burial was portrayed in a negative light where there was emphasis on a rotting corpse, as opposed to the efficient and clean way in which cremation disposed of the body. It was claimed that if a person saw a corpse in the process of decay, the person would prefer cremation from that point onwards.477 Creed in a second reading speech juxtaposed two very different images of death, claiming that in either case it was the same process of oxidisation, except the difference was in one case it took a few minutes, while in the other it took a few weeks. Creed described earth burial as: “…the stages of decomposition rendering the body a mass of fœtid corruption, a source of danger to those left behind, a loathsome object to the survivors…”; and

474 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2375.
476 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3127.
477 New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2374.
cremation as: “…a rapid, cleanly, decent method, which in a few short minutes reduces the corruptible shell of humanity to a small quantity of ashes, so pure, so free from odour or infection…”478 This juxtaposition clearly shows the attitudes of the pro-cremationists to the two methods.

Conversely, the clearest anti-cremationist example of imagery was delivered by John Macintosh in his aforementioned description of an open air cremation in India, as described in the travel writing of Baron von Schonberg. In the description, the calmness of the young boy’s grief was contrasted with the public shrieking of women nearby on the Ganges who were attending a different cremation.479 Cremation was a public event that, as the anti-cremationists hoped to imply, led to greater emotional difficulties for the bereaved, which the Christian earth burial dealt with more satisfactorily.

Much like emotive language, the use of imagery sought to disparage the opposition by negative associations. In this sense, this feature of the parliamentary debate and discourse was *ad hominem*. Some aspects of these attacks sought to acknowledge the seriousness of the issue, yet *ad hominem* attacks by their nature mislead the argument and debate. In analysing the discourses in the New South Wales parliamentary debates, this needs to be kept in mind.

### 4.4.3 The ‘Sacred’ and the Dead

Another feature of the (emotive) language that was used in the debates was the word ‘sacred’. While often associated with religion, in the debates to a certain extent it was disassociated from religion. While Creed acknowledged explicitly the sacred nature of the subject his bill concerned,480 the sacred did not appear at length until Piddington’s speech during the third reading of the bill.

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Piddington attempted to create a sacred nature associated with burial, and for support he referred to Westminster Abbey. This was simultaneously too, an example of appeal to an authority – an example of rhetorical techniques overlapping and complicating detailed discursive analysis. In his final speech, Piddington asked the question if England practiced cremation, what would be the result of places such as Westminster Abbey? As Piddington decried: “Why, sir, when a man walks into that place, as I have done, he feels a kind of awe – a kind of veneration extending itself so deeply and imbuing the mind so strongly that you feel that the ground on which you stand is holy ground.” Piddington attempted to preserve the custom of earth burial by making sacred the place wherein the dead were kept, along with, implying their didactic value similar to his aforementioned ‘tombstone morality’. However, he did not mention religion: the only religious reference being in the title of the place.

Piddington also tried to make sacred the resting places of certain famous individuals, so that their resting places became in time, not quite a site of pilgrimage, but a place where a compatriot proudly looked. Here Piddington cited Shakespeare, who he believed had no equal in Europe, where in Stratford-upon-Avon trees “have been whittled by people who are admirers of that immortal genius.” Apparently this would not have been possible if Shakespeare was cremated. Piddington then continued to list Robert Burns, who was interned in a Dunfries churchyard, which “in consequence of his remains lying there, is now a sacred spot to every Scotchman.” In creating sacred places, Piddington appealed to the authority or stature of individuals and implicitly claimed that there was some utilitarian benefit to the living for these individuals having been buried.

Pro-cremationists dismissed these concerns claiming reverence could still be shown, citing the Romans as a people who did this. George Cox referred to the Romans in his first reading speech. Creed went further and claimed that human affection was as much the same in ancient Roman as in 1886 so there would be no difficulties in
revering the dead in urns. In this way the bereaved could have a special place for the urn and love it secretly.\textsuperscript{486} For James Norton, the existence of urns was no reason for cemeteries to no longer exist as people could still go to there for solace as well.\textsuperscript{487}

Reverence for the dead was portrayed as a largely secular, personal, and private activity. This is in contrast to the elaborate funerals that existed at the time and were referred to in the debates.\textsuperscript{488} A term with a strong religious association was secularised, and this secularised term was accepted by both sides. This helps the argument that the overall debate was largely secular, and that religious arguments succumbed to secular concerns and arguments. The language of the debate itself aided this. As it is seen in subsequent chapters, the religious discourse ultimately did succumb to the practical considerations of the secular discourses. Discourse analysis of this debate shows that from the beginning language itself was used to attempt to change a social custom.

4.4.4 ‘Sentiment’ and ‘Prejudice’

Quibbles over the use of language extended to the terms ‘sentiment’ and ‘prejudice’, and how this related to what people thought and felt; an implicit, internal \emph{ad populum} appeal. ‘Sentiment’ implied more the opinions or inclinations of a person or people, while ‘prejudice’ implied an opposition, often irrational. Respect was paid to sentiment as the pro-cremationists did not want to offend public sentiments,\textsuperscript{489} while they argued that they needed to overcome the unfounded prejudice of people.\textsuperscript{490}

There was a determined effort to conclude what people genuinely thought on the cremation bill. This was often done by philosophical speculation about human nature, such as when George Cox said that it was sentiment and not prejudice which ruled people’s feeling on the question.\textsuperscript{491} It was James Norton who acknowledged that they as parliamentarians did not really know what the community thought.

\textsuperscript{486} New South Wales, Legislative Council 1885-1886, \textit{Debates}, volume 3, 24 June 1886, p.2930.
\textsuperscript{487} New South Wales, Legislative Council 1885-1886, \textit{Debates}, volume 4, 7 July 1886, p.3129.
\textsuperscript{488} See Pat Jalland’s \textit{Australian Ways of Death}, \textit{op.cit.}, pp.108-128.
\textsuperscript{489} For example see, New South Wales, Legislative Council 1885-1886, \textit{Debates}, volume 3, 3 June 1886, p.2371.
\textsuperscript{490} New South Wales, Legislative Council 1885-1886, \textit{Debates}, volume 3, 3 June 1886, p.2372.
\textsuperscript{491} New South Wales, Legislative Council 1885-1886, \textit{Debates}, volume 3, 3 June 1886, p.2373.
because since there were no petitions for or against the bill, they had only heard the opinions of each other.\footnote{New South Wales, Legislative Council 1885-1886, Debates, volume 4, 7 July 1886, p.3128.}

While it was easy to acknowledge that there was a widespread sentiment in the community against cremation despite the lack of petitions,\footnote{New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2375; volume 4, 29 July 1886, p.3670.} the existence of prejudice was utilised to show less rational objections to cremation. People who used progressive arguments cast their opponents in as unenlightened. Some parliamentarians such as Charles Mackellar (Anglican) while in favour of cremation, recognised that it was their own “prejudice” which would prevent themselves personally being cremated.\footnote{New South Wales, Legislative Council 1885-1886, Debates, volume 3, 3 June 1886, p.2374.} And Creed recognised no amount of rational argument alone would be enough to change centuries of Christian custom which in part had force because of prejudice and sentiment.\footnote{New South Wales, Legislative Council 1885-1886, Debates, volume 3, 24 June 1886, pp.2924-2925.}

‘Sentiment’ was an emotion that was appealed to throughout the debates in order to portray what the community thought about cremation, even when what this opinion was exactly was unknown. When ‘prejudice’ was invoked it was to show that the opponents were unenlightened or socially backward because of an irrational belief. Discourse analysis shows that emotive words were used in specific ways by one group or another to portray society in a certain way to further their argument, even when what society thought about cremation was not known. Some parliamentarians acknowledged this, but if the majority did not it shows that the Legislative Council itself was élitist, and this colours the discursive analysis of the debate more so, indicating that the debate occurred not from an immediate need to debate the issue.

Discourse analysis shows that language shaped the debate in the Legislative Council in significant ways; from appeals to authority, \textit{ad populum} and even \textit{ad hominem} arguments, but also the use of emotive language and imagery. These rhetorical techniques often overlapped and the cremationists sought to create a false dichotomy between science and reason on one side, and religion and faith on the other.
Religious arguments and points featured on both sides, and anti-cremationists used these to continue the status quo and continue an historical memory founded in religious belief. Traditional religious terms such as ‘evil’ were also secularised within the debate. The use of such terms helped to establish the seriousness of the debate but favoured the anti-cremationists as it demonstrated the magnitude of change in a social custom or style of life that the bill and cremation heralded.

Below the religious affiliations of the parliamentarians are analysed along with how they voted. Creed’s bill after passing the third reading in the Legislative Council on 5 August 1886, was read for the first time in the Legislative Assembly on the same day. Only two brief lines appeared in Hansard.496 This did not lead to anything as Hansard from the Legislative Council from 20 January 1887 showed Creed reintroducing his bill because his bill never came up for discussion in the Assembly due to “various accidents and press of public business.”497 Creed’s bill was presented and read for the first time,498 but met the same fate as in the Legislative Assembly the previous year.499

4.5 Voting Analysis by Religious Affiliation

As it was mentioned in Chapters 2 and 3, there are several issues surrounding the identification of a parliamentarian’s religious affiliation. Nevertheless the methodology was used and an analysis features below of the religious composition of the New South Wales Legislative Council in 1886, followed by a religious affiliation analysis of those who voted on the cremation bill.

The religious composition of the New South Wales Legislative Council on 5 August 1886500 when Creed’s bill was passed is as follows: 26 Anglicans plus a further one

496 New South Wales, Legislative Council 1885-1886, Debates, volume 4, 5 August 1886, p.3860.
499 See New South Wales, Legislative Assembly 1887-1888, Debates, volume 1, 6 October 1887, p.306; volume 2, 25 November 1887, p.1580.
500 I have decided to focus on the third reading vote as this is the vote which ensured that the bill passed the Legislative Council. Therefore, I consider it to be the more definitive vote, especially when the second reading vote was less contentious (17-6 votes compared to 13-7 votes). If a parliamentarian
suspected of being Anglican; three Presbyterians; and one each of the following: Catholic, Methodist, Anglican/Presbyterian, Anglican/Catholic, Calvinist/Presbyterian. There were a further 20 parliamentarians of unknown religious affiliation. As a result, some religious affiliations may only be cultural, while some may have been culturally more than one religious affiliation, hence such instances of ‘Anglican/Presbyterian’. Nevertheless, the Legislative Council’s religious composition is seen below.

Due to the social and political era, Protestants and in particular Anglicans, dominated the Legislative Council. The overwhelming Protestant majority presumably allowed the discussion to occur since the Catholic Church unquestioningly opposed cremation at the time. Of the 54 members however only a minority voted. Their composition is seen below.

![Figure 5 New South Wales Legislative Council Religious Composition, 5 August 1886](image_url)

Figure 5 New South Wales Legislative Council Religious Composition, 5 August 1886
Of the 20 members who voted, 11 were Anglican with a twelfth member being a suspected Anglican; seven were unknown and the last one was an ‘Anglican/Catholic’. This is seen in Table 2.

![Figure 6 Religious Affiliation of New South Wales Legislative Councillors Cremation Bill Voters, 5 August 1886](Image)

Unsurprisingly when Table 1 is considered, Anglicans held a majority. Religious affiliation may have been a factor for Anglicans but only in the sense that they were able to vote more individually. Six Anglicans along with the suspected Anglican and the ‘Anglican/Catholic’ voted in favour of the cremation bill while four Anglicans voted against the bill. Anglicans passed Creed’s bill on 5 August 1886 at a time when Anglican clergymen were largely but not entirely opposed to cremation. Due to the large number of unknown affiliations, it is probably safe to assume that there were more Catholics in the Legislative Council. It is conceivable that they either abstained from voting on the bill or voted against it. The Anglican vote however was sufficient for the bill to pass, in part because a majority of the Council did not even vote. This says clearly that a majority of the parliamentarians did not see the issue of cremation as even important.

For the record, those who voted for the bill were: George Cox, Frederick Darley, Archibald Jacob, Edward Knox, Charles Mackellar, and James Norton were all Anglicans. Richard Hill was a suspected Anglican and John Lackey was the Anglican/Catholic who also voted for cremation. Samuel Charles, John Mildred
Creed, James Neale, John Stewart and Samuel Terry also voted for cremation but their religious affiliation is unknown. The Anglicans who voted against cremation were: Philip King, George Lee, George Simpson, George Thornton, and William Piddington. Alexander Dodds and John Smith also voted against cremation and their religious affiliation is unknown.

Since the bill was reintroduced but did not progress in the Legislative Assembly twice in 1887, below is the religious composition of the Legislative Assembly in 1887, after the election at the beginning of the year. The bill did not even appear before the election, as opposed to being mentioned a few times in the new parliament after the election. The religious composition of the Legislative Assembly at the time included: 28 Anglicans; eight Catholics and Presbyterians; five Methodists; four Congregationalists; and one Agnostic, Quaker, Anglican/Catholic, Anglican/Baptist, Anglican/Methodist, Methodist/Presbyterian, and Catholic/Anglican/Presbyterian. There were 56 unknown affiliations. This is seen below in Table 3.

From what is known the Legislative Assembly was more denominationally representative than the Legislative Council. Catholics featured to a greater degree but it is not known if this was a contributing factor to the demise of the bill. The religious affiliation statistics for the Legislative Assembly cannot say conclusively many things, however their inclusion is not fruitless as it verifies that there was religious (read Christian) diversity in the Parliament. The religious affiliations however also do not undermine the findings of the discourse analysis.
4.6 Conclusion

The cremation case study, including the unsuccessful attempt to legalise or regulate cremation in New South Wales in 1886, was the first attempt to change a significant social custom or style of life to use Peter Steans’s term. This process however was not smooth as the first attempts were unsuccessful in New South Wales but successful in South Australia. This is a point that proves Callum Brown’s thesis that secularisation in society if it occurs is no straightforward matter, and any secularisation that occurs can be reversed. Some aspects of a society may be more secular or religious than other aspects.

Contrary to latter case studies, the religious and secular discourses were not as separate and distinct in the cremation case study in New South Wales; while in South Australia the religious discourse was effectively non-existent. Yet the religious discourse in the New South Wales debate acknowledged and interacted with the practical utilitarian concerns of the secular discourse, so much so in fact that it
formed a significant portion of the religious discourse. In turn the secular discourse acknowledged and answered concerns put forth by the religious discourse.

The reason the two discourses had a number of similarities was due to the way language was employed as seen via discourse analysis. Each discourse utilised appeals to authority and *ad populum* arguments, but to their own authorities and audiences. The pro-cremationists sought to establish a false dichotomy between science and reason and religion and faith, while the anti-cremationists sought to establish a continuation of historical memory and social custom based on religion as theorised by Danièle Hervieu-Léger. Both sides of the debate employed emotive language and imagery, especially with traditionally religious terms such as ‘evil’ or ‘sacred’. A secularised rendering of these words was accepted uncritically within the religious discourse. This helped to secularise or emphasis the secular aspects of the debate, thus limiting the influence of religious appeals. Elitism and class featured as a result of some language used by the anti-cremationists and this was made clear by the use of discourse analysis.

The role of parliamentarians’ religious affiliations had a limited effect on the outcome of the debates as far as it was possible to determine. There were some parliamentarians who did act on their genuine religious beliefs but they did not constitute the majority, just as the religious discourse and clear, explicit religious arguments did not constitute the majority. In short, practical, utilitarian, secular concerns such as public sanitation won the debate, even if in New South Wales the Legislative Assembly forestalled the bill in 1887. In the subsequent case studies, religious arguments and appeals lost to various practical, utilitarian, and secular arguments and concerns.

The cremation case study in South Australia and New South Wales shows the first steps in how significant social changes, that had religious roots, occurred in Australia in the twentieth century. It was not a conscious act or desire for secularisation, but religious concerns competed with, but did not defeat secular concerns. This supports Brown’s thesis on secularisation as it is not simple and clear cut. The following case study on Sabbatarianism examines how these same changes occurred in New South
Wales, South Australia, Victoria, and Western Australia, regarding the regulation of business hours on Sundays principally in the 1960s. Both the cremation and Sabbatarian case studies and their reliance on Hansard are methodologically justified by the works of the French *Annales* school and the use of discourse analysis by such people as Norman Fairclough, not to mention contemporary trends in the analysis of political language by such people as Anna Crabb, John Uhr, and James Curran. The next chapter introduces Sabbatarianism or Sunday entertainment, along with its legal history in England and Australia, and it examines the debates to liberalise the laws in New South Wales in 1966.
CHAPTER 5 – SABBATARIANISM I:  
INTRODUCTION AND NEW SOUTH WALES

The previous case study illustrated that in the case of cremation practical considerations were of far greater import than religious concerns. The next two chapters consider the second case study and examine the secular and religious discourses used in Parliament when laws affecting Sabbatarianism or Sunday entertainment were enacted. The secular and religious discourses are more distinct in this case study than in the previous one. Practical and utilitarian concerns again trumped religious concerns. These practical and utilitarian concerns formed a significant part of the secular discourse, which was in favour of Sabbatarian liberalisation.

In this case study, Chapter 5 examines New South Wales and Sunday entertainment as it was the first state to liberalise Sunday entertainment in 1966. Chapter 6 examines Victoria and South Australia, which quickly followed New South Wales in 1967 and 1968 respectively. Chapter 6 also examines Western Australia, which was the last state to liberalise in 1997. Chapter 5 begins with a background on the Sabbatarian laws operating in effect in New South Wales prior to 1966, followed by an overview of the Sunday Entertainment Bill’s introduction into the New South Wales Legislative Assembly. The religious discourse is examined followed by the secular discourse. The short debate in the Legislative Council is noted, along with some findings from the New South Wales Law Reform Commission on a separate Sabbatarian issue, as it highlights some of the discourse analysis findings. The chapter ends with an analysis of the religious affiliations of the parliamentarians.

Sabbatarianism and its liberalisation showcase the change in a social custom which relates to, invoking conceptions of time, work, and sacredness, as Sunday was the day traditionally associated with religious observance. This liberalisation is one of the most significant and noticeable changes in Australian social life over the past several decades. Methodologically it is justified in the same way as the previous case study with its reliance on Hansard as a text, paralleling the techniques of Annales historians such as Emmanuelle Le Roy Ladurie and Michel Vovelle. Since the
discourses in this case study are more distinct, the case study thus shows more clearly the complex non-linear nature of secularism, as Callum Brown proclaimed in his basic principles regarding the social significance of religion.\textsuperscript{501} Even if Sabbatarian liberalisation constituted a part of the secularisation of Australian society, the reformers were not consciously seeking to create a more secular society. Nevertheless, there was significant opposition from certain sections of the community, such as churches and some businesses.

5.1 History and Overview of English Sabbatarian Laws in Australia

Sabbatarian laws in Australia derived from English law. The English laws, in turn, were derived from the advent of Christianity in England. This part of the chapter provides a short overview of the development of these laws.

Judaism, like many ancient cultures had a weekly day of rest which it called the Sabbath, and it was from sunset on Friday to sunset on Saturday. With the emergence of Christianity, many Jews who became Christians observed the Jewish Sabbath, and the next day, as it was the day of the Resurrection. When Christianity became dominated by the Gentiles, the observance of the Jewish Sabbath gradually disappeared and Sunday or “the Lord’s Day” became the day of observance.\textsuperscript{502} It was not until Emperor Constantine in 321 AD that Sunday was made a day of rest in Roman law. This was despite overtures to Roman paganism. By the fifth century, and with Europe largely Christian, observance of Sunday entered the social lives of people.\textsuperscript{503}

In Saxon England, edicts mandated Sunday observance. Following the Norman Conquest in 1066, non-observance became commonplace until the Reformation. As a result of the Reformation’s strict religiosity, Sunday observance emerged once again

\textsuperscript{503} New South Wales Law Reform Commission, Service of Civil Process on Sunday, op.cit., p.27.
with strict new laws. The New South Wales Law Reform Commission’s 1984 report, *Service of Civil Process on Sunday*, referred to Sir William Holdsworth’s *A History of English Law* in noting that the first modern Sabbatarian laws in England in the sixteenth century were due to the political and religious rivalries of Protestant non-conformists (Calvinists) and the orthodoxies of Anglicans and Roman Catholics. Political fortunes on the Continent and in England led to Puritan influences on the law. This waxing and waning of Sabbatarianism’s influence confirms that the level of religiosity and secularity in a society fluctuates over time and a sudden waning is not definitive proof of secularisation.

The history of Sabbatarian laws in England during the seventeenth and eighteenth centuries saw strict legal implementation. These laws were inherited by New South Wales through the *Australian Courts Act* (1828) by virtue of the *Short Title Act* (1896). It served as the foundation for imperial laws in force in the colony, and in all other colonies and states by inheritance. The source of inheritance however was common law itself, which arrived in Australia forty years earlier with the First Fleet. Thus, with Australian law deriving from English law, it is important to see the English laws that brought legal Sabbatarianism to Australia.

There are principally four laws that served to place restrictions on Sunday activities in Australia. Three of these laws date from the seventeenth century, and one law dated from the eighteenth century. The aforementioned report by the New South Wales Law Reform Commission mentioned these laws and detailed their Sabbatarian prohibitions. The first of these laws was the *Sunday Observance Act* of 1625. It was originally called “An Acte for punishing of divers abuses committed on the Lord’s day called Sunday”. The Act forbade:

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506 New South Wales Law Reform Commission (1968), *Report on the Application of Imperial Acts*, Sydney: Government Printer, p.22. The law is also commonly referred to by its regal title by lawyers in New South Wales, and in early New South Wales history, it was also referred to as the Constitution Act or the New South Wales Act.
meetings, assemblies or concourse of people out of their own parishes on the Lord’s
day within this realm of England, or any dominions thereof, for any sports or
pastimes whatsoever.  

This banned such activities as bear-baiting, bull-baiting, and common plays for
people “within their own parishes”.  

To close the legal loophole of “within their own parishes”, two years later in 1627 a
new law restricted further the actions of people. Officially entitled, “An Act for the
further reformation of sundry abuses committed on the Lord’s Day comonlie called
Sunday”, the Act was aimed at “carriers, wagoners, carters, waynemen, butchers
and drovers of cattle”; all of whom were forbidden to travel or to continue their trade
on Sundays.  

In 1627, religion had precedence over commerce. Someone could not
simply go somewhere else on Sunday to do business; specific businesses or
industries were targeted, restricted, and prevented from operating on Sunday.

The third law was the Sunday Observance Act of 1677. This Sabbatarian law was the
most comprehensive in nature. Section 1 prohibited “every tradesman, artificer,
workman, labourer, ‘or other person whatsoever’ from doing or exercising any
‘worldly labour, business, or work of their ordinary callings upon the Lord’s
day’”. Retail trading restrictions applied to drovers, horse-coursers, wagoners,
butchers and higlers.  

This near-wholesale cessation of commerce only made
enough concessions to keep the population alive: the sale of milk was allowed before
9 a.m. and after 4 p.m., along with the sale of meat in “inns, cookeshops or
victualling houses” for people who were unable to provide for themselves. 

The last Sabbatarian law was the Sunday Observance Act of 1780. The legal concern
of this law was commercial once again, but additionally, theological. The law

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forbade public entertainment, including “places of amusement” on Sunday evenings and even the holding of “debates on biblical texts ‘by incompetent persons’”. The seriousness of the offence, and other offences under the 1780 law, is seen in its penalties. Places that were caught accepting admission fees for being ‘places of amusement’, could suffer fines some six hundred times the weekly wage of an average agricultural or industrial worker. Fines the size of one hundred and fifty times the average weekly earnings of an agricultural or industrial worker also existed for managers of these ‘places of amusement’, their doorkeepers, and people who were involved in advertising these places.

While the following discussion and analysis in New South Wales concerns itself with the Sunday Entertainment Bill in 1966, it is important to note that the discourse referred specifically to the 1780 Act, or as it was commonly referred to as, the 1781 Act. This may be because it superseded the previous three Acts, and what it forbade was the main subject of interest for the parliamentarians. The sixteenth century Acts were, however, repealed in time by the Imperial Acts Application Act of 1969. The 1968 report of the New South Wales Law Reform Commission noted that, whilst valid in the dominions, the 1625 and 1627 Acts depended upon the definition of a ‘parish’ in the English sense of the word to be applicable. It was argued that such ‘parishes’ never existed in the New South Wales colony and, henceforth, the laws were inapplicable and their repeal was recommended.

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519 It is unclear why there is a difference of dates as a term of reference. Sometimes this is because the date that it was enacted was different from the actual commencement. It is not uncommon for an act to be passed at the end of one year and commence the following year.
520 The Report itself does not mention what is meant by the English sense of the word ‘parish’. It is assumed according to The Concise Oxford Dictionary of the Christian Church that ‘parish’ refers to an area in England under the spiritual care of a Church of England priest whose ministrations the inhabitants are entitled to. The Concise Oxford Dictionary also refers to the formation of ‘parishes’ in the seventh and eighth centuries and their development. It is assumed that the Commission also to some extent had this historical development in mind when it rejected the existence of ‘parishes’ in the Australian colonies. It may also be the case that formal establishment is required, which never occurred for the Church of England or any other church in Australia.
5.2 New South Wales, 1966

5.2.1 The Sunday Entertainment Bill

Religion and religious arguments featured in the February-March 1966 debate in the Legislative Assembly and Legislative Council on the Sunday Entertainment Act, however they competed with a secular progressivist-modernity argument that was rooted in a practicality that was absent from the religious arguments. The legislative process in the Council was minimal. It was in the Legislative Assembly, in the first and second reading debates that religious arguments were made, although in each reading the arguments were slightly different. In the first reading debate, Eric Willis (Anglican), then Chief Secretary, the Minister for Labour and Industry, and the Minister for Tourist Activities, introduced the legislation and argued that the bill was not inappropriate in its treatment of religion because there was minimal opposition from the churches. This was countered by some parliamentarians with the religious and political argument that the State had a role in the moral development of its citizens. By the second reading debate, this second religious argument came to dominate.

Despite religious sympathies, the secular discourse emphasised that current practices were technically illegal and had been since the eighteenth century. By the mid-1960s, no government was enforcing the law, and there was no realistic way to enforce the law as social attitudes had changed considerably in relation to the nature of Sunday observance. The best alternative was to recognise this, and to change the law appropriately so that it could be enforced and people could enjoy their secular activities legally. The debate was concerned with practical elements such as an individual’s or group’s right to entertainment such as sport, conflicting with another group’s right to worship.

The bill proposed to allow public entertainments and meetings for which an admission was charged, that such activities could be held on Sundays anywhere after

522 The religious affiliation of a parliamentarian if known is mentioned in brackets following their first reference.
12:30 p.m., after church services had finished, and beforehand if there was written permission from the Minister. The Minister also had the power to prohibit certain public entertainments and meetings after 12:30 p.m. This discretionary power became a heated topic of debate.

After providing a brief overview of the introduction and first reading debate of the bill, the religious arguments are explored first in the Legislative Assembly, and then the secular arguments, along with the argument about the Minister’s discretionary power. The Legislative Council debate is then examined, followed by an analysis of the religious affiliation of the parliamentarians. Additionally, this section will conclude with an analysis of certain recommendations from a New South Wales Law Reform Commission report.

5.2.2 Legislative Assembly: Introduction and First Reading

On 24 February 1966 Eric Willis introduced the legislation that became the Sunday Entertainment Act 1966. The bill was to amend the Theatres and Public Halls Act 1908, “certain other Acts” and, importantly, the Sunday Observance Act of 1780.523 Willis’s first claim was that sporting fixtures and entertainment events which charged an admission had been operating illegally in New South Wales for years.524 The aim of the bill was to formally legalise this behaviour by repealing outdated legislation. The obsolescence of the legislation was the major argument in favour of the bill, whilst historical religious influences on individual parliamentarians, along with social religious practices, were the main arguments or reasons for opposing the bill. This is an example of Hervieu-Léger’s use of historical religious memory to form and order society in a certain way to ensure historical continuity, namely, Sunday was a day of religious observance and curtailment of secular and commercial activities.525

525 Hervieu-Léger, Religion as a Chain of Memory, op.cit., p.127.
In his introduction, Willis was quick to articulate, or appeal to, the appropriate authorities by indicating that he had consulted the various churches along with “principal entertainment and sports interests”. The exact nature of these “interests” is unclear, along with the way in which the consultations occurred, and the influence that these authorities wielded. Nevertheless, Willis outlined the results from these discussions with the churches, and he expounded the basic details of the bill: allowing sport fixtures and theatrical and cinematic entertainments on Sunday afternoons after 12:30 p.m. or before if it was approved by the Minister (i.e.: it did not disturb religious worship). Willis said that the bill would replace the then existing law which was either often ignored or difficult to enforce.

The first person to speak after Willis’s introduction was Norman John Mannix (Catholic). The crux of his series of objections involved rhetorical devices such as ‘slippery slopes’ arguments, and hypotheticals. Examples by Mannix were: if the bill was passed, some people would wish to do their entertainment at 12:05 a.m. and leave the day free, referring to Paris, Brussels and the New Australians as examples. Similarly, Mannix asked what would happen to restaurants if a cinema screened a film at 11:55 pm and it went until the early hours of Monday morning, assuming the patrons wanted to eat afterwards. Mannix also asked what would occur when Anzac Day fell on a Sunday.

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528 New South Wales, Legislative Assembly 1965-1966, Debates, volume 4, 24 February 1966, p.3600. It was not clear from Hansard alone which Minister this referred to. It was clear that Willis was referring to himself, however at the time he was the Chief Secretary, the Minister for Labour and Industry, and the Minister for Tourist Activities. The New South Wales Law Reform Commission’s Service of Civil Process on Sunday notes that it is the Minister for Leisure Sports and Tourism. See Service of Civil Process on Sunday, op.cit., p.37.
Laurie John Ferguson followed Mannix and his most significant contribution was that he called for the bill to be tabled for a month to allow religious organisations, along with rationalists and agnostics, to provide feedback on the proposed changes.\textsuperscript{533}

Parliamentarians subsequently referred to their religious faith to support their positions. Harold George Coates (Anglican, involved in the parish council and synod), while immediately claiming that it was clear the Act was outdated, did not know the exact contents of the bill.\textsuperscript{534} He spoke about the importance of his religious faith and his high standing within his church. Coates said, “I shall apply my vote at the appropriate time guided by principles that are sacrosanct to me and are my responsibility to espouse in this House.”\textsuperscript{535} Furthermore, “We are dealing with a subject that is sacrosanct to all people in New South Wales.”\textsuperscript{536} And at length:

\begin{quote}
I have my own religious views and I am proud to say that for twenty-eight consecutive years I have been a member of my own church parish council. For many years I have been also a member of the synod of the church to which I belong, and I reserve my right to hold to my religious views and to apply them as I think my Christian faith guides me. I make it perfectly clear that just as I claim my own rights in this matter, I recognize that all other people have an equal right to claim theirs. When we are dealing, as we are on this occasion, with a subject of the highest order, I do not want to be hurried into a decision on something that is more important to me than any other decision I have made in this House.\textsuperscript{537}
\end{quote}

Evelyn Douglas Darby (Anglican), whilst acknowledging that he did not like the bill as it went against his upbringing “which is of some significance”,\textsuperscript{538} focussed most of his energies on defending Christian democracy. Darby channelled his British

heritage, and unwittingly expressed views similar to Hervieu-Léger, claiming that for centuries Sunday had been regarded as a holy day; that current society was based on Christian democratic principles and that the interpretation of the Legislature should be consistent with this tradition. Furthermore, Darby said as few people as possible should work on Sundays, that alcohol should be consumed as little as possible, and that ultimately, the changes would allow open slather “for professional entertainers and economic prosperity for some on a Sunday afternoon” – a slippery slope argument. Darby ended by saying, “A commandment tells us what to do about Sunday.” Coates and Darby were the only parliamentarians to speak from a religious perspective, and both claimed to defend to some degree an imagined historical society that the law helped to continue.

5.2.3 Religious Discourses

On 24 February 1966, when Eric Willis introduced the Sunday Entertainment Bill, he appealed to both the appropriate, religious authorities, and made a religious *ad populum* appeal. He stated that the major religious (Christian) denominations and churches, were favourable to the legislation. Willis did this by first articulating the views of Church of England Archbishop Gough followed by Catholic Cardinal Gilroy, who proffered mixed, although generally favourable, views towards the bill. It was only then that Willis listed the religious organisations that opposed the reform in its entirety. These organisations were: the Baptist Union of New South Wales; the Churches of Christ in New South Wales; the Salvation Army; and the Anglican Bishop of Armidale. The Moderator of the New South Wales General Assembly of the Presbyterian Church of Australia while not opposed to re-examining the 1781 legislation, was opposed to commercial pursuits and entertainment on Sunday.

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afternoons, precisely the issues with which the bill was concerned. This was the main body of evidence tendered by organised religion in opposing the bill, as Willis claimed time did not permit him to disclose all the replies he received from church leaders.

Willis’s representation of the religious organisations began with a lengthy extract from a letter he received from Archbishop Gough. The extract is worth reproducing in full, as in five short paragraphs, several important themes and issues were covered.

Members of the Church of England in Australia believe that Sunday should be observed as a day for worship of Almighty God and of rest for as many people as modern conditions of life allow.
There can be no question that a weekly day of quietness and restfulness is of great benefit to all people whether they are Church attenders or not.
We would regret, therefore, any developments which would tend to destroy the traditional observance of Sunday and to take away from others their chance of rest with their families.
Having said this, I would make it clear that I fully recognize the fact that the Churches represent only a minority of the population and have no right to enforce their own principles upon the majority who do not hold them.
Moreover, it is obvious that the present situation in the State of New South Wales is anomalous and inconsistent, giving unfair advantages of trade to some whilst imposing restrictions upon others. Some reform of the law is then to be desired.

The quote touches upon several aspects of this change in social customs. The first is the change proposed by the bill, but the letter also acknowledged that religious attendance or practice had also significantly changed, and it was implied that churches must accept this change. Archbishop Gough sought to preserve tradition while simultaneously allowing people their individual choice, even to commercial activities as the current traditional practice created an unequal ‘market’. This liberal

approach was succinctly summarised by Cardinal Gilroy via Willis in two paragraphs where Cardinal Gilroy was quoted as saying the proposals were reasonable as they did not “prevent anyone from fulfilling their obligation of offering divine worship; it does no injustice to those not wishing to patronize these events; it satisfies those who do so wish.”

At the end of his first reading speech, Willis connected Christianity with democracy, which may have caused the successive politico-religious arguments that the state was responsible for the moral development of its citizens, especially the young. This is a clear example, as all of the case studies are, of Conze and Wright’s argument that politics affects the structures of everyday life. Willis claimed that one of the great principles of Christianity and democracy was that “people should not be forced to go to work, should not be forced to go to church or to do other things, but should be free to make their own decisions according to their own conscience.”

In his second reading speech on 16 March, Willis invoked religion far less, although he did continue to portray it in a liberal, even libertarian way. For Willis, not only was there minimal opposition to the bill, but there would be minimal negative consequences for people who wished to practice their religion. In his explanation that he would not use his discretionary powers as the minister dictatorially, Willis said the circumstances would determine prohibition and he provided examples. Willis gave the example of a football grand final at the Sydney Sports Ground being acceptable, but that the placement of such sporting activities near places of worship was not.

There were entertainments that Willis believed society did not feel were appropriate for Sundays, but which he acknowledged that a government minister in the future would allow. For Willis nevertheless, the entertainments that he felt society did not feel were appropriate, a vague ad populum appeal, were striptease and burlesque shows.

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I might mention that it is not my intention to permit the strip-tease or burlesque type of theatrical performances on Sundays. I feel they are contrary to the accepted Australian attitude on Sunday entertainment. Should any such entertainment be arranged I can and shall exercise my discretionary powers and prohibit them. It may be that some future Chief Secretary, in the light of conditions then prevailing, may see fit to permit types of entertainment that this Government feels should not be permitted at the present time. Of course, any such action by any Minister will always be open to criticism in Parliament.551

Despite this, Willis affirmed that the Government had no intention to secularise Sunday or disregard the established right of church-goers who would be able to participate fully in their traditional Christian practices on Sunday mornings.552

On the following day, religious arguments were made by Norman Mannix and Richard Hunter (Anglican). Mannix was the prominent speaker, as his speech occupied approximately half of the debate. Mannix wished to preserve Sunday observance, but he acknowledged that society had changed – this is a clear example of Hervieu-Léger’s theory of social memory continuity, Stearns’s styles of life, and to some extent, Brown’s theory of religiousity and secularity in continual flux.553 There was also in Mannix’s thinking a link between the Government or State, and the preservation of a good and moral social order.

This theocratic idea emerged clearly when Mannix concluded his speech and urged “every sound-thinking member of the House to give some serious thought to how deep this legislation can go in affecting the moral and social fibre of the community. Let us measure up to our responsibilities as the elected representatives of the people.”554 Mannix was not alone in thinking as parliamentarians they had a role to play in preserving a moral society, as Hunter echoed Mannix’s belief by providing historical examples. Whilst supporting the bill, Hunter still did not wish for the

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'Continental Sunday’ to develop, which “was one of the reasons why France broke down morally when she was tested.” On this day, however, the idea of being moral guardians for the community was not the foremost concern. The sanctity or uniqueness of Sunday was expressed more widely and more frequently.

The uniqueness of Sunday was first expressed by Mannix when he said that television and radio programmes were slightly different on Sundays. This was done deliberately according to Mannix to “give recognition to certain Christian principles that are basic to anything done on a Sunday.” Hunter once again made similar sentiments to Mannix when he proclaimed that in his experience one of the greatest contributions to man’s welfare was a day of rest. Henry Jensen (Catholic) however added that this day of rest was Sunday, since our society derived from the Jewish and Christian religions.

The majority of religious arguments occurred on the final day of the second reading debate, 23 March. Unsurprisingly, the religious argument that featured was the call on the parliamentarians, or the state, to be moral guardians for citizens. The two main protagonists on this day were Lionel Bowen (Catholic) and William Crabtree (Presbyterian). Others spoke along with Willis who answered the religious arguments by dismissing them, or by making *ad hominem* attacks and casting aspersions on the questioners.

It is clear that for Lionel Bowen, the *Sunday Entertainment Bill* was fundamentally important in nature. He believed that it was the responsibility of the State to be involved in the moral development of its citizens, especially the young. He made this clear when he summarised his position that, from the Christian point of view of society, the State should encourage the young to do good activities, even studying Scripture over Honours (i.e.: religious study over secular study). While this belief

may not have been the central tenet of Bowen’s political beliefs, it provided a coherent framework for his argument.

Bowen began his argument against the bill by declaring that cinemas should not be opened on Sundays because of their morally questionable nature. Furthermore, contemporary films should not be shown at all due to their negative moral and social consequences. Bowen in his own words:

In fact, they ought to be banned, not on a Sunday, but on any day, because they do not meet the moral standards of the community. What is the good of spending £84,000,000 on the education of children when many of them do not know what God means or what happens if they tell a lie?...Consider the unfortunate children facing charges of carnal knowledge. Are they to blame, or are we to blame?\textsuperscript{560}

If the parliamentarians were in doubt to their role in this matter, Bowen said shortly thereafter:

In this Assembly we commence our deliberations each day with a prayer, trying to assist what might be called Christianity. Let us not hide from it, we ought to be more active about it if we want a society that is worth while [sic]. As it is, it is being gradually broken down and eroded. This is the greatest tragedy of all time, and it is not altogether fair to make more people work on Sunday.\textsuperscript{561}

Any concern for workers’ rights was an afterthought. As a result of this, the majority of Bowen’s speech was concerned with decrying contemporary life, thus recognising that the style of life had changed and for the worse, whilst offering ‘solutions’. For Bowen, contemporary life consisted of moral corruptions such as television and newspapers resorting to sex in order to sell,\textsuperscript{562} and films which involved not only moral harm, but also the pursuit of commercial gain.\textsuperscript{563} The solution according to Bowen was allowing and encouraging sport among the young since it was healthy,

\textsuperscript{560} New South Wales, Legislative Assembly 1965-1966, Debates, volume 5, 23 March 1966, p.4560.
\textsuperscript{561} New South Wales, Legislative Assembly 1965-1966, Debates, volume 5, 23 March 1966, p.4562.
\textsuperscript{562} New South Wales, Legislative Assembly 1965-1966, Debates, volume 5, 23 March 1966, p.4561.
\textsuperscript{563} New South Wales, Legislative Assembly 1965-1966, Debates, volume 5, 23 March 1966, pp.4561, 4563.
unlike the films which encouraged juvenile delinquency.\textsuperscript{564} People should be granted more leisure time to enjoy in order to combat the evils of moral decay.\textsuperscript{565}

William Crabtree immediately followed Bowen and whilst he echoed Bowen’s arguments and sentiments, he also took them in new directions. Crabtree similarly rallied against films on moral grounds, but he extended the remit to include literature.\textsuperscript{566} Crabtree also claimed that the youth faced moral decay through films and his solution was sports and organised dances.\textsuperscript{567} If one was in doubt about what was at stake, Crabtree claimed that all successful countries had moral leadership in common. The failing nations of the world all lacked moral leadership.\textsuperscript{568} All of this was due to the “horror and disgrace” of the ‘Continental Sunday’.\textsuperscript{569}

The other participants in the second reading debate that day had similar, albeit milder, sentiments accompanied by a sense that they could do little as ‘the damage had been done’. Ernest Quinn (Catholic) claimed that the bill was the ‘thin end of the wedge’ for the complete breakdown of Sunday as a day of rest and the moral standards of people;\textsuperscript{570} while Douglas Darby claimed that the education system had failed the young for the past 25 years and therefore it was unlikely that the films could do much.\textsuperscript{571} Harold Coates at least recognised that it was only approximately 10-12\% of the population that went to church on a regular basis, but nevertheless the minority should not lose heart.\textsuperscript{572}

Willis thought little of these arguments as he either dismissed their concerns or relied on \textit{ad hominem} attacks. Willis claimed that those who spoke for Christianity and a
Christian Sunday spoke humbug,\textsuperscript{573} while Willis accused Crabtree of hypocrisy, claiming:

\textellipsis I have seen on not one occasion but on a number of occasions in his own electorate going round from one of the clubs to another on a Sunday – drinking, enjoying the films, enjoying the entertainment of the floor shows, enjoying the froth and bubble that goes with these places on a Sunday, and all the frivolity of them.\textsuperscript{574}

This religious discourse is clear in recognising that society had changed since the laws were introduced, especially due to the decline in religious fervour in society. The modern age had also given rise to more variety in entertainment options on Sundays. Some parliamentarians recognised that there was no possibility of a return to old ways. This case study is not only an example of a change in a style of life, but of the law trying to keep abreast of a change in a style of life. The religious arguments were effectively practical in nature, or were concerned with state interventionism which bordered on the theocratic. In recognising the changed nature of society, those who argued on religious lines effectively conceded to those who argued on secular lines since this formed the basis of their argument for the bill. Once this was accepted by both sides, there was not a great deal that the proponents of the religious discourse could do.

\subsection*{5.2.4 Secular Discourses}

The secular discourses within the debate on the \textit{Sunday Entertainment Bill} consisted of practical concerns regarding law enforcement and contemporary widespread societal breaches of the Sabbatarian laws, along with the discretionary power of the Minister to prohibit events. These practical concerns were cloaked in discourses about modernity and how society had progressed since the laws were first introduced, so much so that it was fundamentally a different society.

The discourses of progressivism and modernity existed from Willis’ introduction of the bill on 24 February 1966. Willis was the first to expound the progressivist and

\begin{footnotesize}
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\item \textsuperscript{573} New South Wales, Legislative Assembly 1965-1966, \textit{Debates}, volume 5, 23 March 1966, p.4573.
\item \textsuperscript{574} New South Wales, Legislative Assembly 1965-1966, \textit{Debates}, volume 5, 23 March 1966, p.4573.
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modernist discourse when he derided the antiquity of the existing legislation. For Willis, since the *Sunday Observance Act 1781* was an Imperial Statute, it was inherently clear that review was long overdue.  

Immediately discursive echoes were made by Laurie Ferguson who began his speech by claiming it had taken a long time to “face up to the necessity of altering it [the law]”. After speaking about technical aspects of the law, Ferguson made the argument that the 1781 Act was a result of the Lord George Gordon riots in England. For Ferguson, what was different in New South Wales was that it was a more enlightened age with a broader religious spectrum of persuasions, including those who lacked a religion altogether.

The very first sentence that Harold Coates uttered in the bill’s introduction was that it was “quite obvious that the Act is well and truly outdated”. Coates appeared to be unique in that he openly recognised his religious proclivities, and made the secular progressivist modern claim that the law should reflect reality “irrespective of whether I like it or not”. He argued that sufficient time should be allowed so that the full implications of the bill could be determined.

On 16 March, Willis claimed that he did not know the significance of the legislation and its disconnect to contemporary practices until he became Chief Secretary, when three new social developments brought the law into light. These social developments were: the rapid expansion of licenced clubs holding dances and film screenings on club premises on Sunday nights; dances at so-called private clubs.

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where someone could purchase membership at the door; and, New Australians holding private functions that were, according to Willis, essentially public.\textsuperscript{583} There were even public meetings held under the guise of being a church, which led Willis to claim that the Sunday observance laws for years had effectively been ignored, even citing a Supreme Court judgement from 1890 supporting his case.\textsuperscript{584} In his speech Willis used the rhetorical techniques of explicitly listing examples to support his case and appealing to legal authority by referring to a Supreme Court judgement.

The recognition of these social changes was expressed by other parliamentarians. The two who argued along secular progressivist and modernity lines were David Hunter and Richard Healey (Catholic). Hunter said that everyone had “seen a gradual change in this community on Sundays, and this has been the people’s will, not the law of the land.”\textsuperscript{585} Despite “living in days of great change”, the bill sought to “put an end to hypocrisy”.\textsuperscript{586} Healey was stronger in his claims when he said that some people “retain an outlook that belongs to the Puritan days; this is their life and the way they wish to observe Sunday, and no member in this Chamber would seek to interfere with them.”\textsuperscript{587}

Greater detailed argument is found in Hunter’s speech than in Healey’s. Hunter’s reasoning also implicitly acknowledged Brown’s theory regarding the fluctuation between religiosity and secularity in a society over time. Hunter acknowledged that one could not deem something good simply because their great-grandparents or grandparents had deemed it so, as society had progressed. Hunter listed the advent of cars, women’s rights, scientific progresses and two world wars as evidence.\textsuperscript{588} This was supported by a longer-term trend which covered centuries wherein Sunday observance levels fluctuated. According to Hunter, it was sometime in the fifteenth century that Sunday lost its comprehensive religious meaning, and the accompanied observance levels fluctuated during the Restoration, and the eras of the Puritans and

\textsuperscript{583} New South Wales, Legislative Assembly 1965-1966, Debates, volume 5, 16 March 1966, p.4289.
\textsuperscript{584} New South Wales, Legislative Assembly 1965-1966, Debates, volume 5, 16 March 1966, p.4289.
\textsuperscript{587} New South Wales, Legislative Assembly 1965-1966, Debates, volume 5, 17 March 1966, p.4353.
\textsuperscript{588} New South Wales, Legislative Assembly 1965-1966, Debates, volume 5, 17 March 1966, p.4348.
Queen Victoria. Perhaps the strongest argument in favour of the law being changed was to look at what some of the churches were doing on Sunday evenings for entertainment, such as dances.

On 23 March the discourse of progressivism and modernity was largely mute. All that was said on the point was when Douglas Darby condemned the placing of outdoor entertainment next to indoor entertainment, not to mention the arbitrary opening hour of 12:30 p.m. for theatres. Darby spoke of his pride for Manly Council, where for the last 20 years it had prevented the Manly Oval from being used on Sundays. As a result, Darby argued for local option to be allowed, since he knew the situation elsewhere was different. This suggestion was stronger than what Harold Coates said afterwards. He did not like the government minister having so much power, but he did not know what to suggest as an alternative except to request that whoever was the government minister in the future to keep in mind that Sunday was the Sabbath and that there should be as little commercialised sport on that day as possible.

This concern for the Minister’s discretionary power was a third subject of argument that occupied space, time and energy of the parliamentarians. As a result, the time and energy that was available to discuss the influence of religion, or the contemporary nature of society was diminished.

This subject was first broached by Norman Mannix on 17 March when he called for a select committee in order to draft a new bill, in part to ensure that the Minister did not have such discretionary powers so as to prohibit activities. Mannix’s basic argument was that the bill proposed giving too much power to the Minister, so much so that he could ban everything; that there was no recourse to appeal; and this

was compounded by there being no comprehensive list of entertainments. A select committee would be able to redraft more effective legislation along with allowing the opportunity for the public to be heard.

The idea of a parliamentary select committee to investigate legislative alternatives was a rallying cry that appeared with subsequent regularity, even if it was frequently dismissed. While it was never debated at length at any one time, it appeared many times in Hansard. After making his call on 17 March, Mannix was followed on the same day by Henry Jensen who believed that the call was warranted; and by David Hunter who argued that a committee was a waste of time since the Government did not adopt the proposals that the select committee had recommended. Hunter based this argument on his experience as a member of a select committee earlier in his parliamentary career.

When debate resumed on 23 March, Mannix immediately sought for a select committee to be established, which was denied. On the final day of the debate in the Legislative Assembly, Richard Healey dismissed the call for a select committee on two separate occasions in his single speech, irrespective of whether he was a proposed member by Mannix. The select committee received support from Darby; and finally, it also received support from Ernest Quinn as he argued that in rejecting the call, the Government was not taking into consideration a wide range of views, including Christian and non-Christian, not to mention, atheist views.

Therefore, the arguments to do with the call for a select committee were not lengthy, but they nevertheless comprised a portion of the overall argument and debate in the Legislative Assembly due to the frequency in which it appeared. This distracted from


the debates on the bill and, in particular, the discourses on religion, secularism, progressivism, and modernity. The secular discourse comprised of practical concerns in recognising that the law was not enforced, as it was essentially arcane and derived from a different society. Contemporary society was too different and the law was incompatible with reality. The law needed to change accordingly.

In the end, the bill was voted on and passed 48 votes to 44, with the amendment for a select committee failing to pass.606 In the end Coates, Darby, Healey, Hunter and Willis voted for the bill, while Bowen, Crabtree, Jensen, Mannix and Quinn voted against the bill.607 The bill was read a third time and passed immediately.608

5.2.5 The Legislative Council

The debate in the Legislative Council is treated in a different section since the debate was short, and it was not focused on the same issues. The context of the Legislative Council was different to that of the Legislative Assembly as there were fewer debate speakers, slightly more Catholics as members, and female parliamentarians were more frequent in the Council at the time.

After passing the Legislative Assembly on 23 March 1966, the Sunday Entertainment Bill was read for the first time in the Legislative Council on the following day, by Arthur Dalgety Bridges (Presbyterian).609 The entire second reading debate, along with the third reading occurred on 29 March 1966, and featured only Bridges, James Joseph Maloney (Catholic), Asher Alexander Joel (Jewish), and Mabel Eileen Furley (Anglican), the first female Liberal member of the Legislative Council.

Bridges’s introduction and opening remarks during the second reading debate were calm and reasoned unlike the debates in the Legislative Assembly. They were also a concise summary of the overall argument in favour of the bill. Bridges began by

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detailing the financial punishments of the 1781 Act, along with other details of the 1781 and 1908 Acts. He then proceeded to contrast it to contemporary activities that were occurring on Sundays, such as New Australians holding national holiday celebrations on Sundays, football matches, motor racing, and churches holding dances. As Bridges summarised: “It is obvious that the present law is out of harmony with current attitudes and conditions and should be brought up to date.”

Current attitudes were supported by the fact that no major sporting organisations or entertainment bodies objected to the change, except for the Australian Theatrical and Amusement Employees’ Association. The churches were even in agreement except for a few, which Bridge did not name. Bridges thus sought to contrast contemporary society with Puritan England, and he used *ad populum* appeals to show that there was broad social and institutional support for the law to change.

James Maloney continued this element of Bridges’s speech when he claimed that the Australian Theatrical and Amusement Employees’ Association was opposed to the bill because it feared that its workers would be worse off on Sundays, and to such an extent that cinemas would have to close. This was at best an industrial or economic argument, although it did not constitute a reason to oppose the bill in principle. Maloney agreed with Bridges that the churches took a broad view and were supportive of the bill, with the exception of one church, which Maloney said observed Saturday as its day of rest. It is not known why groups that opposed the bill on religious grounds were not mentioned in the Legislative Council debates, only by Willis in his first reading speech.

Maloney believed that times had changed since sport had been played on Sundays for years and that everyone took the opportunity to do something on Sundays and, since

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615 New South Wales, Legislative Council 1965-1966, *Debates*, volume 5, 29 March 1966, p.4690. This is presumably the Seventh Day Adventist Church.
they all had grown up with these activities, the activities were not going to stop.\textsuperscript{616} Despite these contemporary practices, Maloney did not want to see billiard rooms opened on Sundays,\textsuperscript{617} and other public entertainments such as striptease shows.\textsuperscript{618} Maloney thus believed that the lifestyles were solidly entrenched and that it could not be changed by law; the law would have to change for society. Maloney also spoke about the government minister’s discretionary power.\textsuperscript{619}

The final two speakers were biographically unique to the Sunday entertainment debate, and to some extent, the entire thesis. Asher Alexander Joel spoke next and he was Jewish, and Mabel Eileen Furley followed him and she was the first woman to speak in the parliamentary debates.

Asher Joel brought a modern view to the bill, which was exemplified when he said:

\begin{quote}
I believe that in 1966 we must appreciate that there is a much more sophisticated approach to each hour of an individual’s leisure time, and there is a necessity for tolerance in this particular period in which we are living. What was applicable ten, twenty or fifty years ago does not necessarily apply today…\textsuperscript{620}
\end{quote}

Despite his progressivism and modernity, Joel did not want Sunday to descend into a “Bacchanalian revel”,\textsuperscript{621} and he “would be loath to see Sunday turned into a day on which there is no devotion to the observance of priestly concepts, religious concepts and family matters.”\textsuperscript{622}

Joel interestingly was open about his personal life. He said that while he was in favour of the relaxation, one reason might be because his day of rest was Saturday, a clear reference to Judaism.\textsuperscript{623} Joel made no further personal religious references so it is unclear how religious he was from this particular parliamentary debate. Joel did

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start his speech by proclaiming a directorship in a large film-exhibiting organisation. Therefore, he had a particular concern for the cinema industry and argued that the changes could wreak havoc on the industry, which, in turn, might not be able to pay workers all of their entitlements. 624

Industrial concerns did not worry Mabel Eileen Furley, the first woman to speak in parliament on the Sunday Entertainment Bill. After acknowledging that the bill was a continuation of the new Government’s liberalising trend, which would also allow contemporary practices to happen legally, 625 Furley spent the rest of her short speech trying to close the Royal Easter Show on Good Friday. 626 In short, Furley’s speech was somewhat off-topic.

Arthur Bridges in his second speech answered a few questions raised by his colleagues. Interestingly, he agreed with Furley that it was offensive to thousands of Christians that the Royal Easter Show was open on Good Friday. 627 Anthony Alexander Alam interjected and claimed that 100,000 Christians attended the Royal Easter Show on Good Friday, to which Bridges responded that it was 100,000 pagans that attended. 628 While not focused on Sundays, the short exchange on the Royal Easter Show on Good Fridays perhaps said more about the religious attitudes of these speakers. However, these beliefs has no consequences, either in regards to the Royal Easter Show on Good Fridays or Sunday entertainment.

Hansard records that the third reading was read in the Legislative Council on the same day. 629 In little over a month, the Sunday Entertainment Bill had passed both houses of the New South Wales Parliament. The debate occurred most extensively in the Legislative Assembly and featured both a secular and religious discourse. The secular discourse was practical in recognising that society had changed since the laws were first introduced and that the current law was impractical. This argument

exhibited progressivism and modernity as key values of the parliamentarians. The religious discourse was also practical and pursued state intervention in the moral preservation of society, especially in relation to the young so as to prevent further moral decline. While the vote was close (48 to 44), the secular discourse and the push to liberalise Sabbatarian laws won. The debate in the Legislative Council was short and largely irrelevant to the bill under consideration. Before the discourses are analysed, it is worth considering some findings by the New South Wales Law Reform Commission from 1984 which explicitly mentioned the reasons for liberalising Sabbatarian laws. These reasons are not dissimilar to the reasons given in the debates.

5.3 New South Wales Law Reform Commission Finding, 1984

Before analysing the discourses found in the parliamentary debates in greater detail, it is useful to examine the 1984 New South Wales Law Reform Commission report, Service of Civil Process on Sunday. It is an useful resource as it not only contains references to the Sunday Entertainment Bill, shedding light on the debate, but it in turn gives reasons to allow civil service on Sundays. The reasons given, some 18 years after the passing of the bill, have similarities to the arguments given by some parliamentarians.

The report examined whether civil process should be allowed on Sundays. The Commission ultimately recommended that civil process be allowed despite the restrictions. It gave five reasons to support its decision. The report contended that the community accepted that some people needed to work on Sundays in order for society to function. The second was that the classification of Sunday as a day of ‘rest’ did not make ‘rest’ compulsory. This was similar to the third reason that was given, that the ‘right’ to rest did not mean that an individual could not choose to work. The final two reasons given were that the situation of Sabbatarian legislation in 1984 was an accommodation between two groups that had different priorities: the ‘churchgoers’, who did not want to be disturbed in their worship, and the ‘footballers’, who wanted to play sport. The final reason given for allowing civil
process on Sundays was that it was actually a relatively minor task and was not administratively difficult. 630

None of the reasons cite religious beliefs of any kind as a source of change, or for the continuance of limitations on Sunday process. The closest that the New South Wales Law Reform Commission came to a religious argument was the recognition that certain groups of people were religious and wanted to worship on Sundays.

While the 1984 report was on a different topic to the parliamentary debates of 1966, it was still nevertheless on the subject of Sabbatarianism. While it is important to note that the recommendations of the report were influenced by the change in the style of life heralded by the Sunday Entertainment Bill passing in 1966, it is both a consequence of change and a perspective on the thinking that prevailed in the debates of 1966. The reasons that the Law Reform Commission gave for its decision reflected succinctly the reasons given in the parliamentary debates 18 years earlier in favour of the bill. The reasons were practical and utilitarian. The Law Reform Commission did not claim that it was progressive, but it was implied in the assumptions of those reasons once the issue’s history is known. The Law Reform Commission recognised that there needed to be an accommodation between two groups of people. It was recognised that there were now options available to people on a Sunday that previously did not exist. In other words, there had been a development from one option to at least two. The attitudes to ‘rest’ on Sunday in a similar way indicate that attitudes and practices had changed.

The use of this source is unique in that a similar source does not exist for the other case studies in this thesis. This does not diminish its value but increases it. It shows the effects of a change in the social customs of a society within 20 years, and that a corresponding area of the law was also sought to change for similar reasons. Religion featured less in the report than in the debate. From this it is possible to argue that secularity increased in society as a result of liberalising Sabbatarian law. However, Brown’s thesis regarding the non-linear nature and continual flux in the levels of


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religiosity and secularity in society should be kept in mind. This section is provided as an aside to the main discourse analysis which is provided below.

5.4 Discourse Analysis of the *Sunday Entertainment Bill*

The New South Wales debate on the *Sunday Entertainment Bill* saw a clear distinction between the secular and religious discourses, unlike the cremation case study. The debate in New South Wales on Sunday entertainment indicates that both the religious and secular discourse concerned themselves largely with practical matters. This ultimately worked in favour of the secular discourse as the religious discourse accepted the arguments proffered by the secular discourse without effectively countering them, or offering alternatives to those arguments. There were several distinct arguments within the debate, and several rhetorical techniques were also utilised throughout the debate by both sides.

The religious discourse assumed a self-conscious and practicing Christian society based on a significant segment of the population. This society had been practicing a number of characteristic practices, such as Sabbatarianism on Sundays, for generations. This was under threat from the *Sunday Entertainment Bill* and it needed to be resisted. As parliamentarians, it was a part of their moral obligation to ensure society behaved morally. There was sometimes the reactionary element that general Christian practices needed to increase if society was not to continue its moral decline. This argument contained a number of assumptions about society and it echoed Danièle Hervieu-Léger’s memory theory about religion constituting a link between generations across history. Some parliamentarians saw this religious historical link under threat and they sought to counter it.

The secular discourse was largely concerned with the practical or progressivist argument. It sought to give an opportunity to those who were not particularly religious to legally pursue their recreational interests on Sundays. It sought to bring what it considered an outdated and practically unenforceable law up-to-date by changing the law so that it reflected contemporary attitudes and practices. It was noted above that the religious arguments simply did not defeat this discourse since
the religious discourse took for granted the assumptions of the secular discourse. Practical concerns did not extend to the State being a form of moral guardian, as not everyone agreed with this view of the State. This argument was effectively not even engaged as it was more non-ideological than ideological.

Elements of both of these discourses were found throughout the parliamentary debate in the Legislative Assembly. The right winger Douglas Darby in his first reading speech made comments about the history of Sabbatarianism and Christianity’s fundamental importance to the British society in which they lived. Lionel Bowen, William Crabtree, and Ernest Quinn in the second reading debates decried the moral decline of society; and Norman Mannix called for state intervention on moral grounds. Even in the quieter Legislative Council debates there were calls for state intervention on moral grounds, but mainly in relation to the Royal Easter Show being open on Good Fridays. Laurie Ferguson in the House of Assembly began his first reading speech by declaring the antiquity of the 1781 legislation, while in the second reading speech David Hunter and Richard Healey commented on the changes of social practices that had occurred over decades. These parliamentary contributions unwittingly reflect Hervieu-Léger’s subsequent findings regarding history, memory, and society.631

Ultimately, the calls to a higher moral good (the call for state intervention to preserve morality in society) failed in relation to practical considerations. It was definitely easier to change the law than to attempt to change social behaviour, especially behaviour that had effectively been unenforced, precisely at a time when that society was about to go through a large demographic change in its religiosity.

Just as utilitarianism featured in both discourses, the rhetorical techniques utilised by various speakers were similar to those that featured in the cremation case study. These included appeals to authority, *ad populum* appeals, and now *ad hominem*

631 The discussions about the discretionary powers of the Minister are not discussed here as that argument was often not portrayed or utilised either for or against the bill. Parliamentarians often spoke about being in favour of the bill but hesitant to grant the Minister so much power. It was this concern which formed the basis for the call for the ultimately unsuccessful select committee. It is an important debate but in some ways it forms its own third discourse that played an auxiliary role in the parliamentary debates on the *Sunday Entertainment Bill*.  

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attacks. The appeals to authority were predominantly to religious authorities. These religious authorities were alternatively invoked to show either support or opposition to the bill. The *ad populum* appeals themselves however were to large sections of society such as workers or the young. What was new in this case study compared to the cremation case study was that *ad hominem* attacks featured prominently. This is important to note in order to show the level and style or colour of the debate. If the debate was somewhat one dimensional in the Legislative Assembly it was effectively non-existent in the Legislative Council.

Using Fairclough’s discourse analysis, it is clear, both from the assumptions in the debate and the voices invoked, many parliamentarians saw the liberalising of Sabbatarian laws as a simple matter of updating the law, such as Willis, Hunter, and Healey. A few parliamentarians saw it as an affront to a way or style of life, such as Furley and Bridges. Those who opposed the bill did not help themselves by their arguments, nor by always accepting that the bill provided a choice for people who still wished to worship in the traditional sense. The short time span of the debate showed that those who wished to liberalise the law were the clear majority of parliamentarians, and the issue was largely clear-cut.

While the secular and religious discourses were distinct in the New South Wales debate on the *Sunday Entertainment Bill*, both of them covered much the same ground in terms of arguments and rhetorical techniques. In these ways the debate mirrored the cremation debates in that utilitarian and practical considerations were at the forefront. With regard to Sabbatarian legislation, New South Wales was the first state where the style of life regarding Sunday and the division between secular and sacred time was challenged and changed. Analysis of the debates illustrated that, for the majority of parliamentarians who voted in favour of the bill, the law needed to change as their society was different to one that had created the laws. The only concerns about the changes were once again practical, and secular, and this was how it would affect people having to work on Sundays. The religious opposition however were concerned about further social moral decay. Analysis of the religious affiliations of the parliamentarians indicates that the two Houses of Parliament were well represented denominationally, and that there was a clear denominational division in
how parliamentarians voted, with Catholics overwhelmingly opposing the change. However, this is ostensibly linked to the presence of the Australian Labor Party members and their opposition to the bill due to the possible consequences for workers.

5.5 Religious Affiliations

Below is the analysis of the religious affiliations of the parliamentarians in both the Legislative Assembly and Legislative Council. Analysis is conducted for the composition of the Houses of Parliament, and in the House of Assembly, the principal speakers in the debate and how the parliamentarians voted.

5.5.1 General Composition of the Legislative Assembly and the Legislative Council

The general religious composition of the Legislative Assembly and the Legislative Council mirrored the composition of broader contemporary society. Below is a table of the religious composition of the Legislative Assembly in 1966.

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632 The religious affiliations of the parliamentarians were determined by what their biographies stated in the Australian Dictionary of Biography. If the parliamentarian was not listed in the Australian Dictionary of Biography, then their biography on the New South Wales Parliamentary website was consulted. If this source was unclear or did not mention a religious affiliation, other sources were consulted. As a result, the following statistics of religious affiliation were compiled by myself. As it has already been mentioned, these statistics only show formal religious affiliation, and do not therefore show what the individual personally thought, nor how much the religious affiliation influenced them in their voting, but it is still nevertheless a useful guide to behaviour of the individual, and the corporate body.
Figure 8 Religious Composition of the New South Wales Legislative Assembly, February-March 1966

Of the 94 members, there were 31 Anglicans, 25 Catholics, seven Presbyterians, six Methodists, one Jew, and 23 members whose religious affiliation is unknown. Furthermore, one member (Robert Heffron), has been classified as a Catholic and as a Presbyterian, according to different biographies. These statistics broadly reflect the religious demographics of broader Australian society in 1966. Christianity was by far the dominant religion in Australian society, with Protestantism being larger than Catholicism. The rate of Catholicism in the Legislative Assembly however was higher than the overall general rate of Catholicism in Australian society.

In the Legislative Council the presence of Catholicism was even more pronounced, with Catholicism being the single largest Christian denomination.

633 Here is an example of the difficulty of determining a parliamentarian’s religion. Heffron left the Catholic Church, although his funeral contained Presbyterian/Uniting rite. Heffron described himself according to the Australian Dictionary of Biography as a rationalist after leaving the Church.
Of the 59 members, there were 22 Catholics, 15 Anglicans, three Presbyterians, one Methodist, one Jew, and 16 members whose religious affiliation is unknown. Furthermore, one member (Edna Sirius Roper), has been classified as an Anglican and as a Presbyterian. The Catholics were far superior representatively in the Legislative Council than in the Legislative Assembly. It might seem though that these Catholics in general were not particularly religious as both the Assembly and the Council passed the bill, while the Catechism of the Catholic Church still, even after the Second Vatican Council (1962-1965) recognised Sunday as the Sabbath, and the Sabbath was a day of rest especially for the poor. More importantly concerning the gravity of the decision to approve the bill, one of the debates in the Legislative Assembly had to do with people being economically forced to work on Sundays. It is not until these statistics and religious affiliations are examined more closely does it appear that Catholicism played a significant part in the parliamentary debates; that the Catholic position was reflected in part by the principal participants with a concern for workers’ rights and how the vulnerable in society might be affected by the bill and change in style of life. It is worthwhile noting that during the debates no one mentioned the Catholic Church. A possible reason has to do with party affiliation as seen further below and noted previously.

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5.5.2 Religious Affiliation of the Principal Participants in the Parliamentary Debates

There were a total of 11 different participants in the parliamentary debates on the Sunday Entertainment Bill in the Legislative Assembly. Five were Catholic (Lionel Bowen, Richard Healey, Henry Jensen, Norman Mannix, and Ernest Quinn); three were Anglican (Douglas Darby, David Hunter, and Eric Willis); two were of unknown affiliation (Harold Coates, and Laurie Ferguson); and one was Presbyterian (William Crabtree). Effectively half of the participants were Catholic, a far greater proportion than the Catholic representation in the Assembly. Noticeably, all of the Catholics argued against the bill to a greater or lesser extent. This does not mean that these five Catholics were practicing Catholics, as none of their biographies stated that they were particularly religious. All except Healey ultimately voted against the bill. Healey was also the only Liberal parliamentarian as the four others were Labor. This gives credence to the claim that party rather than religious affiliation had a greater role in the debate. The four Labor Catholic parliamentarians may have voted against the bill because of Labor concerns for workers and not Catholic social welfare teachings. These teachings may have had an effect but they perhaps were not the foremost reasons for voting against the bill. For the other participants, all three Anglicans ultimately voted for the bill; the two unknowns went each way; and the lone Presbyterian voted against the bill. This begins to imply that Catholicism may have been a factor in galvanising votes for one side, but it did not have the numbers.

For the Legislative Council, the sample size is too small to be able to say anything conclusively. There were only four parliamentarians who participated in the debate and each one was from a different religion or denomination: Arthur Bridges (Presbyterian), Mabel Furley (Anglican), Asher Alexander Joel (Jewish), and James Maloney (Catholic). Analysis of the impact of the religious affiliation and voting in the Legislative Council is further hampered by the votes not being recorded. Votes were recorded for the Legislative Assembly.
5.5.3 Religious Affiliation and Voting in the Legislative Assembly

As already mentioned, there were 48 votes for the bill, and 44 votes against the bill. Kevin Ellis (Anglican) and Phillip Norman Ryan (Catholic) did not vote because Ellis was the Speaker, while it is unclear as to Ryan, since no abstention was recorded. Below for ease of comparison, are two tables showing the religious affiliation of those who voted for and against the bill.

![Figure 10 Religious Affiliation of those who Voted for the Sunday Entertainment Bill](image1)

![Figure 10 Religious Affiliation of those who Voted against the Sunday Entertainment Bill](image2)
At first glance it is clear that there is a sectarian divide in how parliamentarians voted. Protestant denominations clearly voted for the bill while Catholics voted against the bill. Of the 31 Anglicans in the Assembly, 25 voted for and five voted against, with the one abstention by the Speaker. It was closer among the other Protestants but the vote in favour still won. Of the seven Presbyterians, five voted in favour and two against; of the six Methodists, four voted in favour and two voted against. Of the 25 Catholics in the Assembly, 22 voted against the bill, two voted for the bill (Richard Healey and Thomas Mead), with Ryan being the unknown abstention. In neither of Healey’s nor Mead’s biographies did it mention that they were particularly religious or devout. It is difficult to say that this was a conscious act or decision by Catholic voters as only three of the 22 Catholic members have recorded in their biographies that they were religious (as seen by involvement in organisations or activities). It is more likely that there are other reasons for why such a large proportion of Catholic members voted in the way in which their Church taught.

It is more likely regarding the Catholic vote that it was not a matter of voting with the Church but with the Labor Party. This seems to confirm that Catholic parliamentarians largely voted along party lines unless given the opportunity to do otherwise such as in the Liberal Party. In this way the concern for workers’ rights was from a Labor perspective and not a Catholic perspective.

It is important to note that the speakers did not present themselves as Catholic, or as representing Catholicism. At most, they were Christians or defending Christians and Christianity, but also, broader society. From previous sections it is also clear that they did use religious arguments to argue against the bill. Mannix invoked the uniqueness of Sunday while Bowen rallied for the parliamentarians to recognise their moral responsibility in helping society rear its young. Both of these sentiments were echoed by Quinn when he claimed that the breakdown of Sunday was causing the current moral breakdown of society which people could witness. While such concerns may reflect post-Second Vatican Council social teachings, at the same time, they represent...
broader Christian social values of corporate morality. The Catholics however, are not unique in this teaching.

While voting against the bill, David Einfeld’s biographies show that he was religiously observant, being involved in numerous Jewish societies. However, since Einfeld did not speak in the debates, it is difficult or impossible to tell what his motivations were in voting.

Thus, there were only broad and vague appeals to religion, or more specifically Christianity. There were no appeals to specific denominations. It was recognised at times in the debate that Australian society was Christian but the claim was not expanded nor explained. There were also no uniquely non-Christian religious arguments. Of the two Jewish parliamentarians, Sydney Einfeld did not speak in the Legislative Assembly, and while Asher Joel did speak in the Legislative Council, his only reference to Judaism was that the law would not affect him personally as much as it might some other parliamentarians.635 There was recognition of the change to a style of life but the religious arguments and sentiments simply did not hold, and it appeared that Catholics while voting in accordance with the teachings of their Church, more likely voted as a result of party affiliation than religious affiliation. This does not say much about their personal beliefs, for both the Labor and Liberal Catholics.

5.6 Conclusion

The examination of the New South Wales parliamentary debate of the Sunday Entertainment Bill in 1966 is a good example of a change in a style of life in Australian society since it concerned the approach taken towards time, namely the day of Sunday. Methodologically the reliance on Hansard as the main primary source is made possible by the techniques of discourse analysis and it is not unprecedented as evident by the Annales school. Recent Australian political studies have completed

similar work such as this case study but on different topics by such people as John Uhr and Anna Crabb.

The secular and religious discourses were far more distinct in the New South Wales Sabbatarianism case study than in the cremation case study. The concerns were much the same, with the secular discourse relying on utilitarianism and practical concerns while the religious discourse made appeals to Christianity. In the New South Wales Sabbatarian discourse, the religious discourse accepted the assumptions of the secular discourse which eventuated in helping the secular discourse succeed by framing the debate in certain parameters. Both discourses utilised the same rhetorical techniques such as *ad populum* appeals, and *ad hominem* attacks. When a parliamentarian operating within the religious discourse made an appeal to the past, they were unwittingly practicing Hervieu-Léger’s theory of historical memory and membership to a community that spanned generations. They saw themselves as a part of a religious community that had survived historically but was now being threatened with a bill for social and religious liberalisation.

The New South Wales case also opened up the question of how much the decision to liberalise Sabbatarian laws in 1966 affected subsequent liberalisation appeals. This was seen in a short section on proposed changes to allow civil process on Sundays in 1984. The reasons given in support of liberalisation by the New South Wales Law Reform Commission were all practical or utilitarian in nature, and when religion was mentioned it was always framed in an individual’s right to practice it so long as it did not affect anyone else and was not negatively affected by anyone else.

The New South Wales Parliament had the best records regarding the religious affiliations of its parliamentarians. As a result, it was seen that Catholics largely voted against liberalising Sundays, which was in accordance with the teachings of the Catholic Church. However, there was a stronger correlation between opposing the bill and being a Labor parliamentarian with a correlation of one hundred percent. As a result, it is more likely that Catholics voted against the bill in accordance with Labor’s political platform rather than the Catholic Church’s teachings.
In the next chapter, the cases of South Australia, Victoria, and Western Australia are examined. They mirror major aspects of the New South Wales case study. The Sabbatarian case study shows that the secularisation of Sundays was challenged by religious parliamentarians with religious arguments and appeals, but these were ultimately ineffective when contrasted with practical and utilitarian concerns.
CHAPTER 6 – SABBATARIANISM II: SOUTH AUSTRALIA, VICTORIA, AND WESTERN AUSTRALIA

This chapter continues the Sabbatarian case study as it examines the liberalisation of Sabbatarian laws in South Australia, Victoria, and Western Australia. Victoria is the only state where an analysis of the religious affiliations of the parliamentarians is done. The debates in these states at times were not as protracted as the debate in New South Wales. As a result, three states are examined in this chapter: two which liberalised around the time as New South Wales did, and one state that liberalised some 30 years later. Secular and religious discourses existed in all three states just as in New South Wales. In all three states practical concerns were dominant and ultimately won the debate. The religious discourse was not aided or enhanced by accepting the assumptions the secular discourse made. Discourse analysis and the theories of Hervieu-Léger and Brown are the methodological aids. This approach of examining three states is also possible due to the use of Hansard as a source, since it is not unprecedented when examining the work of such Annales historians as Vovelle or Le Roy Ladurie. Each state’s Hansard is consulted along with the bills. In this way, the series of sources is limited but the possibility to do work is not limited as Vovelle and Le Roy Ladurie have demonstrated methodologies that along with discourse analysis make it possible to do historical research with limited sources.

South Australia and Victoria were chosen as those states liberalised their Sabbatarian laws at approximately the same time as New South Wales, while Western Australia was chosen since it was the last state to do so. New South Wales, South Australia, and Victoria were states that were a part of a liberalising trend in the 1960s; a time that saw a number of significant social changes. This is not to say that this thesis argues the changes were due to the zeitgeist, but it is important to note the timing of the changes. Working chronologically nevertheless, the first case study is South Australia.

6.1 South Australia, 1967
Religion was a more serious concern in South Australia than in New South Wales. Nevertheless practical concerns dominated the debate on the bill. The context in South Australia helped this with some believing that the bill was being rushed through before the upcoming state election, and that the Premier, Donald Dunstan, was introducing significant social legislation via safety regulations. The issue that brought the situation to light was a fire in a club in Adelaide where there were insufficient emergency and safety measures. For clubs in the future these safety measures would need to be mandatory, but the issue of Sunday entertainment, or Sabbatarianism, also arose as Sunday entertainment in various forms had been practiced for years while technically illegal. Practical and utilitarian concerns for public entertainment venues trumped any social or religious concerns to do with the Sabbath. Discourse analysis of the debate in South Australia shows this. Throughout the South Australian case study, it was sought by the Premier to pass the bill before the last day of parliament before the state election; and from the very beginning the support of the churches was sought. The South Australian case study is examined below.

6.1.1 Introduction

Donald Dunstan, the Premier of South Australia and the first Labor Premier in almost 30 years, introduced the *Places of Public Entertainment Act Amendment Bill* on 17 October 1967. Dunstan began by saying that the amendment bill was designed “to remedy a number of serious abuses that have grown up in relation to the Places of Public Entertainment Act and to liberalize, to some extent, the law relating to entertainment on Sundays.” These abuses were similar to some of those in New South Wales, where clubs circumvented the law by requiring patrons to purchase memberships at the door, thus becoming private clubs. Dunstan provided a case of a discotheque closing only to reopen at a later date in such a way. What brought the case to light was that there was a fire on the premises. As a result, Dunstan claimed that “legislation is urgently needed to avert a major tragedy”.

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The burning discotheque however was the straw that broke the camel’s back. Dunstan said that the Government was also acting because there were reports from businesses that if nothing was done to punish the rogue businesses which acted in this way, by flouting public entertainment laws, they would act in the same way and break the law in order to remain competitive.  

Thus, immediately there were practical and utilitarian concerns, such as public safety and an uncompetitive business environment.

Religion was a second consideration and concern, after the practical and public concerns. In the months prior to introducing the amendment bill, religious institutions were consulted about the proposal. Dunstan said that he spoke to the Bishop of Adelaide about the bill, and from June until September, the churches had the opportunity to contact the Government. It is interesting to highlight that the denomination of the Bishop was not mentioned by Dunstan, nor the denominations that disagreed with the bill. It is unclear whether this was a result of South Australia’s liberal religious history that dissenters were accepted and respected by not being identified. According to Dunstan, while not all the churches were united, a majority agreed with the Tasmanian *Sunday Observance Act* which had been passed earlier that year and which was the basis of the South Australian amendment bill.

The concern and consideration for religion is recognised in the bill as well. Dunstan’s overall summary of the bill was:

> The provisions relating to the conduct of public entertainment on Sundays liberalize the present position but without impairing the rights of those who regard Sunday as a day of rest. Thus the Act prohibits sporting exhibitions that are likely to draw large crowds and cause appreciable disturbance. Although a permit may be granted by the Minister authorizing the permittee to hold an entertainment which is otherwise

641 South Australia, House of Assembly 1967, *Debates*, volume 3, 17 October 1967, pp.2710-2711. The *Sunday Observance Act 1967* (Tas) was sought in the National Library of Australia in Canberra, but the Hansard records for Tasmania were incomplete and the debates and the Act could not be accessed as they were not there. Therefore, South Australia was the third state to make legislative changes on Sunday entertainment, but it is the second state examined in this case study as a result of incomplete archives.
forbidden on a Sunday, the Minister is required before granting a permit to consider whether the susceptibilities of persons in society generally or in the vicinity of the proposed entertainment are likely to be injured by the granting of the permit, and whether the quiet of the neighbourhood will be unduly disturbed. The Bill thus pursues a middle course which should be to the satisfaction of all sections of the community.642

The utilitarianism and practicality of the bill is clear. In trying to find a middle course, the Government sought to please as many groups of people as possible. The bill allowed the South Australian parliament to avoid to some extent, the issue, so important in New South Wales, of the discretionary power of the Minister. The criterion was added that the Minister had to consider the susceptibilities of the community. What these were was not mentioned. Religion was to be respected, although accommodation was given so that those who did not believe could pursue their leisure in their own way. If there was any doubt as to the 1780 Act’s relevancy, Dunstan was quick to dismiss it.

A new subsection (2) is inserted which provides that the Sunday Observance Act, 1780, does not apply in South Australia. It is considered that the Act probably does not apply in any case but this subsection puts the matter beyond doubt.643

Before William Field Nankivell secured the debate’s adjournment, Dunstan listed some of the clauses that would have the greatest impact on the law. The ones that concern the thesis are: that Sunday entertainment would be prohibited from 3 a.m. until 1 p.m.; activities that included a large number of noisy people, and sports where gambling was associated would be prohibited, although the Minister could prohibit more via the Government Gazette; the Minister could allow these activities to go ahead as well; and cinemas were to be closed from 6 p.m. until 8 p.m., due to churches having their evening services at that time.644 These are effectively the social customs that would change with the bill. It was also noted that there would be

643 South Australia, House of Assembly 1967, Debates, volume 3, 17 October 1967, p.2712. It is interesting that Dunstan mentioned an unnamed group tried to enforce the 1780 law but they did not execute. It raises the question whether this was a religious group or not, and if so, what were the group’s specific religious beliefs?
difficulties as different groups of people would clash over wanting to do different things in the same vicinity. There are similarities with the legislation in New South Wales, although religion in the form of religious services in South Australia was accorded more respect by the bill’s recognition of evening services and the suspension of cinema screenings at that time.645

6.1.2 Second Reading

The second reading for the bill in the House of Assembly occurred on 19 October 1967. The principal features of the debate were that the Premier was trying to connect two unrelated bills, and try to get the approval of the churches. Some argued that the churches had not had enough time to comprehend the bill as they thought the bill was based on the Tasmanian legislation, but the South Australian legislation was quite different. The three speakers that day were: William Nankivell, Samuel James Lawn, and Glen Gardner Pearson.

Like many parliamentarians, Nankivell supported the reading but there were many provisions about which he was not happy.646 In his summary, Nankivell claimed that in passing the bill they would need to satisfy themselves that they were “looking after the safety, interests, and well-being of the people: we shall have substantially extended liberties.”647 Liberties were at the centre of Nankivell’s concerns. From the very beginning he was concerned that the bill had not been heralded enough;648 and that the Tasmanian legislation sought to protect leisure, while the South Australian bill sought to extend leisure.649

Nankivell was not silent on religion, stating his own personal religious views. Nankivell claimed that he was horrified when one significant denomination in his words, although unnamed, said that there was nothing significant about Sunday, as all days were equal. He claimed that he was horrified because that was not how Sunday

was traditionally viewed.\textsuperscript{650} In this passage, it is possible to see the magnitude of the social and religious change undergone, and people’s reactions to it. This new view of Sunday as any other day of the week, with nothing intrinsically special about it was opposed by people such as Nankivell. It is an example of Hervieu-Léger’s theory of historical memory and intergenerational society. Nankivell understood society in terms of links to the past through chains of memory, and was concerned about changing social practices, which the bill would hasten. Nankivell did acknowledge, however, that people in essential services had to work on Sundays.\textsuperscript{651}

Lawn was one of the few parliamentarians who had religion at the centre of his speech. While in favour of the bill, his concerns were practical. Lawn summarised his position: “I do not wish to see Sunday mornings disturbed by the holding of sporting activities. Sunday mornings should be quiet and peaceful, and every opportunity should be provided for people to attend their various churches if they wish, without being disturbed by other activities.”\textsuperscript{652} Lawn believed that the bill met the wishes of the churches.\textsuperscript{653} Therefore, there was not much to which Lawn could object to so long as a number of practical concerns were met.

Pearson objected to the bill and to Dunstan’s methods regarding the way in which he proposed it. Pearson claimed that the Premier was trying to link public safety and Sunday, thus trying to get the churches to tacitly approve the bill, and in an unrealistic timeframe.\textsuperscript{654} Pearson pointed out that the Methodists were meeting that week, and the Presbyterians were the major church who disagreed with the bill.\textsuperscript{655} Ultimately, Pearson said he would support the bill in its essential matters, although he objected to clause 6, even though he believed that there should be some relaxation of the restriction placed on activities on Sunday.\textsuperscript{656}

The second reading in the House of Assembly continued on 24 October 1967. The debate involved more speakers and topics, although the debate reflected that most of the Parliament opposed the bill, at least to some aspects concerning Sunday entertainment. Some parliamentarians expressed concern with the rate of progress of the bill, with some thinking it was because of the upcoming state election. Another concerns was the degree to which the legislation reflected the Tasmanian legislation on which it was based. William Allan Rodda made the greatest contribution on the issue of ministerial discretion. Rodda succinctly summarised his opposition to ministerial power, while channelling the sentiments of many people and their views of the law.

I subscribe to the recent report in the *Advertiser* of the Methodist Conference to the effect that any law in regard to Sunday activity should be readily understood, clearly enforceable, and not subject to the personal factors involved in a permit system interpreted and administered by a Minister without reference to Parliament. That is the real crux of the matter: a large responsibility would be placed on the Minister.

Nonetheless, South Australian members of Parliament echoed their New South Wales counterparts in the debate. While there were secular and religious arguments for Sabbatarianism, the secular arguments were more influential.

Another feature was that secular arguments for Sabbatarianism were more often than not simply assertions without any real supporting evidence, such as the argument that regular rest was good for the health of the community. Therefore, secular reasons were used to justify the preservation of a religious institution. This was seen when speakers such as Rodda claimed that there was something to be said for working six days a week and then resting on the seventh day. Gabriel Alexander Bywaters also claimed that, regardless of one’s religious beliefs, everyone would benefit from

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658 Several speakers mentioned this point, therefore it can rather easily be found in South Australia, House of Assembly 1967, *Debates*, volume 3, 24 October 1967, pp.2941-2960 *passim*.
taking it easy one day a week. William McAnaney acknowledged an individual’s right to choice, but claimed that some forms of entertainment would attract large crowds necessitating others to work, such as a Test cricket match at the Adelaide Oval. Joyce Steele, one of only two women in the House of Assembly at the time, and the only one to speak on the bill, added that the groundskeeper deserved his rest too. It is important to note that none of these were specifically reasoned arguments, but rather, assertions.

A discourse analysis of this debate needs to note this as these assumptions were either accepted or rejected by other parliamentarians. The debate to some extent occurred in this zone of accepting or rejecting these assumptions and assertions. Meanwhile, religious arguments or concerns, even when not explicitly invoked, focused on the community and not the individual: they had some altruistic element to them, even if they were cliché such as the moral corruption of the young.

Hugh Richard Hudson was the first to invoke the argument regarding the ‘corruption of the young’ to oppose Sunday entertainment. Hudson deplored how he had repeatedly seen teenagers walking around aimlessly on the streets on Sunday afternoons and reflected that it was worrying local residents. Hudson believed that if certain kinds of entertainment were made available that did not interfere with other individuals, especially their right to worship, then this would be good for young people. At the time of the debate, Bywaters believed that the young were already being subjected to unnecessary dangers.

If the state was to have a role in the moral protection of the young, this role extended to the right for the young to be protected from future harm. Howard Huntley Shannon thought that a commercialised Sunday would simply extend the opportunity for young people, and society, to be exposed to these dangers. As Shannon said:

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Once we establish the principle of a commercialized Sunday, we create vested interests that will be hard to break…. I see the measure as the creator of great ills. It will be a cancer in our body corporate that will be hard to cut out. These provisions will be engraved as our way of life and we will say that we are not going to do without them.666

Shannon did not want a commercialised Sunday to affect the ability for people to socialise on Sunday (presumably socialise in the traditional ways), and he advised the young to save for their futures, as it was unlikely that Sunday would change greatly.667

The significance of the bill was not lost on the parliamentarians. It was not only the moral health of the young that was at stake for some parliamentarians, but also the way in which society functioned. Berthold Herbert Teusner claimed that the proposed bill went against the idea of the Christian community in which they lived:

I said at the outset that I believed this Bill, if passed, might, through its permit system, be the thin edge of the wedge for the complete commercialization of Sunday, and I oppose that…in a Christian community such as we have in this State…Sunday should be treated as a day of rest and worship.668

Teusner was appealing to a connection to a past society based on a collective, connecting historical memory, as Hervieu-Léger theorised. The religious values of parliamentarians, if not explicitly expressed, inclined them to oppose Sunday entertainment because it would fundamentally change the social fabric; in other words, it was a significant change in a style of life. Through the lenses of religion the consequences of the bill to people were recognised, but religion itself did not influence parliamentarians to ultimately vote for the bill.669 When it came to practical considerations, very few maintained their moral principles. As Dunstan claimed in his second reading speech, it was only the Churches of Christ and the Lutheran Church that told him that “there should be no change on Sundays regardless of the problems that faced the Government, and they made no specific suggestions as to how the

669 It was not recorded how the parliamentarians voted.
problems should be coped with. They have maintained their position." Religion, in the form of Christianity, was an ideal to aspire to, and to talk about, but as it is seen below, not to be the basis on which parliamentarians voted.

### 6.1.3 The Committee Stage and the Legislative Council

The legislative process moved quickly in late October and early November, no doubt owing to the impending state election. Hansard recorded that during this period discussion of the bill oscillated between committees and the Legislative Council. Discussions became so heated that on the last day a conference was called between the House of Assembly and the Legislative Council in order to resolve their respective disagreements. The debates in the committees highlighted the concerns expressed in the second reading speeches, while the debates in the Legislative Council largely reiterated those of the House of Assembly, although in a more refined manner.

On 26 October 1967 when the *Places of Public Entertainment Act Amendment Bill* was in committee in the House of Assembly, Dunstan was attacked for deceiving the churches with regard to the exact nature of the bill, and for falsely claiming that there was widespread support among the churches for the bill. Glen Pearson began by claiming that the week before he had received a letter from the South Australian Methodist Conference. He also stated that the Lutheran community was concerned about it. Pearson’s concerns were that if sport was played in metropolitan areas, a large crowd of people in a confined space would disturb nearby worshippers. This would be a clash of different styles of life in society. Furthermore, Pearson claimed that owing to the major social changes that the bill would cause, the churches had asked for more time to discuss it, especially as several churches, including the Methodists, believed that they were ‘sold short’ on the bill.

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673 South Australia, House of Assembly 1967, *Debates*, volume 3, 26 October 1967, p.3098. Pearson himself said that he had no reservations about non-commercial forms of relaxation, but that he objected strongly to allowing commercialised activity to develop. p.3098. Hence again, the concern about commercialisation.
Berthold Teusner said that he knew various church bodies had made representations to the Premier about the bill and that improvements were suggested by the churches, as they did not overwhelmingly support the bill as Dunstan originally claimed. Robin Rhodes Millhouse accused Dunstan of simply using the churches for political gain. Dunstan claimed that he was disgusted by the accusations, and added that he negotiated with the churches sincerely and that he had tried to do an effective job. Regarding the Methodists, Dunstan claimed that their situation was more nuanced since the Church “wished to keep Sunday as far as possible a family day and to retain the right for people not to have to work, although if they wished to work that was a different matter.” Clause 6, the clause which concerned Sunday entertainment passed 19 votes to 12. This result is discussed more in the analysis below.

The second reading of the bill in the Legislative Council was interrupted by adjournments. It began on 31 October 1967 and only Albert James Shard spoke before Renfrey Curgenven DeGaris secured adjournment. It continued the following day with DeGaris speaking and being adjourned by Colin Davis Rowe. These adjournments were summaries of the issues surrounding the bill.

The second reading debates on 2 November 1967 involved a significant amount of religious discourse, and it featured from the very beginning when Rowe immediately acknowledged that the bill addressed social and moral questions. Rowe was adamant about the role of religion in society and politics: this was perhaps due to his position on a number of Methodist missionary boards. Rowe saw his fellow parliamentarians as Christians. His evidence was based on the fact that parliamentarians took an oath of allegiance by swearing on the Bible when elected. Rowe did not believe that there was a large amount of public support for the bill as there was a large amount of support to oppose the bill. Despite this, Rowe

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recognised that fewer people were observing Christianity, although he did not think the parliamentarians were giving churches due consideration for the social work that they did.683

Jessie Mary Cooper, the sole female representative in the Legislative Council, expanded on Rowe’s comment about public support when she said after claiming she had asked several hundred people, that, “Nobody wants commercial sport or entertainment: to many people it is anathema.”684 If her statement is to be believed then it was an ad populum argument that people did not want a particular style of life to change. However, Cooper nevertheless recognised that the social situation had changed: “Not many years ago Sunday was almost entirely conducted in conformity with the requirements of the Christian church. Today, that situation is certainly quite different.”685

Maynard Boyd Dawkins was the third and last parliamentarian to speak on the bill in a significant way that reflected his participation in the religious discourse. Dawkins claimed that even though it was 5:23 a.m. and he did not want to continue for long and he was not opposed to change, in the case of moral legislation, changes should be made with caution, and the Government should be completely open with the churches.686 He claimed church people of standing had told him that they had been fooled by the legislation.687 Dawkins’s statements assumed a tremendous amount of importance for the role of religion in the issue. This is discussed in general below in the analysis.

The remaining speakers did mention religion in their speeches; however it was not necessarily a central issue. Arthur Mornington Whyte stated that he thought the churches were inconsistent and could have been more forceful, although he admitted they could have been misled regarding the bill.688 While Whyte encouraged sport, he was “very much opposed to the commercialization of sport and to other entertainment

on Sunday.” Leslie Rupert Hart argued that Sunday entertainment should not start until 2 p.m. due to logistical reasons that many people may have by attending church in the morning and then going to a football match. Hart’s secular concerns were how the bill would affect football clubs. Frank Jacques Potter simply claimed that an activity could occur in any licensed place of entertainment in South Australia on a Sunday if the Minister in an administrative act gave his consent, thereby demonstrating his concern with practicalities. Shard in his conclusion mentioned the churches, but they came a second to social pragmatism and the recognition that changes in a style of life were inevitable:

I respect the points of view of churches of all denominations, but the waters will not be kept back: the pressures are too great. By phasing in the change gradually, as the Bill does, we will be able to take action if some aspect does not work out satisfactorily.

The events of the rest of the day happened in quick succession. That very morning the bill went into committee in the Legislative Council where the bill passed its third reading, after debate about dual control between the Minister and local councils. A conference had to be called because the House of Assembly disagreed with the Council’s amendment. Stanley Charles Bevan, Hart, Potter, Shard and Whyte were the Council’s delegates at the conference, where the Assembly agreed to the motions of the conference. Later that day before the prorogation of parliament, the Legislative Council amendment was debated and it passed 14 votes to 13 in the House of Assembly.

6.1.4 Analysis

What is clear from an analysis of the debate in South Australia regarding the liberalising of Sabbatarian laws is not necessarily whether it should have happened,
although some did question or raise this issue, but the speed with which these changes were occurring. The speed of change raises questions of changes to styles of life, but it also invokes Hervieu-Léger and historical memory and continuity, and Brown’s theory of secularity and religiosity being continually in flux in society. The analysis of South Australia is different to the previous analyses in this thesis. With the exception of Victoria, as provided later in this chapter, the religious affiliations of parliamentarians are not examined. This is due to the difficulty of ascertaining the religious affiliation for even a substantial number of parliamentarians. This is the result of a lack of prior research by previous historians; the fact that the Parliament of South Australia has never recorded the religious affiliations of its members; and that with a decline in sectarianism, religious affiliation declined in importance, and therefore the need to record those affiliations. Religious affiliation can be determined by statements that the parliamentarians made, but as it is a point of this analysis, a statement is not an indication of personal belief nor how and what the parliamentarian will do. Voting patterns, now along party lines, along with a discourse analysis are possible.

It is immediately clear that, for the two votes that occurred and were recorded, the parliamentarians voted along parliamentary party lines. In the first vote during the committee stage the controversial clause 6 passed 19 votes to 12. The 19 votes in favour of the bill consisted of 16 from the Labor Party, two from the Liberal and Country League (John Coumbe and William McAnaney), and one vote was from an Independent (Percival Quirke). All 12 votes against the bill came from the Liberal and Country League with the exception of Steele Hall who was listed as a Liberal, and John Freebairn and Howard Shannon whose political affiliations were not listed. The Opposition’s claims that the Labor Government was trying to push through the bill before the upcoming state election might have some credence since Labor voted for it along party lines. No Labor parliamentarian voted against the bill, although there were two abstentions: Lindsey Gordon Riches and John Richard Ryan.

697 Private email correspondence from the Clerk’s Office at the Parliament of South Australia, 5 May 2014.
698 Riches was the Speaker in the House of Assembly therefore he could not have voted, which leaves only one absent voter: Ryan.
The discourse in the parliamentary debates in South Australia on the *Places of Public Entertainment Amendment Bill* featured religion, but the debates also largely concerned practical matters. At other times, the matters were practical and non-religious in nature. Fittingly for the bill, one of the most significant matters discussed was the nature of the Sabbath or Sunday. It was acknowledged by all that the traditional view or style of life of Sunday was under challenge from societal changes, but nevertheless there should be a day of rest set aside in the week. As it was noted during the second reading, health arguments were given to support Sunday as a day of rest. In this way, a religious institution was to be supported because of non-religious arguments. The debate was practical in nature because it was not concerned about theoretical matters such as the nature of religion or worship, but about how individuals could achieve more in their lives.

The unique nature of Sunday was challenged by the bill because the bill would allow sporting events and entertainments such as cinemas to open and charge admission. This commercialisation of sport, and commercialisation of Sundays, agitated a number of parliamentarians. It seems that it was the monetary component which agitated the parliamentarians even if they did not admit it. An example of this is Jessie Cooper’s aforementioned claim that she asked several hundred people and discovered that commercialised sport and entertainment on Sundays was anathema to them. She did not say why. While it was acknowledged that some needed to work on Sundays, especially if certain entertainment options were to be allowed, there seemed to be resentment that people would make a profit on the day. This did not only stem from parliamentarians questioning whether the ‘donations’ that were demanded of patrons did in fact go to the charitable causes which were claimed by the entertainment providers. It was fine for someone to play sport with their family, but it was not fine for someone to pay to watch. The same applied to entertainment: private entertainment was fine, but public entertainment was a different proposition.

The second point in how religion played a significant role in the discourse, and on practical matters, was youth morality. The fear was that a commercialised Sunday jeopardised the moral health of the young since they would be exposed to moral dangers. The issue of the moral degeneration of the young was already evident for
some parliamentarians when they claimed that they saw groups of young people walking aimlessly around the streets on Sunday afternoons. Religion was not mentioned as a solution to this supposed problem, but the traditional Sunday restrictions were alluded to in order to prevent the moral degeneration from occurring. A serious concern regarding these young people focused on practical outcomes: there was a fear that young idle people might be corrupted by public entertainments such as films. The positive role of religion was not openly discussed, only vaguely assumed in the propositions, or more correctly, assumptions of the debates. Even the language of moral corruption is heavily religiously influenced. This was a case of how the moral concerns of religion were preserved even if the doctrinal issues of religion had been jettisoned. This is an example of Grace Davie’s theory about belief without belonging: society in a vague sense still believed some moral aspects of the religion, but they did not belong to it in the sense that they went to church or considered themselves explicitly Christian. Parliamentarians were concerned about morals, but they did not always use Christianity in their arguments and appeals.

Practical matters dominated with a consideration of religion relegated to the background where it was acknowledged, but only played a peripheral role in the debate. The appearances of religion in the remaining debates, and the discourse which developed, concerned practical matters, with religion used more as an assertion than a comprehensive argument. Religion, or rather churches, were invoked to oppose the bill by claiming that church services would be affected by football matches in close vicinity or that evening services would be affected by people attending the cinema. It was also asserted that the churches as a whole were purposefully left ignorant as to the true nature of the bill by the Government; and that the Lutherans and the Methodists were independently concerned about the bill and its impacts. These claims were used to curtail or stop the bill, but none of these assertions was a sustained, comprehensive, rational argument. Strictly speaking the appeals were not appeals to authority as the parliamentarians did not invoke the authority of the institutional churches as sources of religious authority when they spoke, but simply referred to the churches as groups in society that would be negatively affected. Sufficient
accommodations along with individual choice circumvented the concerns that were raised.

Whichever way religion was invoked, it competed with non-religious claims, and there are as many examples of secular claims being made, many of which were merely assertions by the parliamentarians. These assertions, just like the religious assertions, had no, or limited, evidence to support them. The secular assertions included public safety, often claimed by the Government to support the introduction of the bill, but questioned by the Opposition in regards to Sunday entertainment; an uncompetitive and uneven business environment, which was not proven, and the values which underpinned this claim were never explicitly articulated; the extension of leisure as opposed to permitting it; ministerial discretion; and the upcoming state election. These secular points were mentioned by parliamentarians, but the parliamentarians did not speak about these points in the same way as they did about youth morality and the unique nature of Sunday were spoken. The mention of these secular points did not need explanations, as they were assumed by most parliamentarians participating in the debate. Religion had a distinct place in the parliamentary discourse whereby it could be discussed and assertions developed using religion as a foundation, but it always had to compete with secular concerns. These secular concerns did not need explanation and the assumptions underlying them were widely acknowledged and accepted. This would seem to indicate a broader acceptance and support for secular values, beliefs, and practices than for their religious equivalents. Ultimately, religion was an important but secondary concern. There was no need to explain secular points as they were widely accepted.

Below the case study is continued with an examination of Victoria. The Victorian case also contains an analysis of the religious affiliations of the parliamentarians. This analysis along with discourse analysis shows that once again secular practical concerns trumped religious reservations about liberalising Sabbatarian laws.

6.2 Victoria, 1967-1968
Similarly to South Australia and New South Wales, Victoria liberalised its Sabbatarian laws at approximately the same time in 1967 and 1968. After initial liberalisation in late 1967, there was an amendment a few months later to overcome practical issues.

6.2.1 The Sunday Entertainment Bill and the Sunday Entertainment (Amendment) Bill

Chief Secretary Arthur Gordon Rylah introduced the Sunday Entertainment Bill on 21 November 1967 “to make provision with respect to the holding or conducting of public entertainment on Sundays and for purposes connected therewith.”\(^{699}\) On 22 November 1967 during his second reading speech, Rylah articulated some of the details of legal restrictions due from the imperial statutes, and the 1958 Theatres Act; the manner in which people circumvented the restrictions by selling programmes and asking for ‘donations’; and the magnitude of the penalties.\(^{700}\) Rylah also detailed the permit system that the Sunday Entertainment Bill entailed, and he concluded by mentioning the urgency of the bill because of the extent in which people were breaking the law.\(^{701}\) Rylah’s attitude on the imperial statute was clear when he described it as “ancient”,\(^{702}\) and that there “can be little doubt that the law on this subject is archaic and confusing. That is probably the understatement of this session.”\(^{703}\) From the very beginning there was an understanding of its effect on the life of Sundays in Victoria.

The bill was next discussed at length on 30 November 1967, where the bill passed the second reading and the committee stages. Patrick Keith Sutton was the first to speak on the matter and while he referred to religion, he also argued that Sunday had long ceased to be “observed on the kill-joy lines that for generation after generation were considered or prescribed to be proper.”\(^{704}\) Due to the law deriving from the times of George III and even Charles II, Sutton attacked Charles II’s character.\(^{705}\) This was a clear rejection by Sutton of the value of an historical continuous link with

seventeenth and eighteenth century English society and, as Hervieu-Léger’s theory articulates, it was a discontinuity. Sutton proceeded to admit that while the ‘donations’ at events on Sundays were strongly enforced, he wanted to acknowledge that the majority of entertainment providers were decent people, although, “Frequently the donation demanded...is of a size grossly beyond the value of the quality of the entertainment provided or the worthiness of the cause that is declared to be served.”

Once these personal bêtes noires were aired, Sutton made two points which were symptomatic of the attitudes to religion (its concerns reduced to practical matters), and modernity (a virtue toward which society should aspire). Firstly, Sutton said concerning religion:

The stipulation that no public entertainment shall be held for profit on a Sunday before 1.30 p.m. seems to ensure that church-going habits will not be impinged upon or interfered with. It is more probable that large numbers of church-goers will welcome and take advantage of the opportunities to attend or to participate in wholesome and regulated entertainment outside the hours fixed for church services.

Secondly, Sutton said concerning modernity:

The purpose of the Bill is to clarify existing laws and to add amendments designed to give the whole code correspondence to modern thinking on a subject which in the past, the not very remote past at that, was prolific of heated controversy. No rational objections of any substance are likely to be revised against it.

The second quote was also the conclusion of Sutton’s speech. Despite some personal quirks, Sutton reflected a practical approach to religion, and the belief that modernity and the progressive changes which it entailed were undoubtedly positive.

Peter Ross-Edwards spoke next, and practical religious concerns were central to his speech. Ross-Edwards began by saying that in Australia “it has for a long time been generally accepted that the community does not object to how people spend Sunday, provided that their activities do not interfere with or annoy other people.” However, “A very large section of the community wishes to retain Sunday as the Sabbath and not merely as a second Saturday”, and he believed that the Minister should keep Sunday as ‘Sunday’ in the real sense of the word. To ensure that the unique nature of Sunday was kept, Ross-Edwards wished that permission for events to start before 1:30 p.m. was only ever granted for truly special events; and for the Minister to ensure that as few people as possible had to work on Sundays. Ross-Edwards’s supported his comments by reference to a discussion he had had with some denominationally representative clergy in Shepparton the previous weekend. They supported the bill on the grounds that it was better to have Sunday entertainment controlled by the Chief Secretary than for it to continue as it had.

Sir John Bloomfield was the last to speak before the bill entered the committee stage. Bloomfield mirrored the previous speakers in his concern about individual residents being disturbed on Sunday, the one quiet day of the week. Bloomfield also referred to Sundays at one point as the Sabbath. The second reading debates concluded on the point of the uniqueness of Sunday.

The most significant point made during the committee stage was made by Bruce James Evans and it concerned youth morality. Evans noted that the legislation authorised films on Sundays, with the exception of “horror” films which were not seen to be in the spirit of the bill. Evans argued to add films with sexual connotations to the list since, while it was fine to show these films during other days of the week, young people were more likely to go to the cinemas on Sundays and see these films without their parents’ knowledge. Evans noted that, generally speaking, many people applauded the Chief Secretary for his stand against obscenity in literature.

therefore he hoped that a similar stand would be sustained in relation to cinema.\textsuperscript{715} A concern for youth morality was not new to the debate about Sunday entertainment, but it was the first time it was mentioned in the Victorian debate. The bill passed the remaining stages of the Legislative Assembly.\textsuperscript{716}

The debate in the Legislative Council reflected the debate that occurred in the Legislative Assembly, however it was far shorter. The bill was introduced for its second reading in the Legislative Council by Rupert James Hamer on 5 December 1967. Hamer’s speech reiterated all the major points and sentiments of Sutton’s second reading speech only a few days before: it mentioned the antiquity of the legislation and how society had changed in 200 years and how the Government recognised this; along with the details of current legislation and the proposed bill.\textsuperscript{717} Adjournment was secured by Douglas George Elliot.\textsuperscript{718}

Douglas Elliot was the first of two speakers to speak on the bill the following day. Elliot recognised that the bill would legitimise a practice that had been common for a number of years. Elliot also called for a broad-minded liberalism, and even progressivism.

There will always be argument about the use and abuse of the Lord’s Day, and we must respect the views of those people who would minimize activity on Sunday out of respect for the Deity. But earlier to-day a Bill was introduced to enable people to consume liquor with their meals on Christmas eve and New Year’s eve if those days happen to fall on Sunday. We must act equally broadmindedly in other directions, and this is what is being done now.\textsuperscript{719}

Ivan Archie Swimburne was the last to speak before the bill entered the committee stage and passed through its remaining stages. Swimburne raised four points: practical concerns about the permit system; entertainment times in the evenings conflicting with church evening services; that the Sabbath was formerly strictly followed; and that now matters would be more honest and entertainment promoters

and the public would not have to engage in subtle arrangements to circumvent the law.\textsuperscript{720}

While the \textit{Sunday Entertainment Bill} was last mentioned on 6 December 1967, the \textit{Sunday Entertainment (Amendment) Bill} was introduced in the Legislative Assembly by Chief Secretary Rylah on 19 March 1968 in order to amend section 5 of the 1967 Act, and solve practical issues that had arisen because of the \textit{Sunday Entertainment Act (1967)}.\textsuperscript{721} James Williamson Manson noted that once the \textit{Sunday Entertainment Act 1967} came into force on 1 March 1968, it was discovered that an event which began on Saturday and continued past midnight into Sunday came under the Act. The amendment bill was to allow such events to continue until 1 a.m. before they came under the Act.\textsuperscript{722}

Debate on the amendment bill was short lived as it passed both houses of parliament by 23 April 1968.\textsuperscript{723} Thomas Campion Trewin in the Legislative Assembly stated that while the Country Party supported the bill, people were increasingly seeking entertainment on Sundays which used to be a day of rest.\textsuperscript{724} After Trewin spoke the bill passed its remaining stages in the Legislative Assembly.\textsuperscript{725}

On 23 April 1968 Douglas Elliot spoke again and echoed Trewin by repeating his own point broadly from a few months before, this time on the change of a style of life, and how a few decades ago people did not even cook on the Sabbath.

\begin{quote}
In to-day’s modern society, this outlook has altered, but I do not think the alteration has occasioned any lack of respect for the Deity. People with various religious beliefs look on the Sabbath in different ways and some are more tolerant than others. Certain religious adherents still do not condone dancing in any shape or form or the playing of any sport except of a very minimal nature on a Sunday. We must respect those people for their beliefs.\textsuperscript{726}
\end{quote}

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The only other religious comment came from the only other speaker, Michael Alastair Clarke, who suggested the time of 2 a.m. instead of 1 a.m. as it was too early, and it was “the time that the churchmen turned in.” These religious comments, statements, and witticisms, competed against Elliot’s concluding non-religious remarks that he did not believe allowing people to drink more on Sunday would cause more road accidents, and that he thought sport was a good outlet for people.

6.2.2 Analysis

The discourse analysis shows that religious discourses were more dominant than in the other cases discussed, although often that they were implicit and in the background. Practical considerations were nevertheless dominant. The secular discourses in the debate mostly took the form of appeals. The charge made by Rylah and Sutton in the Assembly and Hamer in the Council that the law in question was ancient or archaic, therefore necessitating change, was not an argument but a rhetorical device appealing to the idea of modernity. The assumption was that modernity was a shared value among all the parliamentarians.

From this point, the discussion increasingly turned religious. The key assumption was the acknowledgement that society had become less religious in the sense that fewer people went to church on Sundays. This was clear as the discussion revolved around allowing people to do other activities when traditionally they would have been in church. The debate was about reconciling the competing demands of people who wished to be left undisturbed in their worship in church, and those that wished to make noise at such things as football matches and to go to the cinemas. This was a clear change in lifestyles from the time when the laws were first formulated. Sutton for example, sought for the law to reflect reality more correctly, even if it was more secular. The discussion also raised the wider question of the nature of Sunday and the secularisation of time, and here two points were made in the religious discourse.

The first point regarding the secularisation of time relied, as it did in South Australia, on the notion of the uniqueness of Sunday. In the committee stage Bloomfield noted the concern that individuals did not want to be disturbed on Sunday, or the one quiet day of the week. Bloomfield also referred to Sunday as the Sabbath at one point. While Bloomfield did not argue at length, he posited a point relying on religion. The reason Sunday was considered unique was because of its association as the Sabbath in Christianity. References to Sunday as ‘the quiet day of the week’ derived from fewer people working on Sunday due to it being the Sabbath. Bloomfield did not list reasons for the uniqueness of Sunday, but all of this is implied, including his Christian sympathies in his argument. It is clear that Bloomfield consistently used language with religious associations throughout his speech, even if he did not openly admit it.

Douglas Elliot used religious language alongside his progressive disposition and religious liberalism. In the quotation in the previous section, Elliot referred to Sunday as the Lord’s Day, a Christian rendering of the day, before referring to Sunday as Sunday in the second part of the sentence. During his amendment bill speech he referred to it as the Sabbath. While it is not a sign of religiosity on Elliot’s behalf, it is at least a recognition by Elliot of the importance of Christianity to contemporary society. Furthermore, it was an expression of liberalism since Elliot acknowledged that not everyone shared the same views towards Sunday, but respect was still required, citing in his amendment bill speech, that there were still some groups that advocated no dancing on the day.

A final point to make about Elliot’s use of religious language was his use of the word ‘Deity’. It is unclear whether he meant anything particular by using this term, such as associations with Freemasonry, or he simply sought a neutral term to describe God. In that case he could have simply said ‘God’. It is at least an interesting point whose full meaning may never be known.

Associated with this discourse of Sunday as an unique day was the discourse that Sunday should not be commercialised. Ross-Edwards expressed this concern when he said that many people did not want Sunday to be a second Saturday, but to keep
Sunday as the Sabbath. The reference of Sunday as the Sabbath is clear that there is a religious dimension to Ross-Edwards’s point, speech and argument. Commercialisation was a challenge to a sacred day and way of life. Presumably, if the parliamentarians were religious this would not be allowed to happen.

A final point needs to be made, which echoed arguments made in both the New South Wales and South Australian debates: the issue of youth morality. In Victoria this argument was expressed by Bruce Evans and took the familiar form of films and cinemas opening on Sundays. It is more likely that a concern for the collective morality of the young came from a religious position than a secular position. Even so, Evans’s argument was that the young were more likely to see films on Sundays that their parents would not know about. This was a practical concern. The reasoning was secular, but if the concern was that the films dealt with ‘inappropriate’ subjects, it was more likely that uneasiness regarding these subjects had its roots in religious and not secular beliefs. Evans’s declared support for Chief Secretary Rylah’s opposition to obscenity in literature and his desire for Rylah to continue the opposition to films was further evidence that there was a religious underpinning to what Evans said in the debate. Therefore the discourse on youth morality was a religious discourse, and this is further supported by the analysis of the religious affiliations of parliamentarians below.

6.2.3 Religious Affiliations

The religious affiliations of the parliamentarians in the Legislative Assembly and the Legislative Council add a dimension to the discourse analysis above. The religious affiliations show that some of the most prominent speakers in the debates were religious, even though they did not make references to their own religiosity. The parliamentarians as a group were at least religiously diverse in their own ways.

729 The religious affiliations of the Victorian parliamentarians was predominantly determined by viewing their biographies on the Parliament of Victoria’s ‘Re-member’ section of its website. In most cases the religious affiliation of the parliamentarian was listed along with other biographical details. As with all religious affiliations, the religious affiliation is not a sign of religiosity, nor that their religiosity directly influenced their behaviour as parliamentarians.
The religious affiliations for the 73 members of the Legislative Assembly at the time of the two bills are shown below.

![Pie chart showing religious affiliations of Legislative Assembly members]

The religious affiliations above are broadly reflective of the religious affiliations of society at the time, with the Church of England dominant, and all major Christian denominations represented. There was also one non-Christian representative, the Jewish parliamentarian Walter Jona, although it is unfortunate that he did not speak

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730 The Parliament of Victoria site listed Church of England and not Anglican in its biographical details, so the term is used in this analysis, even though Anglican is used in the analysis in New South Wales.

731 The Uniting Church did not formerly come into existence in Australia until 1977, 10 years after the parliamentary debates in question. The term Uniting Church was used by the Parliament of Victoria website anachronistically. The term was used in the Legislative Council, so too is the term Uniting Church used in the Victorian analysis of religious affiliations.
on either of the two bills, where he could have possibly offered a non-Christian, albeit still Judeo-Christian, perspective on the two bills.

Of all seven parliamentarians from the Legislative Assembly who spoke on either of the two bills, it is only Arthur Rylah’s religious affiliation that is unknown. Of the six other speakers, four were members of the Church of England (Bloomfield, Evans, Ross-Edwards and Trewin); while Sutton was a Catholic, and Manson was described as the sole ‘Presbyterian/Uniting’ member. Of these, Evans, Trewin and Sutton can be deemed religious as they were listed as holding various church positions, such as warden.

Evans, Sutton, Ross-Edwards, and Rylah were the principal speakers. Evans’s appeal on youth morality casts a different shadow now that it is known that he was personally committed to his faith. While Evans did not admit it, his concern may have been partly based on religious conviction. As noted in the foregoing analysis, Evans did not mention religion in his crusade against obscenity and advocacy for protecting the young from moral dangers.

Sutton was the only Labor politician to speak on either of the two bills. It is likely that Sutton’s Catholicism had little influence on his behaviour as the only time that he mentioned religion was in relation to the practical matter of ensuring that Sunday entertainments did not disturb worshippers. Since this was a broad concern, it is not possible to ascribe this to his Catholicism.

Religious affiliation does not add to or change the discourse analysis findings regarding Ross-Edwards. It is not known if his concerns about the commercialisation of Sunday were due to the conservatism of the Country Party or the conservatism of the Church of England, of which he was a member – or perhaps a combination of the two. The unknown religious affiliation of Rylah does not necessarily add an extra dimension since having no formal religious affiliation does not mean a person was irreligious or not spiritual. It may explain why Rylah did not mention religion in his speech.
Therefore, in the Legislative Assembly, it is difficult to ascertain the extent to which the religious affiliation of the parliamentarians, and their level of commitment to their faiths, influenced the various speakers. None of the parliamentarians acknowledged their faiths, and while it can be inferred that it had an influence on them it cannot be explicitly demonstrated. If religion was mentioned, it was often in the context of practical matters, and it dealt with concerns which were non-religious.

The religious affiliations of the 36 members of the Legislative Council at the time of the two bills are shown below.

![Figure 13 Religious Affiliations of the Legislative Council](image)

There were eight members of the Church of England, six Presbyterians, five Methodists and five members of the Uniting Church, three Catholics, one Baptist, and there were eight members whose religious affiliation was marked as ‘Unknown’. These religious affiliations, much like those in the Legislative Assembly, reflect the broader religious diversity of society, and in some ways more so since there was no Christian denomination which dominated, unlike the Church of England in the Legislative Assembly.

Only four members spoke on either of the two bills. Two were members of the Church of England (Clarke and Hamer), one was a member of the Uniting Church
(Swinburne), and the remaining member’s (Elliot) religious affiliation was unknown, although it is known that he was religiously liberal minded and progressive.

Analysing the religious affiliations of the members of the Legislative Council is of limited value as none of the four speakers were identified as religious according to their biographies on the Parliament of Victoria website. The principal speakers on the two bills in the Legislative Council were Hamer and Elliot.

There is nothing in Hamer’s nominal adherence to the Church of England to suggest that that adherence coloured the comments he made in his speeches in the Legislative Council on the two bills. His membership of the Liberal Party can also similarly viewed since the Liberals held 18 of the 36 seats, and the Country Party a further nine, giving the conservatives a commanding majority. Such majorities can lead some people to take liberties in opposing legislation, where they feel strongly and not have to be worried about repercussions, but it is unlikely that this was the reason for why Hamer regarded the Acts in low esteem.

Elliot is the final speaker whose religious affiliation needs analysis in regard to his speeches. The lack of formal religious affiliations may explain his religious liberalism since he was not tied to any dogma or religious bias, and it may explain his general respect for Christianity in society: while he himself might not have been religious, he recognised that other people were so he duly respected them. The absence of a formal religious affiliation also explains why Elliot made the ‘Deity’ references. With no formal personal belief in God or a supernatural force, Elliot was free to refer to such forces in general terms, which to some may be seen as slightly irreligious. As one of the nine Labor Councillors however, it may have been a person in a minority speaking his mind because he did not have anything to lose since the bills could easily pass with the conservative vote.

The Victorian case study has illustrated that, despite religious diversity, the discourses surrounding changes to Sunday entertainment were largely practical in

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732 It was much the same case in the Legislative Assembly, where of the 73 seats the Liberal Party alone held 44, and the Country Party 12. The Australian Labor Party held 16 seats, and the remaining seat was held by a Labor-leaning Independent.
nature and religious discourses competed with secular discourses. The arguments tended in reality often to be appeals. Some themes which appeared in South Australia or New South Wales also appeared in Victoria, such as the uniqueness of Sunday and the dread of commercialisation of Sunday. Religious affiliations did not have a great influence, perhaps due to the commanding majority of the Liberal Party, even without the aid of the Country Party. There were peculiarities to Victoria such as Douglas Elliot as some of his comments were the most explicit and unique to appear in Hansard in any of the states.

Below the case of Western Australia is examined. It was selected because it was the last state to liberalise in 1997, some 30 years after New South Wales, Tasmania, South Australia, and Victoria.

6.3 Western Australia, 1997

The West Australian case of Sunday entertainment, in the form of the *Sunday Observance Laws Amendment and Repeal Bill 1997* is interesting due to its lateness compared to the other states, and because the debate was short. This may be due to the 1990s in Australia being far more progressive in terms of social mores and religious tolerance than the 1960s, alongside economic changes that had occurred. Before concluding the case study on Sunday entertainment, Western Australia is briefly examined below.

6.3.1 The Sunday Observance Laws Amendment and Repeal Bill

The *Sunday Observance Laws Amendment and Repeal Bill 1997* was first introduced to the Legislative Council on 15 October 1997. The bill also sought to allow judicial acts to occur on Sundays. The second reading and all remaining stages were recorded as occurring on 20 November 1997, thus, the bill had a relatively fast progression through the Legislative Council. Nicholas David Griffiths commenced

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733 The West Australian State Parliament discussed the *Sunday Entertainments Bill* in 1979 which became an Act, however this concerned a continuation of Sunday entertainment or Sabbatarian restrictions.

proceedings and he did not make any religious argument whatsoever. He did make religious references several times such as being ‘born again’ but the context made it somewhat unclear whether it was meant in the religious sense.\textsuperscript{735} More time was spent by Griffiths either making fun of the 1677 Act that was being repealed, or, explaining that even though he was in the Labor Party, he was conservative when it came to changing social legislation especially when it was 320 years old.\textsuperscript{736} Griffiths in his own way recognised the great change in style of life that had occurred in this time, and that society was different to such an extent that it was almost effectively discontinuous from an historical memory.

Helen Hodgson spoke next and her practical stance can be summarised in her statement that while some argue whether the Act was in the Statute Books or not, it was better to repeal than continue to argue about it.\textsuperscript{737} Hodgson had other practical reasons for supporting the bill, some of which had already been dealt with in other states such as allowing courts to operate on Sundays. This would lead to great legislative, legal and judicial efficiencies.\textsuperscript{738} In a sign that Hodgson was not simply indifferent to religion but perhaps opposed to religion, she said that they could not rely on religious arguments for Sunday to be the unique day of the week, although she did not proceed to expand on that.\textsuperscript{739} The assumptions surrounding this statement are examined in the analytical section below.

The remainder of the discussion of the bill in the Legislative Council that day either concerned auxiliary issues or practical legal matters. Peter Gilbert da Conceiciao Foss was the next to speak before the bill entered the committee stage. However, Foss only spoke about constitutional history and the Glorious Revolution. He did mention the religious intolerances of that time and how they affected the creation of the Act, however he did not mention contemporary religion.\textsuperscript{740} It is assumed that Foss spoke in such a way in part to highlight the changed religious circumstances of West

\textsuperscript{735} Western Australia, Legislative Council 1997, \textit{Debates}, volume 9, 20 November 1997, p.8311.
\textsuperscript{737} Western Australia, Legislative Council 1997, \textit{Debates}, volume 9, 20 November 1997, p.8313.
\textsuperscript{738} Western Australia, Legislative Council 1997, \textit{Debates}, volume 9, 20 November 1997, p.8313.
\textsuperscript{739} Western Australia, Legislative Council 1997, \textit{Debates}, volume 9, 20 November 1997, p.8313.
Australian society in 1997 to that of seventeenth century England. The committee stage itself was short and the three previous speakers spoke again but this time the discussion was confined to the issues of retrospectivity in the law and its application to the bill.\footnote{Western Australia, Legislative Council 1997, \textit{Debates}, volume 9, 20 November 1997, pp.8315-8317.} The bill passed with no amendments and the bill was read a third time.\footnote{Western Australia, Legislative Council 1997, \textit{Debates}, volume 9, 20 November 1997, p.8317.}

The bill was introduced to the Legislative Assembly on the same day by Antony Kevin Royston Prince. Prince was direct in his descriptions of the bill and associated issues by saying that the Western Australian Law Reform Commission had recommended the 1677 Act to be repealed; and that the bill would do this alongside allowing judicial acts on Sundays by an amendment to the \textit{Interpretations Act (1984)}, along with retrospectivity applying in the matter.\footnote{Western Australia, Legislative Assembly 1997, \textit{Debates}, volume 9, 20 November 1997, pp.8386-8387.} Debate was adjourned by Edward Joseph Cunningham.\footnote{Western Australia, Legislative Assembly 1997, \textit{Debates}, volume 9, 20 November 1997, p.8387.}

The resumption of the debate in the Legislative Assembly on 26 November 1997 saw an extended speech by John Charles Kobelke. A key focus of Kobelke’s speech was religion. Kobelke’s speech also focused on practical issues and his speech recognised the tremendous change in the style of life regarding Sunday that was happening in Western Australia. Kobelke in his speech was able to recognise that while a day of rest was beneficial, society was moving away from widespread Sabbath observance, and that he himself, because of his work, did not do what he preached. Nevertheless Kobelke sought a place for religion in society despite large numbers of people either having no religion, or a non-Christian religion. After acknowledging that Sunday was perhaps the only day to be sure to find someone at home for the purposes of law enforcement, such as police questioning, Kobelke said in his own words:

\begin{quote}
I have some concern that people are slipping away from any real observance of Sunday. Although it is obviously part of my background and beliefs, I believe it is also detrimental to society at large. The pace of life and the pressures of the modern world are such that people need a day of rest each week. However, very few people
\end{quote}
Kobelke admitted his admiration of Jews, especially orthodox Jews who observed their Sabbath, and said that because of the pace of life “we need to find that balance again and put aside more time for relaxation. In some ways I am being hypocritical because I have not been able to find that balance.” For Kobelke, individual responsibility was crucial since it was up to the individual to decide whether they wanted to work longer hours or not. This however seemed to be somewhat of a contradiction as Kobelke claimed that the bill took society one more step away from a structure that helped people to put aside one day of the week to rest.

Kobelke’s contradictory positions continued when he recognised that it was not possible to have laws based on Christianity when a large portion of the community did not believe in it. Kobelke opposed changes to Good Friday and Christmas Day, since without those days society would lose guidance. Kobelke did not oppose investigating the possibility of giving other religions their own days in time. This was perhaps the greatest endorsement of non-Christian religions in any of the debates in the thesis. Interestingly, Kobelke never explicitly mentioned his religious affiliation or lack thereof.

Kobelke’s speech can be summarised by the claim that he sought to preserve elements of Christianity in society that were beneficial to people even if he himself did not observe them, while recognising that religion (Christianity) could not be the basis for the law, although religion nevertheless played an important role in society. The only non-religious elements of Kobelke’s speech were when Robert Clyde Blofwitch interjected that the bill would not “change very much except that if I want to sign something on a Sunday instead of a Saturday or Monday I can. It is not a big thing we are doing”; and Kobelke’s discussion about whether juries would sit on

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745 Western Australia, Legislative Assembly 1997, Debates, volume 9, 26 November 1997, p.8726.
746 Western Australia, Legislative Assembly 1997, Debates, volume 9, 26 November 1997, p.8726.
748 Western Australia, Legislative Assembly 1997, Debates, volume 9, 26 November 1997, p.8727.
749 Western Australia, Legislative Assembly 1997, Debates, volume 9, 26 November 1997, p.8727.
Sundays and whether this would affect their judgements i.e. would they arrive to a decision early so as not to have to sit on Sunday, and how this might impinge upon the judicial process and the notions of a fair trial. The bill was read a second time and passed all of its remaining stages.

6.3.2 Analysis

Hansard did not record how the parliamentarians voted and their religious affiliations were not listed by the State Parliament. Therefore the analysis is effectively drawn from the arguments and discourses within them. This proved to be largely concerned with practical matters, and at times legal matters, such as the issue of retrospectivity. Religious discourses only occurred at the end thanks to Kobelke, who provided perhaps the lengthiest speech on religion of any of the parliamentarians in all the states seen in this case study. Griffiths only made some allusions to religion, while others mentioned that it would be nice to have a day of rest in the week.

Kobelke was an interesting speaker because he mentioned religion, and he displayed his own commitment to religion, but he still did not mention the nature of his religious affiliation. His religious affiliation also cannot be guessed, although he admitted admiring orthodox Jews. Kobelke believed that religion had a role to play in society and openly said so. Despite his own religiosity, he was liberal, and it can be argued more liberal than any other parliamentarian that spoke, when he said that he was open to the idea of granting days to other religions in time. Clearly, for Kobelke, variety of religion and not just a single religion were an important element for society but also individuals.

Kobelke however was an exception in Western Australia where once again practical matters and their discourses outweighed the religious discourses. Of the three principal speakers (Griffiths, Hodgson and Kobelke), Griffiths and Kobelke were from the Labor Party and Hodgson was from the Australian Democrats. The minor speakers of Foss and Prince were both Liberals. The political affiliations were

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750 Western Australia, Legislative Assembly 1997, Debates, volume 9, 26 November 1997, pp.8728-8729.
751 Western Australia, Legislative Assembly 1997, Debates, volume 9, 26 November 1997, p.8729.
therefore fairly evenly spread but the sample is too small to draw any substantial conclusions, especially when the voting was not recorded by Hansard.

6.4 Conclusion

When it came to Sabbatarianism or Sunday entertainment in New South Wales, South Australia, Victoria and Western Australia, religion and religious discourses played a role, but practical matters dominated. In each of the states there were individual parliamentarians for whom religion was important and they made their points, but in none of the examples did they succeed. In some cases, political affiliations were more important than religious affiliations. Throughout the various case studies of the different states, the issue of the change in the style of life of Sunday was at the forefront. This secularisation of time with the liberalising of Sabbatarian laws caused unease for some parliamentarians by the very speed of the change. This conflict between parliamentarians was a sign of how certain sections of society sought different levels of secularity and religiosity. This is a point that Callum Brown noted in his work and that was duly noted in Chapter 2. These changes that some parliamentarians sought to slow down were a threat to the historical memory and continuity as theorised by Danièle Hervieu-Léger. The changes were a threat to how Sundays were remembered and practiced in Australian society. Those who disagreed pointed out that the laws originated in seventeenth and eighteenth century England, a society vastly different to twentieth century Australia. These findings would not have been possible without the use of Norman Fairclough’s discourse analysis as a methodology for this thesis.

In chapter 6 three states were covered. This differed to all the other chapters where only one state was examined. Due to the debates in each of the states being shorter than in New South Wales, the analysis was not able to go in as much depth as in New South Wales, or as in the cremation case study. What an examination of the parliamentary debates in these states indicates is that similar concerns were expressed in a number of different jurisdictions.
In New South Wales in 1966 religion and religious discourses could not match a discourse which had a focus on practical, progressivist, and modernity. While the religious discourse assumed that broader society was largely Christian, the secular discourse recognised that many people were not Christian, and that the option should be allowed for them to pursue their own interests on Sunday, and should not be made to comply to laws created in a bygone era. For New South Wales it was possible to note that while there was a relatively large number of Catholic parliamentarians, the overwhelming majority of them voted against the Sabbatarian changes, although this was more likely due to their membership of the Australian Labor Party as this issue was not subject to a conscience vote. The Protestants meanwhile were far more likely to divide. Such detailed analysis was not possible for the other states.

South Australia was a state where interestingly it was not possible to gather the religious affiliations of the parliamentarians. Nevertheless, the unique religious history of South Australia revealed itself in the many times and ways in which religion was appealed to, but ultimately to no avail. Religious discourses were funnelled into themes that appeared in New South Wales the year before, and which would also appear in Victoria in the following year and to a lesser extent in Western Australia in 1997. These religious themes were the uniqueness of Sunday and the desire for a day of rest and also a concern for youth morality. Practical matters eventually won in South Australia and these involved a dubious concern for public safety, the desire to remedy an uneven business environment, and an imminent state election. The non-religious concern about ministerial discretion in granting permits to events was less heated in South Australia than in New South Wales.

While proving to be religiously diverse, and with secular arguments being short and more often appeals rather than arguments, religion and religious discourses did not prevail in Victoria. The religious arguments were to a large extent confined to Douglas Elliot and his liberalism, with the exception of the youth morality argument. Religious affiliations ultimately did not influence the passage of the bills, although the votes were not recorded by Hansard. In some ways Victoria proved to be a midway point between New South Wales and South Australia.
Sabbatarian liberalisation occurred in Western Australia some 30 years after the other states and the debate was relatively short. There were no arguments about ministerial discretion as the bill in question concerned slightly different matters and there were no arguments about youth morality. Once again practical arguments held sway and religious expressions and discourses were largely confided to one individual at the end. In some ways it was a case of Western Australia finally joining the rest of Australia.

In all four states, religious discourses existed to varying degrees but in no state did they win. Ultimately, practical matters and concerns dominated. Some states acknowledged religion more than others, and some were more ‘religious’ in this way. Religious affiliations wielded limited influence, while it was political affiliations which were more influential, such as the case of Catholics in the New South Wales Labor Opposition. Much like the cremation case study, the Sabbatarianism or Sunday entertainment case study shows that religion had a limited influence on Australian politics when social and religiously influenced laws came under legislative review.

The following two chapters deal with the third and final case study in the thesis: ‘no fault’ divorce through the *Family Law Act (1975)*. It differs from the previous two case studies in that it examines the Federal Parliament. Chapter 7 examines the Senate and Chapter 8 examines the debate in the House of Representatives. The next chapter gives a brief introduction to Australian divorce law history, followed by an overview of the debate concerning the bill and then the arguments for and against the bill, along with common rhetorical devices used in both discourses.
CHAPTER 7 – DIVORCE I: THE SENATE

The final case study in this thesis examines the parliamentary debates surrounding the Family Law Act 1975 (Cth) from 1973 to 1975. The case study is different from the previous two as it occurs at the Federal level, as marriage is a Commonwealth issue, under section 51 (xxi) of the Australian Constitution. Two chapters are devoted to analysing the debates in the Australian Parliament on this matter, one on each of the Houses of Parliament, starting with the Senate where the bill originated. The format of the chapters in this case study is the same as in the previous two case studies with the exception that the religious affiliation of parliamentarians is not identified. This case study shows the resistance to the Family Law Bill and the change in a social custom that it signalled. Many parliamentarians explicitly or implicitly expressed views that indicate their appreciation of the magnitude of the change.

Theoretically, the case study shows how some resorted to religion and collective memory in order to link society to a certain past, as Danièle Hervieu-Léger theorised regarding society and religion. The contest over the nature of marriage and divorce demonstrates Callum Brown’s thesis that secularisation is not a linear path, that it is far more complex, and that both processes of secularisation and religionisation can occur contemporaneously. While the ultimate liberalisation of divorce went against traditional Christian notions and beliefs, it is unfair to say that society as a whole was secularised as there was considerable opposition to the bill. The arguments used for and against the bill echoed the arguments and debates of the previous two case studies. Therefore, while it appeared as if there was a case of secularisation underway, the divorce case study is more complicated as there were parliamentarians who fundamentally resisted the changes. It does, however, confirm the argument of this thesis that religious arguments and appeals, had little appeal and effect for most parliamentarians when it came to such a pressing social issue.

Methodologically, this case study is almost identical to the preceding two case studies in that it relies on a body of texts, Hansard, to form the basis and analysis. As in the previous two case studies this is justified through the work of the French
Annales school and the work of historians from that school such as Emmanuel Le Roy Ladurie and Michel Vovelle. A key difference is that there is less statistical information, as a religious affiliation matrix was not used due to the difficulty in establishing religious affiliations for a significant number of parliamentarians. A second difference is that, within the secular discourse, attention is paid indirectly to external texts in the form of the letter writing campaigns that were mentioned throughout Hansard by all parliamentarians. This intertextuality is supported by the discourse analysis used throughout the thesis. Therefore, it is both possible and worthwhile to do this case study, and it continues on from the previous two case studies. The previous two case studies examined death and work. This final case study examines marriage. In this way, the major aspects of a person’s life are covered within the thesis.

This chapter in particular briefly examines the history of divorce in Australia prior to the Family Law Bill’s introduction to the Senate in 1973. It briefly notes the main points of what became the Family Law Act 1975 (Cth), and the main points and issues that were argued in the parliamentary debates. A brief overview of the debate in the Senate is given followed by an examination of the secular discourse, which included progressivism, modernity, utilitarianism, the use of statistics, argumentum ad populum and appeals to expertise and authority. The same examination is carried out for the religious discourse albeit with slight differences, featuring letter writing campaigns and the Festival of Light.

7.1 Divorce in Australia and the Family Law Act (1975)

This section first examines the changes in Australian divorce law prior to the introduction of the Family Law Bill, and then it examines the nature of the bill. If law is a reflection of a society’s morals and beliefs, then Australian society was undergoing changes in its style of life since the nineteenth century. As noted in the introduction to this chapter, it does not mean that it was a simple case of secularisation.
7.1.1 Brief History of Divorce in Australia

As Henry Finlay extensively outlined in his book, *To Have but not to Hold: A History of Attitudes to Marriage and Divorce in Australia 1858-1975*, divorce had existed in Australia since 1858, due to the English *Divorce and Matrimonial Causes Act 1857*, which was shortly followed by colonial equivalents. Finlay’s book offers a glimpse of the process and expansion of divorce in Australia until World War II, as it shows the steady extension of divorce.

<table>
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<th>England</th>
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<th>Tasmania</th>
<th>Victoria</th>
<th>Western Australia</th>
<th>Queensland</th>
<th>New South Wales</th>
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<td>1857 s 27</td>
<td>1858 s 14</td>
<td>1860 s 14</td>
<td>1861 (i) s 13</td>
<td>1863 s 23</td>
<td>1864 s 21</td>
<td>1873 s 22</td>
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<td>1858</td>
<td>1860</td>
<td>1861</td>
<td>1863 (b)</td>
<td>1864</td>
<td>1873</td>
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<td>-</td>
<td>1911</td>
<td>1922 (d)</td>
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<td>1919 W: 2 yrs H: 4 yrs (dom 2 yrs)</td>
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</tr>
<tr>
<td>Resp impris’d for capital crime or 7 yr sentence or freq convvns 5 yrs, plus aggng imprnt 3 yrs and left wife habitually without money or support</td>
<td>1928 dom’d 3 years</td>
<td>1919 (f) dom’d 2 years</td>
<td>1889 dom’d 2 years</td>
<td>1911 (e)</td>
<td>1892, dom’d 3 yrs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wife/husband: attempted murder/repeat assault/cruel beaten</td>
<td>1928 1 yr (dom’d 3 yrs)</td>
<td>1929 (dom’d 2 yrs)</td>
<td>1888 (g) 1 yr (dom 2 yrs)</td>
<td>1911 (g) 1 yr</td>
<td>1892 (dom 3 yrs)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insanity, or confined, and unlikely to recover</td>
<td>1937 5 yrs</td>
<td>1928 5 in 6 yrs (dom’d 3 yrs)</td>
<td>1919 7 in 10 yrs (dom 2 yrs)</td>
<td>1919 5 in 6 yrs (dom’d 2 yrs)</td>
<td>1911 5 in 6 yrs</td>
<td>1922 5 in 6 yrs</td>
<td></td>
</tr>
<tr>
<td>Wife/husband: Restn conjugal rights + adultery</td>
<td>1884</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1893</td>
<td></td>
</tr>
<tr>
<td>Cruelty</td>
<td>1937</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1893</td>
<td></td>
</tr>
<tr>
<td>Husband: (h) aggravated adultery</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1893</td>
<td></td>
</tr>
<tr>
<td>5 years living separately/apart</td>
<td>1938 under order for judicial separation/relief from cohabitation (j)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1948 and resumed cohabitation unlikely (k)</td>
<td></td>
</tr>
</tbody>
</table>

Notes:

(a) Husband: wife guilty of adultery; wife: husband guilty of incestuous adultery, bigamy with adultery, adultery coupled with cruelty as in divorce a mensa et thoro, adultery plus two year desertion.

(b) Sodomy or bestiality

(c) Wife: if domiciled two years; equal right regarding husband’s adultery after date of legislation.

(d) From date of legislation.

(e) Western Australia: four years habitual drunkard.

(f) Tasmania: ‘leaving Wife without means of support’ is omitted.

(g) Or: assault with intent to inflict grievous bodily harm: for Victoria, Western Australia

(h) Adultery in conjugal residence, or aggravated, or repeated.

(i) 1864 consolidation.

(j) Lived separately five years under court order, subject to husband making provision for maintenance of wife and/or children.

(k) If no likelihood of cohabitation being resumed.

Table 3 Progress of Divorce Reform in Australia.

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573 Finlay, *To Have but not to Hold*, op. cit., pp.52-53.
Finlay’s account of divorce differs from the one in this thesis on several accounts. Firstly his is far more comprehensive. This case study does not purport to do what Finlay has done. Finlay examined the social reasons for the changes in attitudes, such as his remark that divorce was extended or introduced into colonies that had a larger population earlier, as opposed to other colonies that had a smaller population.\footnote{Finlay, \textit{To Have but not to Hold}, op. cit., p.35.} The thesis is not primarily concerned with explaining the reasons why the changes occurred. Rather, the thesis is concerned with the attitudes in the debates about secular and religious attitudes, which are not necessarily social explanations. Finlay observed that the colonial differences to the Imperial suggestions on divorce were “surprisingly varied, yet in the end they came down to a simple conflict between traditional religious and moral attitudes against divorce, and a view that was both pragmatic and compassionate in favour of relieving the plight of deserted wives and children.”\footnote{Finlay, \textit{To Have but not to Hold}, op. cit., p.50.} Pragmatism and utilitarianism are not strange bedfellows and compassion for women and children was seen in the debate on the \textit{Family Law Bill}.\footnote{Finlay, \textit{To Have but not to Hold}, op. cit., p.288.}

The most significant development for the case study regarding divorce law in Australia was the 1959 \textit{Matrimonial Causes Act} which meant that Commonwealth law superseded State divorce laws. The administration would still be state based, but there was now a single Australia-wide law.\footnote{\textit{Matrimonial Causes Act 1959} (Cth), section 28, (a)-(n).} An important element of this Act was that it extended ‘no fault’ divorce, or consensual divorce, if the couple had been separated for five years, alongside 16 restrictive grounds for divorce.\footnote{Finlay, \textit{To Have but not to Hold}, op. cit., pp.267-269.} This was modelled from the West Australian legislation which had granted such divorces after five years’ separation in 1945.\footnote{See for example, Commonwealth Parliament of Australia, Senate, \textit{Debates}, volume 4, 30 October 1974, p.2153. Although Senator Durack mentions that no fault divorce had been available in Western Australia since 1944.} References to Western Australia’s progressive nature on the matter were made during the course of the debates on the \textit{Family Law Bill}.\footnote{Finlay, \textit{To Have but not to Hold}, op. cit., pp.267-269.} The \textit{Family Law Bill} would only grant divorce by ‘no fault’ and after 12 months. In this sense it was more socially progressive. It appeared at a time of great social change in Australia. It became a part of the Whitlam Government’s legislative
agenda; the bill was first mentioned while Whitlam-led Labor Party was still in Opposition.\footnote{The issue was first mentioned in the Senate in December 1971. See below.}

The social significance of the bill is seen by comments future Prime Minister John Howard wrote in his autobiography \textit{Lazarus Rising: A Personal and Political Autobiography} nearly 40 years after the bill was first introduced. He was a new Member of Parliament, in the House of Representatives. After mentioning that he had personal experience of divorce cases as a lawyer, Howard wrote: “There was no more important piece of social legislation debated in the time that I was in federal parliament than the Family Law Bill. All parties allowed a free vote, and this exposed real fissures and bitterness within the Labor Party.”\footnote{Howard, John (2010/2013). \textit{Lazarus Rising: A Personal and Political Autobiography}, Sydney: HarperCollinsPublishers, p.85.} This was the magnitude of the legislation for one of the participants and it is fair to assume it had similar significance for other parliamentarians. Howard’s statement also offers an insight into the true gravity of the bill and this explains why debate in the Senate and then the House of Representatives was so long and protracted.

\subsection*{7.1.2 The Family Law Act 1975 (Cth)}

The content of the \textit{Family Law Bill} did not simply cover divorce, but several other associated areas of law, and its comprehensiveness and progressiveness signalled a change in the style of life for Australians. These areas were often debated as much if not more than the merits of no fault divorce. No fault divorce referred to the marriage being able to end even if neither party had done something warranting the termination, such as committing adultery, cruelty or desertion. The sole ground was to be the irretrievable breakdown of marriage and it was to be acknowledged by twelve months of separation. There were debates about extending this period to two years, or having it in conjunction with the fault category of adultery but these suggestions were unsuccessful. The major aspects of the \textit{Family Law Act 1975 (Cth)} that were discussed throughout the parliamentary process included the creation of marriage counselling organisations, the establishment of the Family Court of Australia, and issues to do with welfare and maintenance.
Regarding marriage counselling organisations, the debates concerned how they would be recognised and operated, and how the funding for these organisations would occur. Aspects of these issues were within the Attorney-General’s ministerial powers.762

The most significant issue within the debates, particularly in the committee stage, was the establishment of the Family Court of Australia. Discussion regarding the Family Court ranged from the constitutionality of Parliament establishing the court,763 to matters as to how judges would be appointed, how many, for how long, who would pay for them and other such practical matters.764

Debates concerning the nature of the court were succeeded by discussion of a number of related matters including the welfare and custody of children, and maintenance and the division of property. The results of these debates became the various clauses in the eventual Act.765

Thus, the *Family Law Act 1975* (Cth) was a comprehensive legislative scheme that dealt with many matters pertaining to the family and related legal issues. Due to the auxiliary matters, many of the debates were practical and technical in nature. The debate therefore was not theoretical or theological in the sense that no fault divorce was debated in moral terms as either morally right or wrong; the focus was on large practical matters that needed consideration.

### 7.2 Overview of Debate in the Senate

This section aims to provide a chronological overview of the debate in the Senate by providing a short chronicle of how the debate unfolded, before the arguments themselves are examined in greater detail. The examination of the Senate and then

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764 *Family Law Act (1975)* (Cth), Part IV, s20-38.
765 *Family Law Act (1975)* (Cth), Part VII and VIII, s60-88.
the House of Representatives in this case study highlight the importance of politics and the impact of the structure of law on society, just as Conze and Wright noted.766

The first traces of what would become the *Family Law Act 1975* (Cth) appear on 7 December 1971 in the *Journals of the Senate*. Lionel Murphy in the Standing Committee on Constitutional and Legal Affairs moved a successful motion regarding the law and administration “of divorce, custody and family matters, with particular regard to oppressive costs, delays, indignities and other injustices.”767 This brief statement is a clear indication of the intention of the then Opposition’s aims and purposes with regard to what would become in the future *Family Law Bill*. The outlook was practically oriented, with a utilitarian sentiment.

The first mention in Hansard proper of the bill occurred on 5 December 1973, when Murphy, now the Attorney-General, and the Whitlam Government in power for just a year, sought leave to introduce a bill relating to marriage, divorce, matrimonial cases, parental rights, custody, the guardianship of infants, and “certain other Matters.”768 It is all that is mentioned in Hansard: no vote or result of motion. From the beginning the bill was comprehensive, and signalled a change in the style of life for Australians regarding divorce.

Murphy was successful several days later on 13 December in introducing his bill for its first reading. Murphy was the only speaker and gave an introduction to the bill along with the Government’s reasons for its introduction. Murphy signalled the major reasons for the bill. Murphy said that the bill would repeal the *Matrimonial Causes Act 1959-1966*, and “replace it with an up-to-date, comprehensive set of provisions dealing not only with divorce but also other areas of family law.”769 The principle underlying divorce then in force of matrimonial fault was not, he claimed, in accordance with community standards, and the rules were “unnecessarily prolix and cumbersome and that the result is high costs, delays and indignities to the

parties.” Ad populum arguments were mentioned when Murphy claimed that the proposed changes were almost universally accepted even among conservatives or ‘traditionalists’. Murphy also claimed he had researched recent developments in other jurisdictions, listing the *Canadian Divorce Act 1968*, the *Californian Family Act 1969*, and the *English Divorce Reform Act 1969*. In the remainder of his speech, Murphy set out briefly the nature of the bill, emphasising the modernity of the bill and its practical fairness to all parties. The fault principle, judicial separation, restitution of conjugal rights, jactitation, and imprisonment for maintenance defaulters would all be abolished, seemingly emphasising their philosophical and legal obsolescence. As Murphy concluded, in short the bill was “a realistic way to meet some of the most pressing human problems of modern society in a humane way.”

Murphy faced several parliamentary obstacles in 1973 and 1974. Parliament was prorogued so that, on 28 February 1974, Hansard stated the *Family Law Bill* would once again be put before Parliament. On 12 March 1974, a motion by Murphy was agreed to for introducing the bill, and the bill was subsequently presented and read the first time on 2 April 1974. On 3 April Murphy gave his second reading speech and reiterated many of the points he made in December 1973, although he did mention new aspects of the bill that had been added since December, such as phrasings and terminologies. This initiative by Murphy however was disrupted by the May 1974 Federal Election. Thus, Hansard mentioned Murphy seeking leave to introduce the bill again on 17 July; introduced by Murphy on 1 August and 16 August where he largely restated his position from his two previous speeches.

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On 29 October 1974, the extended debate on the bill began, and for the next two days it was the primary topic of debate. The debate also saw speakers other than Murphy. Some of these speakers included Alan Missen, James McClelland, Peter Baume, Condor Laucke, Jean Melzer, Peter Durack, Sir Kenneth Anderson, Frederick Chaney, and Kathryn Martin. A further issue arose when Sir Kenneth Anderson moved to delay debate on the bill for six months which would enable senators to have more time to study the bill.778

Debate on the bill resumed in late November 1974. On 19 November the second reading debate resumed and the bill was now known as Family Law Bill 1974 [No.2] in Hansard.779 The bill entered the committee stage on 21 November and was debated and amended there on 26 and 27 November.780 During the committee stage there was extensive discussion on such matters as the establishment of the Family Court system and its intricacies, maintenance, the nature of the twelve month separation period, and whether indeed the no fault principle should be removed from legislation. These matters are dealt in greater detail in the section below. On 27 November the bill entered the third reading stage and then moved on to the House of Representatives.781 The bill returned to the Senate from the House on 22 May 1975.782 It returned to the committee stage again briefly on 29 May, and its assent was reported in the Senate on 12 June 1975.783

Below are the main arguments offered for and against the Family Law Bill. The arguments for the bill were primarily utilitarian, and those against were, to a certain extent, religious in nature with conservative overtones.

7.3 The Secular Discourse

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782 Australia, Senate 1975, Debates, volume 2, 22 May 1975, p.1734.
The vast majority of arguments within the secular discourse were in favour of the Family Law Bill. These arguments are grouped into sections below and are dealt with one by one. These sections are progressivism, modernity, utilitarianism, along with sections on statistics and argumentum ad populum and appeals to expertise and authority. At the end there is a small section on the secular arguments against the bill, which were also utilitarian. None of these arguments can be seen in terms of the speakers seeking to create a more secular social order. This correlates with Brown’s thesis of secularisation as non-linear or not a straightforward process with many complexities. Those who argued in terms of ‘modernity’ or ‘progress’ implicitly acknowledged the magnitude of change in the style of life that was being proposed.

7.3.1 Progressivism

Much like the previous two case studies, arguments which emphasised modernity usually were linked to ones founded on progressivism. The argument of progressivism was often allied with the argument of modernity. Taken together, these arguments formed what might be described as the minor argument in favour of the bill, with utilitarianism forming the major argument.

The progressivist argument featured more frequently at the beginning of the parliamentary debate, and first appeared in Murphy’s introductory speeches. Murphy appeared keen to show a progressive picture of the bill when he mentioned that the bill did not go as far as he personally wished, but only as far as he believed it would go with Parliament and the majority of people.\footnote{Australia, Senate 1974, Debates, volume 1, 3 April 1974, p.641.} If the progressivism was not shared by all of society, it did not prevent Murphy from framing the debate and the bill as a matter of social progress. Murphy in his speech took a progressive stance and assumed progressivism was intrinsically good. If this was questioned in relation to the progressive Family Law Bill, the light of “modern standards of sociology” demonstrated the need to reform the law and administration of divorce.\footnote{Australia, Senate 1973, Debates, volume 2, 13 December 1973, p.2832; Senate 1974, Debates, volume 1, 3 April 1974, p.644.} One of the progressive objectives acknowledged by Murphy was the Government’s determination to remove the “distinction between ex-nuptial children and other
children.” 786 If the bill was therefore progressive and good, it was also good that the Australian Labor Party would grant its senators a conscience vote. 787

Murphy was not the only one who considered progressive policy as inherently positive. Some, such as James McClelland from New South Wales, believed that the bill provided the opportunity for the twenty-ninth Parliament to go down in history as introducing a matrimonial law “as enlightened as any in the world.” 788 McClelland further emphasised his favourable view on the bill by saying that with regard to the no fault principle it was not new, despite those who implied that the reform was something “from the minds of permissive trendies.” 789

The idea that no fault was an accepted mainstream idea was accepted by some unexpected people. Senator Peter Durack from Western Australia acknowledged that he would support the bill because the community had rejected the idea of fault. 790 Durack’s position was something of a surprise as he mentioned religion and the bill several times.

Another way in which the no fault progressivist cause was galvanised was by noting that no fault divorce already existed. Senator Alan Missen from Victoria claimed that no fault existed already owing to the 1959 legislation; therefore the debate on the matter was settled. Since there were rarely any innocent people in a divorce, fault was just a charade that people performed in order to establish guilt. 791 It was the progressive position to be clear about this in the law.

Progressive arguments were made in favour of the Family Law Bill from the beginning of the debate. Some participants such as Murphy recognised that there was a divide between what he wanted and what society would accept, which alluded to the issue of changes in a style of life. Some parliamentarians such as James

786 Australia, Senate 1974, Debates, volume 2, 1 August 1974, p.740.
McClelland, regarding the issue of maintenance, stated that it was his desire to see a society where maintenance would not be an issue because a woman would be able to support herself with a job, however, he recognised that that was not the current social situation.792

7.3.2 Modernity

Closely allied to progressive arguments were arguments based on modernity. These two arguments at times overlapped. In short, the modernity argument was that society had reached a certain stage of development such that previous practices such as the fault principle in divorce were now obsolete. Modernity arguments featured early in the course of the debate and Murphy was the first to utilise them. As discussed previously, Murphy in introducing his bill for the first time, said that the Matrimonial Causes Act 1959-1966 was outmoded and would be brought up-to-date with his new bill,793 but Murphy continued and claimed, “The petition has been done away with, as an out-modeled document, and all proceedings will be initiated by a simple form of application.”794

James McClelland believed that modernity necessitated change. The social condition of modernity caused the nature and expectations regarding marriage to change; therefore the law must change. Most of these social changes were also those which historians and sociologists associate with secularisation, but this was not a concern for McClelland. These changes were for McClelland the reasons for more marriages breaking down.

The real causes of the disintegration of marriage, I suggest, are to be found in such things as increasing urbanisation, increasing industrialisation, greater social mobility, the emancipation of women, the weakening of religious sanctions and, I suppose we could say, the increased all-round prosperity. It is just a fact that we have to face, that more people today are able to get divorced and to go on having a reasonable standard of life than was the case in the past.795

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For McClelland therefore, marriage breakdown was not caused by the availability of divorce as some argued, its roots lay in these developments which had become part of the human condition.  

Other speakers recognised that the current laws were obsolete, along with some of the associated assumptions such as a woman not being able to support herself independently. Senator John Button from Victoria recognised this and it formed a large part of his speech on the issue. Button acknowledged that the experience of most legal practitioners, marriage guidance counsellors and commentators was that, “the legislation of 1959 is not working in 1974, that the legislation of 1959 is no longer socially desirable, that divorce will go on and that in 1974 if that is the case it is desirable that divorces be conducted with the utmost dignity for the people involved and more particularly for the children involved.” Button was very sociological in his understanding of the consequences of modernity. Button explained that in pre-Industrial Revolution society marriage was part of a wider set of social relations resulting in effectively an extended family net. Along with the nineteenth century idea of romantic relationships with the girl next door, this was no longer the case with marriage. As Button noted:

The current urban society is anonymous. Its people are alienated from each other, and its family units are no longer of an extended nature in that they are alienated by distance and by the complexities of travel in large cities and so on....What I am really putting is that the problems of existing marriages are not problems of marriage law or divorce law. They are problems of the pressure which our society inflicts on the marriage institution and on human relationships generally.

In short for Button, society’s views of marriage had changed owing to social changes, and this was also true even for the 1959 legislation. Button concluded that marriage
was a social institution which was subject to social changes, changes in social mores and views, and other various social pressures. 800

In these progressive and modernity arguments used by Button, it is clear that he believed that the lifestyle changes that had occurred due to industrialisation, to name just one agent of change, necessitated the law to change. This had a significant structural impact on people’s lives. Such important change could only take place through the influence of politics. How some people thought about the past and their communal connection to it through a shared religion was not considered as change was necessary. This was not conscious secularisation on behalf of the parliamentarians. Social pressures were causing them to make social changes. These changes in turn weakened institutional religion in public life. However, a far more consistent and comprehensive argument throughout the secular discourse in favour of the Family Law Bill was based upon utilitarianism.

7.3.3 Utilitarianism

Utilitarian arguments for the bill can be subdivided into three primary categories: how the bill or current divorce laws affected people in general and divorcing couples; children; and women. Utilitarian arguments were also utilised to indicate why the bill was a matter of urgency. This was seen in Murphy’s opening statements, where the indignities of the current system: their cost and complexity to name a few features, warranted the law to be revised; 801 Murphy’s citation of an unnamed American report which indicated poverty as the most common reason for marital breakdown; 802 and Murphy’s claim that the disputes in court mostly had to do with custody or property and not the marriage itself. 803 Towards the end of his speech Murphy proclaimed that in introducing such sane legislation as his bill, people “will be encouraged to adjust their transition from married life with the minimum of bitterness and animosity. At

least under this legislation, persons will not become financially as well as emotionally bankrupt as a result of divorce proceedings.”

7.3.3.1 General

Despite Senator Alan Missen’s claim about the importance of the bill and not waiting until the system was broken to fix it, the system according to several senators was already broken. One way the system affected people negatively, it was claimed, was that procedurally, it was farcical and humiliating. Senator James McClelland and Senator Mervyn Everett from Tasmania both thought that the fault system was farcical and did damage to individuals. Senator Everett listed desertion, cruelty and ‘habitual drunkenness’ as causes to which people needed to resort to in order to prove fault. In fact they had to circumvent the truth if they wished to be successful. For Senator Everett this benefitted no one and caused reputational damage to the courts. Senator James McClelland was of a similar mind when he mentioned the dishonour people suffered when they consciously had to have affairs to qualify for adultery. In general, the existing legislation posed problems in its administration and procedures for anyone who wished to obtain a divorce.

There were more acute problems caused by the status quo for the divorcing couple. Senator Everett claimed that the adversarial system was far from suitable for divorce legal proceedings since those proceedings were usually conducted in an atmosphere of bitter recrimination. Everett cited a recent example from Tasmania where a woman was cross-examined so extensively and comprehensively about her intimate marital life that during the proceedings she committed suicide. The most graphic description in Hansard of the harsh consequences of the adversarial system was given by Senator Jean Melzer from Victoria. She described how the court system pitted the two parties against each other, negatively affecting all. She said:

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One of the worst things about courts... in Melbourne are the wretched circumstances in which one meets with barristers and solicitors. One can walk around those dirty, cold, miserable, stone corridors and find people literally taking their lives apart bailed up in corners with nowhere to sit. They are bailed up in one corner with their barristers. The opposing party... is around the corner with his barrister and solicitor. The bargaining usually goes on from one to the other... The question is not what we are doing to people’s lives or to children’s lives but bargaining, and usually over money.809

In all of Hansard there was perhaps no greater rhetorical depiction of the squalid nature of the existing courts and court system and what they inflicted on people. This led to the general concern that there needed to be a review and improvement of the existing system to overcome such problems. What might now be termed as a ‘people focussed approach’ was in 1974 a utilitarian argument for improvements in divorce law and proceedings. Such sentiments were encapsulated by New South Wales Senator Douglas Scott’s remark that, regarding the law and its implementation, the yardstick for a judge would be whether or not the law contributed to the dignity and security of families.810

7.3.3.2 Children

Protection of the family was a great utilitarian concern for the senators although with regard to children, they were more concerns expressed than arguments proffered. It was commonly recognised that the children in divorce proceedings needed to be protected. This call for protection found voice in Senators Melzer and Durack. Senator Melzer noted that the interests of children should come first as they were human beings and not property.811 Senator Durack noted the need to think about children, and since children were involved, it meant marriage was no ordinary contract.812

Acknowledgement of the uniqueness of children led to the specific utilitarian concern for their welfare. Some of the views expressed to benefit children included Senator

811 Australia, Senate 1974, Debates, volume 4, 30 October 1974, pp.2139-2140.
James McClelland’s claim that if the marriage was dead divorce should be allowed so that at least the children were not affected;\textsuperscript{813} Queensland Senator Kathryn Martin’s cry that children needed protection;\textsuperscript{814} and, from South Australia, Senator Harold Young’s concern that the adversarial system and the fault principle led to the airing of dirty laundry and this could have negative consequences for children at school.\textsuperscript{815} These concerns for the welfare of children were best summarised in Senator Baume’s declaration that efforts should be made to preserve the institution of marriage in whatever guise society wished so as to “provide a stable situation in which children can be brought up and protected and in which family life can be established.”\textsuperscript{816} Senator Baume in his statement recognised that changes in a style of life were necessary at times. While not specifically utilitarian, arguments regarding children expressed utilitarian concerns and were invoked as part of broader utilitarian arguments in support for the bill.

7.3.3.3 Women

Women, and more specifically their welfare, were a third group used as the basis of utilitarian arguments, and a second group for utilitarian concern. Women were usually portrayed as victims of the existing divorce legislation, and as a group that were largely powerless. It is important to note that this account of the circumstances of women was made by both male and female senators.

The most common refrain regarding women in discussion of the bill was the case of the hypothetical woman who had been married for a specific period of time and had suddenly found herself divorced. Since she had relied on her husband to support her she would be in great strife post-divorce because she may have had only limited work experience before marriage and she would be ill-equipped to re-enter the workforce. One aspect of the \textit{Family Law Bill} was its desire to rectify problems to do with maintenance via the establishment of the Family Court system. Unless this was done, there was always the possibility that women could end up worse off materially than

\begin{itemize}
  \item \textsuperscript{813} Australia, Senate 1974, \textit{Debates}, volume 4, 29 October 1974, p.2042.
  \item \textsuperscript{814} Australia, Senate 1974, \textit{Debates}, volume 4, 19 November 1974, p.2502.
  \item \textsuperscript{815} Australia, Senate 1974, \textit{Debates}, volume 4, 19 November 1974, p.2527.
  \item \textsuperscript{816} Australia, Senate 1974, \textit{Debates}, volume 4, 29 October 1974, p.2048.
\end{itemize}
under the existing system. Thus, the concern for women could be galvanised both for and against the bill. In this section I discuss this briefly and below in the section dealing with arguments against the bill I examine in more detail how the concerns for women were utilised to oppose the bill.

The senators who referred to the hypothetical woman included Baume who referred to a woman who had been married for 20 to 25 years and had spent that time childrearing, now having to find work and live a subsistence life, and Senator Gordon Davidson from South Australia who mentioned the case of women who never had the thought that they would be in a position where they needed to work. Female senators who referred to this issue were Melzer who speculated about a woman who had been married for 25 years, and Senator Martin who made the slightly different point that a woman who had been married between the ages of 25 to 40 had sacrificed a large amount of her career earning potential and she was therefore in a precarious place.

The remark by Senator Kathryn Martin from Queensland was a good point and it is worthwhile exploring Martin’s arguments. Prior to making her first speech on the issue on 30 October 1974, the President of the Senate introduced her. He described Martin as a successful career woman, and therefore ideally placed to make comments about women and work. The President (the Honourable Justin O’Bryne from Tasmania) mentioned that Martin was the youngest senator to represent Queensland; she was formerly an administrative officer in the Faculty of Architecture at the University of Queensland; she had also been a mathematics mistress in Ipswich and a lecturer at the Queensland Institute of Technology. She held a Bachelor of Arts degree with majors in political science and economics, and at the time of her election she was undertaking a Master of Business Administration at the University of Queensland. Martin was concerned about the plight of women undergoing divorce and advocated strong support for women and in turn for the Family Law Bill, including the provisions regarding maintenance. Martin, in her speeches, mentioned

the need to protect women, and how women had come to see her worried about their situation. She even mentioned how it had been difficult for her regarding her work arrangements when she was younger and claimed that that was not too long ago.

Martin was so concerned with the plight of women that, for her, even the *Family Law Bill* did not necessarily go far enough to support the welfare of women. In this case, it can be said that the argument was utilitarian but Martin claimed that the bill was not utilitarian enough. Martin urged the senators that until government measures genuinely enabled women to be more economically independent, “…we must not, via the Family Law Bill, abandon those individuals who have been brought up to be dependent, who have been expected to be dependent, who have been conditioned to be dependent and who are capable of being nothing but dependent because of all those pressures.” Thus, while the *Family Law Bill* was good and needed to be supported, it was not the end of the struggle to alleviate the plight of women in society.

Both male and female senators claimed that women were in a position that required help from the *Family Law Bill* in divorce matters such as maintenance. This was because the style of life of contemporary Australia had changed so much that there was the risk some divorced women would not be able to support themselves financially. The arguments or appeals in essence were utilitarian. Such utilitarian arguments and appeals were also utilised to oppose the bill as examined in the religious discourse section.

### 7.3.4 Statistics, *argumentum ad populum*, and arguments from expertise and authority

Before the arguments against the bill are examined, I wish to briefly discuss the overlapping area of statistics, *argumentum ad populum*, arguments from expertise and authority, and how these reasoning devices were used to support of the bill. All approaches were used to show that the bill had widespread support and needed to be

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passed. *Argumentum ad populum* as has been seen in the previous case studies was the appeal to mass support in order to prove that a proposition was widely accepted and was correct. I will first discuss statistics, *ad populum* calls, and finish with arguments from expertise and authority.

When statistics were mentioned by senators in the debate to show that the Australian population supported reform of divorce laws, the statistics were usually isolated and under referenced. For example, during the committee stage, Murphy claimed that the latest opinion poll showed that 60% of Australians favoured no fault divorce based on a separation period of twelve months.\(^{825}\) The specific opinion poll was not identified. A worse case was that of Senator Arthur Gietzelt from New South Wales, who earlier on in the committee stage sought to discredit the letter writing campaign discussed below. Gietzelt said, “Every public opinion poll that has been taken has shown an overwhelming majority of support for the basic principles of the Bill.”\(^ {826}\) No attempt was even made to identify a particular opinion poll, as all opinion polls were grouped together and portrayed as if their results were all the same. Gietzelt was particularly fond of using statistics to support the bill, and seemingly in equal measure, to fight the (religious) opposition to the bill. Gietzelt went on to claim that the number of people choosing to marry in churches was declining each year with no source given.\(^ {827}\) Gietzelt also introduced figures in the debate and derived statistics from those figures without properly referring to them. In his speech during the committee stage on 19 November 1974, Gietzelt said that 18,000 divorces occurred each year. According to Gietzelt, for 33% of these divorces it was possible to take action for a divorce at any time, and for a further 11% of people on such grounds as drunkenness or cruelty. 33% of divorces that did occur in Australia did not involve children.\(^ {828}\) These statistics that Gietzelt used lazily, were used nevertheless to argue for the bill.

Senator Missen on the other hand was the person who utilised statistics most rigorously, or at least, most graphically. In his second reading speech on 29 October 1974, Missen noted that two polls were taken towards the end of the previous year.

The first poll indicated that 63% of people thought twelve months separation (hence no fault divorce) was a good idea; 32% thought it was a bad idea; and 5% gave no answer. Western Australia, with 68% in favour, was the state with the highest approval rating.829 The second poll referred to was a Morgan poll and Missen was successful in having it tabled in Parliament and it appeared in Hansard. It is replicated below.830

<table>
<thead>
<tr>
<th>Analysis by Religion</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th>Phone Owners</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Total Australia</td>
<td>Roman Catholic</td>
<td>Protestant</td>
<td>Anglican</td>
<td>Presbyterian</td>
<td>Methodist</td>
<td>Baptist</td>
<td>Other Christians</td>
<td>Non-Christians</td>
</tr>
<tr>
<td>F Respondent</td>
<td>2,153</td>
<td>478</td>
<td>1,439</td>
<td>774</td>
<td>234</td>
<td>215</td>
<td>46</td>
<td>170</td>
<td>19</td>
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<tr>
<td>12 months</td>
<td>3,648</td>
<td>658</td>
<td>2,615</td>
<td>1,369</td>
<td>465</td>
<td>412</td>
<td>104</td>
<td>249</td>
<td>21</td>
</tr>
<tr>
<td>2 years</td>
<td>38.6</td>
<td>30.2</td>
<td>42.5</td>
<td>42.4</td>
<td>49.7</td>
<td>45.1</td>
<td>45.9</td>
<td>32.0</td>
<td>21.1</td>
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<tr>
<td>3 years</td>
<td>3.7</td>
<td>2.9</td>
<td>3.6</td>
<td>3.7</td>
<td>2.4</td>
<td>3.8</td>
<td>12.5</td>
<td>1.4</td>
<td>19.4</td>
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<tr>
<td>4 years</td>
<td>93</td>
<td>8</td>
<td>65</td>
<td>38</td>
<td>14</td>
<td>11</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>5 or more years</td>
<td>22</td>
<td>2</td>
<td>22</td>
<td>12</td>
<td>0</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Can’t say how long</td>
<td>0.2</td>
<td>0.0</td>
<td>0.4</td>
<td>0.4</td>
<td>0.0</td>
<td>1.1</td>
<td>0.0</td>
<td>0.0</td>
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</tr>
<tr>
<td>Grant immediately</td>
<td>2,013</td>
<td>676</td>
<td>1,304</td>
<td>1,961</td>
<td>259</td>
<td>266</td>
<td>41</td>
<td>168</td>
<td>27</td>
</tr>
<tr>
<td>Undecided</td>
<td>31.1</td>
<td>31</td>
<td>29.3</td>
<td>32.4</td>
<td>28.7</td>
<td>29.1</td>
<td>15.7</td>
<td>21.6</td>
<td>27.6</td>
</tr>
<tr>
<td>Total after interval</td>
<td>4,278</td>
<td>1,055</td>
<td>3,230</td>
<td>1,400</td>
<td>519</td>
<td>474</td>
<td>559</td>
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<td>35</td>
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<tr>
<td>Grant immediately</td>
<td>2,932</td>
<td>676</td>
<td>1,804</td>
<td>1,961</td>
<td>259</td>
<td>266</td>
<td>41</td>
<td>168</td>
<td>27</td>
</tr>
<tr>
<td>Undecided</td>
<td>245</td>
<td>56</td>
<td>136</td>
<td>97</td>
<td>13</td>
<td>21</td>
<td>3</td>
<td>23</td>
<td>0</td>
</tr>
<tr>
<td>Total grant divorce</td>
<td>7,455</td>
<td>1,487</td>
<td>5,000</td>
<td>2,757</td>
<td>820</td>
<td>760</td>
<td>203</td>
<td>479</td>
<td>82</td>
</tr>
<tr>
<td>Don’t grant a divorce</td>
<td>79.0</td>
<td>68.2</td>
<td>81.2</td>
<td>84.3</td>
<td>85.5</td>
<td>81.2</td>
<td>78.2</td>
<td>61.7</td>
<td>85.1</td>
</tr>
<tr>
<td>Undecided</td>
<td>834</td>
<td>238</td>
<td>555</td>
<td>253</td>
<td>91</td>
<td>89</td>
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<td></td>
<td>8.8</td>
<td>20.0</td>
<td>9.0</td>
<td>7.7</td>
<td>9.7</td>
<td>9.8</td>
<td>6.9</td>
<td>13.5</td>
<td>4.1</td>
</tr>
</tbody>
</table>

Table 4 Morgan Poll from late 1973 on divorce with religious affiliation.

Missen did not miss the opportunity to highlight that according to the poll, Australians, and various Christian denominations, favoured no fault divorce. Missen was quick to highlight the major findings of the poll’s results as indicated in the table.

829 Australia, Senate 1974, Debates, volume 4, 29 October 1974, p.2034. Senator Missen also mentioned the question that was asked to elicit these results. The question was: “The Federal Attorney-General has proposed that in future the only ground for divorce should be evidence of 12 months separation. This will make divorce easier to obtain. Do you think that this is a good thing or a bad thing?” The question featured on the same page in Hansard as where Missen revealed the statistical results.

830 Australia, Senate 1974, Debates, volume 4, 29 October 1974, p.2035. The poll results do not mean that there was a majority for the ‘no fault’ principle. Missen gave the questions of the poll and they were tabled along with the results on the same page in Hansard. The questioning was: “Q1C – If a husband and wife tell the court their marriage is broken should a divorce be granted or not. Q1D – If granted, immediately or after an interval. Q1E – If interval, after how long.”
The total Australian vote in favour of the proposition that a divorce should be granted immediately was 31.1 per cent. The percentage in favour of granting a divorce after an interval of 12 months was 38.6 per cent. That makes a total vote of those who favour a Bill of this nature of 69.7 per cent or almost 70 per cent. If one takes the Roman Catholic vote, the figure is 61.2 per cent. The total Protestant, Anglican and other votes in favour of granting a divorce immediately or after an interval of 12 months was 71.8 per cent. Throughout Australia 3.7 per cent of persons wanted a divorce granted after 2 years; those who would not grant a divorce at all were 12.2 per cent; and 8.8 per cent were undecided.831

Thus Missen, with some reference to sources, was able to show that a majority of Australians, irrespective of religion, favoured granting some form of divorce, and that the favoured waiting period was twelve months. This was the most powerful example in the parliamentary discourse of statistics being utilised and it was in support of the bill. It should be noted that in Missen’s tabled poll the question asked did not use the term ‘no fault’. In this way Missen was perhaps able to mask or distort the discourse somewhat, but using discourse analysis it does not seem that Missen’s table had a large direct effect on the overall debate in the Senate. It is also worthwhile noting Senator John Marriott’s point regarding the changes which statistics indicated had occurred as a result of the 1959 legislation; divorce rates increased subsequently but the marriage rate increased as well due in part to divorcees remarrying. Marriott said, “figures do not mean everything.”832

Argumenta ad populum were employed in support for the bill and they took the form of appeals. Murphy was the prime example once again, and ad populum appeals featured in his introductory speeches. In his first introductory speech on the bill on 13 December 1973, Murphy in one section spoke about the people he had consulted in drafting the bill, an appeal to expertise; and Murphy then mentioned that he also consulted recent developments in divorce law in foreign jurisdictions. Murphy explicitly mentioned the Canadian Divorce Act 1968, the Californian Family Act 1969, and the English Divorce Reform Act 1969.833 These references became ad

populum appeals because Murphy detailed the grounds for divorce in each Act and went on to speak favourably regarding the Californian and English Acts. These jurisdictions were mentioned because of their historical and social significance for the senators, and it would have been a sign of what respected people in other parts of the world were doing on the matter, not to mention how those jurisdictions had dealt with changes in styles of life. Murphy’s implication was that Australia was going to be left behind. There was also in this the hint of progressivism.

Combining ad populum appeals with arguments from expertise and authority was therefore a rhetorical device that Murphy employed in his speeches. Shortly after referring to these foreign Acts, Murphy admitted his approval of the English Law Commission’s definition of a good divorce law, namely that, “it should buttress, rather than undermine, the stability of marriage and, when a marriage has irretrievably broken down, it should enable the empty legal shell to be destroyed with the maximum fairness and the minimum bitterness, distress and humiliation.”834 The statement perhaps combines all the elements that Murphy used in justifying the legislation. By referring to the English Law Commission Murphy appealed to popular sentiments of a place (England) that most senators respected and were favourably inclined to; he had appealed to an authority or experts; he painted his bill as safeguarding and improving marriage; and there were practical utilitarian considerations as well.

7.3.5 Secular Arguments against the Family Law Bill

The New South Wales Senator John Carrick was the only one who used secular and utilitarian arguments to oppose the bill. Carrick claimed that the Family Law Bill was actually a step backwards, since according to section 51 of the bill, if there were no children and a woman was able to work she would not receive any maintenance. Carrick claimed that this sent women back centuries especially at a time when they were acquiring equality before the law in many other areas.835 Carrick claimed that there should be some recognition for the woman who sacrificed herself to help her

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husband establish a career. For Carrick the bill was not utilitarian as it discriminated against women. Senator James Webster from Victoria mentioned a similar point when he referred to the woman who had been married for 30 years and upon divorce could not support herself; maintenance needed to be there to support her. In this case, for both Carrick and Webster, the proposed law change in law did not alleviate the results of changes in social customs. Carrick’s point in particular highlights Brown’s argument regarding the non-linear nature of secularisation, as a secular utilitarian point was used to argue against a bill which was seen by some as secularising. How those using religious discourse dealt with the Family Law Bill is discussed below before it is discursively analysed.

7.4 The Religious Discourse

The religious discourse was not explicitly opposed to the Family Law Bill. If parliamentarians of a religious disposition saw the bill as part of a secularisation project of Murphy and the Whitlam Government, they did not mention it. They did imply the magnitude of the proposed change in a style of life by asking for delays, usually six months. There were however instances when the religious discourse was used to support the bill. In this section the major features of the religious discourse are examined. These features were utilitarianism, statistics, argumentum ad populum, and appeals to expertise and authority. Debates concerning the letter writing campaign and the Festival of Light are also examined as they were unique to the Senate’s religious discourse.

7.4.1 Utilitarianism

The historical utilitarian role of Christianity, especially within marriage, was mentioned several times during the course of the debate. This was an important point of attack for those that sought to preserve the status quo, since it formed a religious link to previous generations and the imagined Christian society of the past. It was

essentially an example of historical memory and community as theorised by Hervieu-Léger. Some parliamentarians saw the Family Law Bill as an attempt to limit the influence of Christianity within society. The Honourable Senator Ivor Greenwood noted that several centuries earlier in rural areas the Church fulfilled a role for people that placed it at the centre of civilisation, and people accepted the advice of clergymen. Other senators went further back in time. The Honourable Senator John Marriott from Tasmania mentioned how religion and clerics had been involved in marriage in Australia and elsewhere for many years, and provided the example of the Biblical wedding in Cana as proof. On the other hand, Senator Gordon Davidson simply mentioned that the Christian Church had had an interest in marriages for a long time, and cited passages from the Presbyterian Church of Australia on marriage and divorce.

Regardless of how long religion, or the Christian church, had been involved in marriage, it was considered that the connection was still necessary. Senator Anderson claimed that family life was the greatest gift God had given man, and he said that with all the force he had in his belief in the word of God. This gift no doubt was to be preserved within a Christian marriage. Senator Greenwood believed that the modern nuclear family was at the “absolute essential core of our Judeo-Christian tradition”. Furthermore according to Greenwood, if this essential core was weakened, for example, by the bill:

Weaken respect for marriage, regard it as easily and opportunistically dissolvable, remove the lawful backing for the mutuality of obligations and promote the independence or separateness of the parties to the marriage and their children and I believe that we are threatening the institution of the family and its stabilising influence in our society.

Such statements correlated with those of Senator Peter Durack who said that he still believed that the view of marriage in society was the Christian view of marriage, of

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one man and one woman exclusively together. He believed that it was the accepted view, and the ideal for marriage. 845 Durack’s statement was a typical example of the appeals to community and historical memory that parliamentarians made, not to mention contemporaneous ad populum arguments.

It was argued that a practical way in which the churches could be involved in marriage and divorce proceedings was to provide or fund marriage guidance counselling. Senator James Webster from Victoria mentioned how there were indeed several churches that did provide this service and they were quite good. 846 The issue was raised during the committee stage when Senator Margaret Guilfoyle from Victoria mentioned the Catholic Welfare Bureau; how it did good work but that its funding was under pressure. Murphy acknowledged the good that it and other such organisations did and thought Commonwealth funding for such organisations was a possibility that could be investigated. However, Murphy noted the difficulties due to section 116 of the Constitution and its provisions regarding the Government and religion. 847

7.4.2 Statistics

While statistics were not as common in the religious discourse as in the secular discourse, when they were utilised they were debated. For example, Senator Carrick acknowledged that there were secular marriage ceremonies performed; he highlighted how 87% of marriages still had religious ceremonies according to the last census. 848 Towards the end of the debate, the Honourable Senator Sir Kenneth Anderson, who vehemently opposed the bill, dismissed Senator Missen’s rejection of census findings because they related only to New South Wales. 849 While not much of an issue, there was at least some debate in the religious discourse regarding statistics and the importance allocated to them.

849 Australia, Senate 1974, Debates, volume 4, 27 November 1974, p.2851. Senators Kenneth Anderson and Carrick both represented New South Wales while Senator Missen represented Victoria. It is possible although unlikely that it was a case of interstate rivalry.
7.4.3 *Argumentum ad populum*, and appeals to expertise and authority

The largest part of the religious discourse on the *Family Law Bill*, irrespective of whether the argument was for or against the bill, relied on appeals to expertise and authority. In the religious context, this was when senators made to various appeals to clerics who would have both religious authority and expertise. The two most common Christian denominations named in such appeals were unsurprisingly the Anglican and Catholic churches. Appeals to the authority of the Anglican Church and its clerics and organisations included Senator Missen’s citation of a letter from the Secretary of the Anglican Synod of the Diocese of Melbourne which stated that the period of twelve months was fine since it was in the interests of preserving the family as the basic unit of society.\(^\text{850}\) Similarly for the Catholic Church, the Tasmanian Senator Donald Devitt mentioned the two occasions on which he had heard the American Catholic Bishop Fulton Sheen speak and how impressed he was when he spoke about delinquent children, which he saw as the result of parents having to maintain a relationship when it was dead.\(^\text{851}\)

Other Christian denominations were appealed to, along with several simultaneously in order to showcase Christianity was on that particular senator’s side. For example, Senator Harold Young’s discussion of conversations with clerics from various religions and where he quoted the opinion of a “very important cleric” that he was in favour of the irretrievable breakdown of marriage as the grounds for divorce.\(^\text{852}\) Other Christian denominations that were invoked included the Presbyterian Church when Senator Gordon Davidson referred to the Subordinate Standard of the Presbyterian Church of Australia and its claim that twelve months was not long enough for all the steps and stages of reconciliation to occur.\(^\text{853}\) Senator Davidson mentioned that he was secure in his opinions because of the community groups he spoke to which included Christian ministers.\(^\text{854}\) Senator Frederick Chaney similarly justified his

position that two years was the optimal period of separation by referring to several different clerics.855

The literature of religious clerics was at times used as a source to justify a senator’s position. For example, Senator James McClelland referred to the 1966 pamphlet, *Putting Asunder* by the Archbishop of Canterbury’s Group which recommended irretrievable breakdown of marriage as the sole grounds for divorce.856 At other times, the religious literature was actively sought as some senators believed the churches were not active enough in the debates outside parliament. Senator Peter Durack from Western Australia stated that he was surprised that he had not heard from the churches on the matter so he had sent letters to Cardinal Knox and Archbishop Loane in 1973. He explained that they both replied to him detailing the moves that their respective churches had made. Durack used this information to argue that society had been thinking about the bill so that there was no need to delay the bill for six months.857 Furthermore, Durack also referred to a letter that the Standing Committee had received from Archbishop Woods, the Primate of the Church of England in Australia and Anglican Archbishop of Melbourne, where Woods said that most Anglicans would accept twelve months although it might be a bit too short, and the question was what was the best way to prove irretrievable breakdown.858

The senator most likely to invoke religious appeals to expertise and authority, or any religious element was the Honourable Senator Sir Kenneth Anderson. In his second reading speech on 30 October 1974, Senator Anderson made several religious points and referred to many religious figures. He made appeals to authority by mentioning Cardinal Freeman (Archbishop of Sydney) and Archbishop Loane (also of Sydney) and their letter to the *Sydney Morning Herald* letter editor on 10 September 1974, where they expressed their opposition to the bill and the ideal that Christians should not divorce.859 Anderson continued by referring to Catholic Archbishop Little of Melbourne, and the telegram which he received from him asking that debate be adjourned for six months in order to give interested people time to read the Standing

Committee’s report. At various times during the course of the debate Anderson also referred to lists of people who supported his position. For example, on 30 October 1974, Anderson referred to a letter dated five days previously, signed by clerics such as, the Reverend Thomas J. Connolly of St. Patrick’s College in Manly, the Reverend B. Judd, the Reverend Fred Nile, and Dean Lance Shilton of St. Andrew’s Cathedral in Sydney. Anderson admitted that the letter covered many points and then proceeded to read select passages from it and declared that hopefully he would be able to incorporate the letter into Hansard at a later date. Anderson successfully did so on 21 November, and in the list of signatories to the letter there were the following clerics: Cardinal Freeman and Archbishop Loane, the Most Reverend Edward Kelly, Auxiliary Bishop, St. Mary’s Presbytery in Concord; and Reverend Dr. Gloster S. Udy, Chairman of the Parramatta District Methodist Church.

Despite Anderson’s acknowledgement that diverse views were held among the various churches regarding the bill, it did not stop him from making numerous appeals to authority. Anderson also claimed that Murphy’s view went against the view of almost every denomination in the country, and that thousands agreed with Anderson that marriage was a contract entered into in good faith that could not be unilaterally dissolved.

Anderson’s appeals were rejected outright by a number of senators including Senator Kathryn Martin from Queensland. Senator Martin was forthright in her opinions about the lack of unity within the Christian churches on the matter.

It is a little futile to talk about the points of view of groups. The churches themselves are not unanimous. Different churches have taken different stances of different aspects of the measure. There are, of course, other pressure groups also working within the community.
Furthermore, Martin explained in some detail how she was not entirely persuaded by the religious arguments made by some people.

I am not totally persuaded by religious argument. Speaking personally, I have had a lot of pressure put on me by religious groups with the notion that marriage once undertaken is a permanent contract. I have never yet had sufficiently explained to me the logic behind the situation when 2 parties enter into this contract and one party breaks it, or never attempts fairly to keep it according to all the conditions that they undertake when they go through a religious marriage. It is not just an agreement to live together as man and wife. It is not just an agreement to be legally in the state of marriage. It is an agreement that covers very many aspects of human conduct in marriage. I cannot understand why when one of the parties breaks those aspects of the contract the other party is obliged to maintain them unilaterally. I think that is a matter for individuals.866

Any remaining force of Anderson’s argument was dismissed by Senator Missen during the committee stage. Senator Missen referred to an article from the Melbourne Herald from 22 November 1974 wherein the Reverend Bruce Reddrop, the Director of the Church of England Marriage Guidance Council since 1961, expressed his support for the bill. Missen went on to note Reddrop’s support, and that while religious authorities were being portrayed as opposing the bill, outside of Sydney this was not the case.

SENATOR MISSEN- An impression has been given abroad that religious leaders are mostly against this Bill, whereas if we leave out the city of Sydney my experience as a member of this Senate is that throughout the rest of the country they are overwhelmingly in support of the general principles of the Bill. In this newspaper article Reverend Bruce Reddrop says:

I see the Family Law Bill as sound, imaginative legislation which fills a long-felt need.

In referring particularly to the 12 months’ period, he says this:

The 12 months’ separation envisaged by the Bill is, I believe, an accurate indication that the marriage has broken down. No doubt there are cases where


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marriages have been resumed after a year or more of separation, but I believe they are very few.

That is the experience of a man who has directed the operations of that organisation for the last 16 years. I believe it is accurate and true.867

Thus, *argumentum ad populum* often in the form of appeals to expertise or authority were common within the religious discourse, but the situation was confused with different senators referring to different clerics in support of opposing positions. The view of religious authorities on divorce reform was therefore complicated. It is contestable whether the *Family Law Bill* was an agent of secularisation as some religious clerics did not have issues with the bill.

7.4.4 Letter Writing Campaigns

A form of *argumentum ad populum* that was utilised in the *Family Law Bill* debate was letter writing campaigns directed towards the senators by the public. These letters, sometimes from eminent clerics thereby providing the dimension of authority, were referred to by senators in order to support their various positions. This added a form of intertextuality to the debate in the Senate. It is one point that makes the debate in the Senate different to the other case studies as none of the other case studies focus on sources or texts external to the immediate debate. This adds a dimension to the discursive analysis.

Doubt however was first cast on these letters by the Honourable Senator Ivor Greenwood from Victoria who claimed in his second reading speech that, “Every honourable senator has been subjected to an intensive letter-writing campaign. Scarcely one senator has not received a considerable number of petitions urging a course one way or the other with regard to this Bill.”868 Greenwood went on to say that since September 1974, 99 petitions with 11,000 signatures for the bill had been received, alongside 133 petitions and 20,000 signatures urging for a delay.

867 Australia, Senate 1974, *Debates*, volume 4, 27 November 1974, p.2848. There is a chronological error in the statement. Missen mentions that Reddrop has been the director since 1961, and for the last 16 years. Since the statement was made in 1974, one of the two dates is wrong.

Greenwood noted nevertheless that these people still represented a segment of the population.\footnote{Australia, Senate 1974, Debates, volume 4, 19 November 1974, p.2535.} Senator Arthur Gietzelt believed that the letter writing campaign was orchestrated by the Anglican Church, more specifically the Sydney Anglicans, saying that they were sending out many letters claiming that the bill was being foisted unsuspectingly onto people.\footnote{Australia, Senate 1974, Debates, volume 4, 19 November 1974, pp.2518, 2519.}

While the letters may have affected some senators, overall they were not effective as the bill passed. It was also ineffective as some senators suspected that there was a group behind the letters thus undermining attempts to portray the letters as coming from concerned citizens who were motivated to write. An example of this was Senator Chaney who was happy one day when he received 72 letters on the same day largely expressing his view. He concluded it was an organised effort since he received no letters the following day.\footnote{Australia, Senate 1974, Debates, volume 4, 27 November 1974, p.2851.} Thus, letter writing campaigns, seemingly from at least some religious groups, aimed to give the illusion that there was broad support for their position, ultimately failed. This issue however provided an opportunity to discuss another issue in the religious discourse, the Festival of Light.

### 7.4.5 The Festival of Light

The Festival of Light featured in the debate to a degree because of rival claims as to its purpose and what it stood for. The recently formed organisation considered itself to be “a Christian ministry to the nation, promoting true family values in the light of wisdom of God.”\footnote{Family Voice Australia website, http://www.fava.org.au/about-us/history/ [accessed 11 May 2015].} In the Senate the organisation was accused of being the principal organisation behind the letter writing campaign. Senator Gietzelt\footnote{What Senator Gietzelt said should be considered in the light of accusations that he was a member of the Communist Party of Australia and was infiltrating the Australian Labor Party. This possibly influenced his stance on the Festival of Light. For an overview of the accusations, see Troy Bramston, ‘Truth about Communist Party infiltrator Arthur Gietzelt still not officially out there’, http://www.theaustralian.com.au/opinion/columnists/troy-bramston/truth-about-communist-party-infiltrator-arthur-gietzelt-still-not-officially-out-there/news-story/19ede93fe4cd7e14778fd77e1ef82fe8c?nk=d060a7e5852f79841b96d9335cc7cfd-id=1469078344 (9 August 2014) [accessed 21 July 2016].} claimed that the Festival of Light was scaring well-meaning Christians into action. He disapproved of
their actions and thought that they were more political. Gietzelt expressed his fear that the organisation was actually a front for the development of an ultra-conservative political group.

I am concerned that the Festival of Light organisation, which seems to be the principal core of the opposition to this legislation, is developing into a ultra-conservative political group, using the cloak of the Church and of morality to attract community support.

This caused Senator James McClelland to label the organisation, along with similar organisations, as ‘the Festival of Darkness’, in part because of their involvement in the concerted letter writing campaigns. This name-calling, *ad hominem* attacks, led to divisions and some senators spoke to openly support and defend the Festival of Light and reject McClelland’s derogative name. Senator Davidson defended the Festival as a group of people with the utmost best intentions; Senator Peter Baume from New South Wales took offence saying that he had met them and thought that they were only good and honest in their dealings and only wanted a good divorce bill. While they started with different premises than him and came to different conclusions to him, they were intellectually honest throughout the process. Senator Greenwood also spoke positively about the Festival of Light.

The Festival of Light and the brief debate that surrounded it in the Senate was important since it offered a glimpse of the political machinations outside of Parliament, especially in regards to a rhetorical device that was mentioned in the parliamentary discourse. The debate on the Festival of Light was also important because it highlighted the name-calling and toxic nature that the overall debate on the *Family Law Bill* caused.

Thus the religious discourse did not necessarily oppose the *Family Law Bill* although it did not support all the clauses that were ultimately successful such as a twelve

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month period of separation as a sign of irretrievable breakdown. The religious discourse shared some features with the secular discourse such as invoking utilitarianism or *argumentum ad populum*, and appeals to expertise and authority. The religious discourse was far more nuanced than the secular discourse which was overwhelmingly in favour of the *Family Law Bill*.

### 7.5 Analysis

A discursive analysis of the debates in the Senate regarding the *Family Law Bill* shows that the specific arguments employed by the parliamentarians were much the same as the arguments employed in the previous case studies. While the parliamentarians acknowledged the significance of the legislation and the change in a style of life that it would cause for Australia, it was never seen as a consciously secularising act. A discursive analysis of the debate therefore supports Brown’s thesis regarding secularisation as the *Family Law Bill* cannot be claimed to have (consciously) secularised Australia. Some senators however claimed or alluded to a past that was endangered by the bill. They appealed to historical memory and the sense of community as described by Hervieu-Léger. This was the power and influence of politics on society and people.

Just as secular arguments were more common or pervasive in the debates regarding legalised cremation and Sunday entertainment, secular arguments were more common and pervasive in the Senate regarding the *Family Law Bill*. The arguments were both more extensive and more complex. The secular arguments also began at the very beginning, helped by Senator Murphy employing them, and they were a regular feature until the passage of the bill. When religious arguments did appear opposing the bill, often they were either appeals to authority and sought to delay the bill’s introduction, or ‘water down’ the bill by tinkering with details, e.g. the necessary length of separation to constitute irretrievable breakdown of marriage. Secular arguments dominated and beat any religious arguments or appeals that were made. There were differences in approaches from both sides, but the senators shared discursive similarities with previous debates in different Parliaments on different legislation.
The common secular arguments were progressivism, modernity and utilitarianism. Usually the progressive and modernity arguments overlapped. These arguments assumed that the bill in question was the right course of action for the times. Utilitarian arguments aided this claim by showing the improvement in peoples’ lives that the bill would secure. For no fault divorce this meant a fundamental revamp of divorce proceedings that would alleviate burdens for the couple, any children involved, but also the judicial system. When these arguments were combined, it was a difficult proposition to oppose the bill in toto on some religious principle that no senator extensively made.

The religious arguments were similar to the religious arguments in the previous debates. Often these amounted to appeals to certain religious beliefs or figures. The slippery slope rhetorical device was assumed that if the bill passed the deterioration or even fall of society and civilisation was predicted. As Henry Finlay noted at the beginning of this chapter, in short it came down to a confrontation between traditional moral attitudes towards divorce and the practical considerations of life. The practical considerations of life won the debate.

A fatal flaw for the religious discourse was that its arguments were not united, nor was the support behind the arguments. Senator Martin made this clear in one her speeches that not all the churches were united in the same position, and Senator Missen added that if the Sydney clergy were taken out of the debate, the majority of the clergy elsewhere favoured the bill. Such disunity could only weaken any strong religious argument, especially against a unified secular front from the progressive Whitlam Government.

Of the four female senators at the time, three spoke at some length on the bill, with Senator Ruth Coleman the exception. The three remaining women were all in favour of the bill. Senator Martin’s comments have already been noted; Senator Jean Melzer said, “I think the fact that we are moving towards no fault divorce is an excellent

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880 Finlay, To Have but not to Hold, op. cit., p.50.
idea”, and Senator Margaret Guilfoyle mentioned during the debates how such entities as the Catholic Welfare Bureau did good work and needed support. This is the first case study where there were several women in parliament. The fact that the women supported the bill is likely due to the difficulties that women suffered under the old legislation. This is one of the few examples in the thesis where gender, as a result of female participation in the debates, helped to change the debates. While it is impossible to gauge how much the three female senators affected the debate, their votes were at least meaningful and influential. Interestingly, some of the women were stridently opposed to the churches.

In the Family Law Bill debate, those with a strong religious background opposed the bill in some form, at times vehemently. For example, the Honourable Senator Sir Kenneth Anderson, perhaps the strongest opponent of the bill, declared himself to be a lay Presbyterian, while the Australian Dictionary of Biography lists Anderson as having “Calvinist Presbyterian principles” which led to some social initiatives such as liberalising censorship and redrafting the pharmaceutical benefit scheme. The Honourable Senator Ivor Greenwood also opposed the bill and the Australian Dictionary of Biography also noted that he was a lay preacher in the Churches of Christ. Senator Gordon Davidson in opposing certain measures of the bill referred to the Presbyterian Church of Australia and noted that he referred to them because they were the church that he knew the best. While it was not possible to gather the religious affiliations of a significant number of senators, it is noticeable that some of the bill’s fiercest critics were religious and their religious beliefs extended into their arguments regarding the Family Law Bill.

Lastly, several notes need to be made about the Senate debate on the Family Law Bill. It was acknowledged at the beginning of this chapter from Henry Finlay’s work that the long-term historical trend in Australia had been to steadily do away with punitive

punishments regarding divorce. These trends were not uniform but steadily made progress. The bill therefore can be seen as the last hurdle in abolishing punitive elements in the matter of divorce. Finlay sought to account for marriage and divorce and the social reasons for changes over time. This case study seeks to see the religious and secular reasons given by parliamentarians on the issue in the early 1970s in answering the overriding question of the thesis. The research is aimed in a different direction. Perhaps more so than in the other case studies, the divorce case study even at this stage shows that it may have been a significant result of a progressive government. No fault divorce formed a part of their overall agenda of building a progressive Australian society. This, I think, however, does not mean that it was solely the result of the zeitgeist of the late 1960s and early 1970s. Such claims are too vague and miss the specific causes, and would not answer the concern of the thesis. It is also important to note that even if it was a case of zeitgeist, there was a significant countermovement exemplified in the letter writing campaigns and the Festival of Light. While the previous two case studies had instances of letters being sent to parliamentarians, this case study was the most significant, perhaps in part due to the bill taking place in a national parliament. These counter-movements as demonstrated had a limited impact in the Senate. Thus, the nature of secularisation and even religionisation is as contested as Brown’s thesis claims; a change in a style of life was contested by some, who at times relied on historical memory. Discourse analysis demonstrates this even with relatively few sources such as Hansard, but methodologically this is not unprecedented as some Annales school historians have demonstrated. These final analytical notes need to be kept in mind as the case study moves to the House of Representatives. In the next chapter the secular and religious discourses are examined in the Lower House.
CHAPTER 8 – DIVORCE II: THE HOUSE OF REPRESENTATIVES

This chapter covers the parliamentary discourse surrounding the Family Law Bill in the House of Representatives. It begins with an overview of the debate before examining the secular and religious discourses respectively. These discourses are then analysed via Fairclough’s discourse analysis. The methodology is justified as it enables the assumptions, differences, intertextualities, and different voices of the discourses to emerge, be analysed and understood. Such an approach is not unprecedented and it is common in the work of some French Annales historians such as Emmanuel Le Roy Ladurie and Michel Vovelle. It has enabled both the secular and religious discourses to be examined with subcategories. This chapter is important because the House of Representatives was the last legislative obstacle for the bill to pass and formally legalise a style of life that had been fairly standard for a long time. This change was a third change in a significant area of life for Australians changed within a century, after the legalisation of cremation (the realm of death); the liberalisation of Sunday entertainment (the realm of work and leisure). Now it was no fault divorce (the realm of love and the home).

Throughout this chapter the House of Representatives may occasionally be referred to as the Lower House for brevity and style. It is also important to note that just as with the debate in the Senate, the parliamentarians had a free, or ‘conscience vote’ on the bill. Therefore, as with all conscience votes there was no party political pressure to vote in a particular way. The parliamentarians were free to vote however their consciences directed them. Nevertheless, the party political affiliation of the speaker appears in brackets when they are first mentioned. Finally, as in the previous chapter, this chapter does not analyse the religious affiliations of the parliamentarians because the affiliations were not able to be determined to a significant degree. However, some parliamentarians did mention their religious affiliations during the course of the debate and this is examined in the religious discourse section. First however, the overview of the debate in the Lower House needs to be established.
8.1 Overview of Debate in the House of Representatives

The *Family Law Bill* debate began in the House of Representatives on 28 November 1974 when the bill was received from the Senate. Its association with the House of Representatives concluded on 29 May 1975 when a message was received noting the bill’s royal assent. The second reading stage occurred principally in February 1975, although it was also discussed somewhat in March and April. The committee stage followed in May.

As with the other bills in this thesis, the contours of the debate were evident from the very beginning. Labor Prime Minister Gough Whitlam in his second reading speech noted that it was a bill responding, “to an overwhelming demand for reform in this area, and not, as has been suggested by some, to impose an unwanted measure on an unwilling community.” The *ad populum* sentiment expressed was coupled with overcoming such utilitarian concerns as high costs, delays, and indignities. The restitution of conjugal rights, the annulment of void marriages, and damages for adultery would be abolished as anachronistic. Whitlam made clear the utilitarian intentions of the bill as it sought to, “protect the welfare of the children, who are the real victims of broken marriages.” Utilitarianism, modernity, and popular support were key motivations and arguments. Philip Lucock (Country Party) was the only other speaker on the day and he sought to delay the proceedings when he claimed more time was needed, especially as two of the six major Christian churches claimed that the bill should be delayed for six months.

The bill was next discussed on 11 February 1975, wherein a number of petitions were tabled. Interestingly, the very first paragraph of the first petition read:

(a) That the present matrimonial laws are archaic, unrealistic and cruel and the cause of so much distress, bitterness and injustice as to make their continued

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889 Australia, House of Representatives, *Debates*, volume 4, 28 November 1974, p.4320
890 Australia, House of Representatives, *Debates*, volume 3, 29 May 1975, p.3072
891 Australia, House of Representatives, *Debates*, volume 4, 28 November 1974, p.4320
892 Australia, House of Representatives, *Debates*, volume 4, 28 November 1974, p.4320
893 Australia, House of Representatives, *Debates*, volume 4, 28 November 1974, p.4323
894 Australia, House of Representatives, *Debates*, volume 4, 28 November 1974, p.4321
895 Australia, House of Representatives, *Debates*, volume 4, 28 November 1974, pp.4324-4325
operation intolerable to the vast majority of fair minded citizens of Australia and the Family Law Bill at present before Parliament should be passed without delay.\footnote{896}{Australia, House of Representatives, \textit{Debates}, volume 1, 11 February 1975, p.1.}

Among some of the petitions, Country Party’s Peter Fisher’s petition opposed the bill in the current form. He prayed that the House incorporated support to married couples that the Australian Catholic Episcopal Conference suggested in a statement.\footnote{897}{Australia, House of Representatives, \textit{Debates}, volume 1, 11 February 1975, p.2.}

The bill was first properly debated in a second reading debate the following day on 12 February 1975. On this day a total of 12 parliamentarians spoke on the bill. A further five more spoke the following day. The debate on 12 February was largely uncontentious and it was the first time that the key themes of the debate appeared. The debate on 13 February however itself began with a debate principally between the Honourable Keppel Enderby (Labor) and the Right Honourable Billy Snedden QC (Liberal) about an amendment, and the claim that if it passed it effectively ended the bill. The amendment called for the family to be noted as the basic unit of society; marriage should be buttressed, permanent, and secure; full and proper recognition be given to women as wives and mothers; full protection for women and children; children needed to be reared by a parent; and a minimum period of two years for no fault divorce.\footnote{898}{For this debate see, Australia, House of Representatives, \textit{Debates}, volume 1, 13 February 1975, pp.317-320.} The debate on this date involved both discussion about the amendment and the bill more broadly.

28 February 1975 marked the date when over 20 parliamentarians spoke on the bill. While the arguments made on this day were not unique to the overall debate, it did see a number of religious references or statements made in opposing the bill. These are examined in greater detail in the religious discourse section. The final dates for the second reading debate occurred on 6 March and 9 April 1975.

The next significant event regarding the Family Law Bill’s progress was on 15 May 1975 when it entered the committee stage. It was discussed in the committee on that day and the discussion continued on 19, 20, and 21 May, before it was read a third
time. 15 May was significant as the Honourable Frederick Michael Daly (Labor) began the committee’s debate by noting statistics on how long both Houses of Parliament had already debated the bill, with a focus on clause 48, which had to do with the dissolution of marriage. Daly claimed that sufficient time had been given to parliamentarians to make their views known. To make matters more practical for the House, he suggested a five minute time limit on parliamentarians discussing clause 48 during the committee stage. There was to be an overall time limit of five hours to discuss the clause, with Standing Orders suspended in order for clause 48 to be discussed first so that the issue was resolved as it affected other clauses in the bill. Daly’s suggestion was controversial but eventually passed 59 votes to 55. The committee began discussing clause 48 on 19 May.

Finally, a significant issue during the committee stage was Robert Ellicott QC’s (Liberal) amendment granting three grounds for divorce with different time lengths required. Ellicott’s amendment was however ultimately unsuccessful by one vote.

Some of the consistent issues that crept up throughout the debate in the Lower House were whether fault should indeed be made redundant remain; whether twelve months or two years, or some other length of time was appropriate for the couple to live apart and therefore establish irretrievable breakdown; and some specifics about the Family Court and its operation.

8.2 The Secular Discourse

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899 Australia, House of Representatives, Debates, volume 2, 15 May 1975, pp.2341-2342. An overall summary of the time spent discussing the bill ended with the Senate spending a total of 28 hours and 21 minutes, while the House of Representatives had spent a total of 17 hours 50 minutes on the second reading stage alone. See Daly in Australia, House of Representatives, Debates, volume 2, 15 May 1975, p.2343.
900 Australia, House of Representatives, Debates, volume 2, 15 May 1975, p.2343.
901 Australia, House of Representatives, Debates, volume 2, 15 May 1975, pp.2348-2349.
902 Australia, House of Representatives, Debates, volume 3, 19 May 1975, pp.2419-2420.
903 Australia, House of Representatives, Debates, volume 3, 19 May 1975, p.2441. The vote was 60-59.
With discourse analysis it is possible to investigate the secular discourse through a number of subcategories. Most of these subcategories featured in the examination of the Senate in the previous chapter. In the Lower House it is possible to subdivide the secular discourse into progressivism, modernity, utilitarianism, rhetorical devices such as *argumentum ad populum*, statistics, and appeals to expertise and authority. Utilitarianism itself subdivides further into more subcategories. Each of these categories are examined below, and they are then analysed further towards the end of the chapter after the religious discourse has also been examined in a similar manner. Without discourse analysis as a methodology, this analysis, and the thesis, would not have been possible. The examination of the secular discourse begins with the subcategory of progressivism.

8.2.1 Progressivism

Arguments and appeals based on progressive assumptions featured in the Lower House and were a part of the secular discourse. These assumptions, appeals, and arguments were supportive of the *Family Law Bill*. Some parliamentarians made this clear and stated that they supported the bill because of its progressive nature. For example, Richard Gun (Labor) explicitly stated that he supported the bill because of its progressive nature.\(^{904}\)

One of the main progressivist arguments concerned the social education of young people and its value for the future. David Connolly (Liberal) was the most detailed on this matter when he claimed that people were marrying for the wrong reasons as seen in the number of births within nine months of marriage. As a result he argued, education of young people about marriage should begin in high school.\(^{905}\) Such a sentiment was noted earlier by Anthony Lamb (Labor) who said that it was not laws that made good marriages but a good social education.\(^{906}\)

Another common progressive argument concerned the benefits that the bill would give women, although this point was often contested. Richard Gun noted that women

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\(^{904}\) Australia, House of Representatives, *Debates*, volume 1, 12 February 1975, p.172.

\(^{905}\) Australia, House of Representatives, *Debates*, volume 1, 6 March 1975, p.1172.

\(^{906}\) Australia, House of Representatives, *Debates*, volume 1, 28 February 1975, p.927.
were not appendages to men,\textsuperscript{907} and David Connolly welcomed or at least acknowledged that under clause 72 of the bill, the wife might have to support the husband if the circumstances were right,\textsuperscript{908} much to the chagrin of some other parliamentarians.

In general however, the progressive elements of the bill were noted by supporters and were considered positively. Those who opposed the bill generally saw it as either the beginning or the continuation of social decay and decline. It is clear that those who were concerned about social decline and decay considered the bill a far greater change in the style of life than those who supported the bill. Progressive supporters of the bill did though acknowledge social reality. Examples include Ian MacPhee’s (Liberal) identification of social changes and the consequences this meant for society when he said:

\begin{quote}
Increased education, affluence and equality of opportunity between the sexes have led to attitudes such as those which are reflected within this Bill and those of which it is a logical extension. The most important aspect of the Bill is that it makes men and women more equal before the law then they are at present.\textsuperscript{909}
\end{quote}

MacPhee spoke again on the bill during the committee stage and made similar points regarding the acknowledgement and acceptance of social reality. MacPhee stated that some issues to do with divorce or the reasons traditionally given for divorce were no longer applicable or as applicable as had previously been the case. MacPhee noted the example of homosexuality and stated that people were not as shocked by it nowadays in part because people knew more about each other’s sexuality prior to marriage. People were now more likely to know beforehand if their partner was homosexual so it would not be an issue that would lead to a divorce. MacPhee qualified this statement by saying that perhaps some older parliamentarians were an exception to this progressive social development.\textsuperscript{910}
The Honourable James Ford Cairns (Labor) was more explicit in his progressive support when he said that the bill was “a humane and civilised proposal which covers many significant social matters other than the dissolution of marriage.” Cairns continued by listing some of the at least fifteen (Cairns’s estimation) significant social provisions provided in the bill, some of which were completely new. An abridged list includes provisions such as the establishment of the Family Court of Australia; the abolition of fault in divorce; the joint custody, responsibility and maintenance of children; criteria for spousal maintenance; increased counselling services; and the establishment of an institute of family studies.

8.2.2 Modernity

Assumptions, appeals and arguments that were based on notions of modernity were closely related to those that were based on progressivism, just as they were in the Senate, and in previous case studies in this thesis. The most common appeal was that contemporary society was sufficiently different to a previous time that changes in legislation were therefore necessary. This was most explicitly expressed by Robert Whan (Labor) when he said that Australia in 1975 was not the same socially as Britain in 1857. Whan added to this by asking members to think what Australian society would be like in 1985 and how different it would be. By 1857 Whan was referring to the British Matrimonial Causes Act which made divorce in the United Kingdom a matter for civil and not ecclesiastical law courts.

While Whan’s example may have been hyperbolic, other parliamentarians made references to broad and general social changes. Ian Sinclair (Country) claimed that legislative changes were needed because social change had been so great; changes in social attitudes were what had caused the number of divorces to increase according to David McKenzie (Labor), and therefore the law needed to keep up with changing social expectations; John Coates (Labor) in a similar vein wanted to provide

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911 Australia, House of Representatives, Debates, volume 2, 9 April 1975, p.1375.
912 Australia, House of Representatives, Debates, volume 2, 9 April 1975, p.1375. Cairns’s full list is listed on this page.
913 Australia, House of Representatives, Debates, volume 1, 12 February 1975, p.179.
914 Australia, House of Representatives, Debates, volume 1, 6 March 1975, p.1178.
915 Australia, House of Representatives, Debates, volume 1, 6 March 1975, pp.1168-1169.
Australians with up-to-date legislation, and Robert Viner (Liberal) summarised the views of the above parliamentarians by claiming that legislation needed to take into consideration changing social attitudes. Discourse analysis reveals that the assumptions underlying all of these statements were the recognition that the times had changed: various styles of life, as Peter Stearns would say, had changed and it was necessary to legislate accordingly.

There were other parliamentarians who were more specific with claims about modernity. John Kerin (Labor) spoke about how the position of women had changed since the nineteenth-century leading to greater equality along with increased economic power. John Howard (Liberal) mentioned women during the committee stage and noted that divorces occurred more often as people were able to afford to live separately, and women were more financially independent than they had been a generation before. Some parliamentarians however, such as Horace Garrick (Labor), noted that the rise of the nuclear family, along with greater educational opportunities for women, had placed greater pressure and stress on families, although Garrick believed that the bill would not save as many women from projected negative practical consequences as some hoped.

There were some parliamentarians who acknowledged that social changes had occurred, but this did not mean moral judgements could be made regarding those changes. For example, Kenneth Fry (Labor) rejected the claim that the family was the basis in determining whether something was right or wrong. Fry claimed that history showed that the current nuclear family as opposed to the extended family was the reason why there were greater pressures on families. Fry continued, “…the history of the family is one of slow but constant change in the past and one of accelerating rate of change in contemporary society. The changes in the nature of the family have many causes and have had many manifestations in the history of mankind.”

916 Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.951.
917 Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.932.
918 Australia, House of Representatives, Debates, volume 1, 28 February 1975, pp.947-948.
919 Australia, House of Representatives, Debates, volume 2, 15 May 1975, p.2426.
920 Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.922.
921 Australia, House of Representatives, Debates, volume 1, 6 March 1975, pp.1161-1162.
922 Australia, House of Representatives, Debates, volume 1, 6 March 1975, p.1162.
Fry, it was not their job as parliamentarians to judge whether the changes were good or bad, only to take them into consideration. Fry concluded that with such changes having occurred he could not perpetuate the injustices found in the contemporary law and he supported legislative change.

The importance of the clash between the legal status quo and contemporary social change and the practical issues it raised was made clear by the new Attorney-General, the Honourable Keppel Enderby. Enderby, in a second reading speech on 13 February 1975, gave two examples that illustrated what he saw as the legal disconnect from social reality. One of Enderby’s examples involved a husband who in a state of drunkenness caught his wife and her lover in bed. He told them to “go for it”. It was argued in court that he had therefore given his consent to their activities and was unable to divorce his wife.

Through Enderby’s example, discourse analysis highlights the thrust behind both the progressivist and modernity arguments within the secular discourse. The claim was that social reality had changed greatly but the contemporary law caused unexpected challenges and difficulties to people. The law needed to change to reflect contemporary society. Here is the idea that contemporary practice forms the foundation of law. This is different from the view wherein there was an ideal to aspire to and this was reflected in the law e.g. marriage was permanent therefore divorce was illegal or difficult to obtain. While this has an utilitarian dimension to it, utilitarian appeals and arguments were also explicitly made during the course of the debate.

8.2.3 Utilitarianism

Utilitarian concerns were the most common concerns throughout the secular discourse in the Lower House. Much like in the Senate, the principal tropes concerned the married couple, broader society, children, and women. Interestingly for the Lower House, how divorce would affect men was an issue as well. A basic

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923 Australia, House of Representatives, Debates, volume 1, 6 March 1975, p.1162.
924 Australia, House of Representatives, Debates, volume 1, 6 March 1975, p.1163.
925 Australia, House of Representatives, Debates, volume 1, 13 February 1975, p.322.
summary of the utilitarian secular argument, along with a summary of the secular-religious discourse debate was seen when Honourable Leslie Johnson (Labor) said the bill was “being denounced as a conspiracy to wreck marriages, break up families, spread immorality, tear the social fabric and destroy the nation. The basic purpose of the Bill is to diminish the oppressive costs, delays, indignities and other injustices inherent in the present divorce laws and their administration.”926 Such claims that life would be easier formed the essential core of the utilitarian secular argument.

8.2.3.1 General: Society and Couples

The general assumption was that the status quo was negatively affecting married couples seeking divorce, and their lives would be made easier and better under the Family Law Bill. Some parliamentarians such as Robert Viner, even claimed via ad populum arguments that their electorate universally approved the concept of the family courts as established by the bill. Viner also claimed that the community favoured administrative and law reform; removal of indignities in court proceedings; protection of wives and children; the settlement of financial issues; and irretrievable breakdown as the grounds for divorce.927 The Honourable Ransley Garland (Liberal) believed that the bill would overcome the bitterness which resulted from contemporary divorces, leading people to have more settled and satisfying lives.928

If there was the belief that the status quo was not working and that couples would be better served under the Family Law Bill, why was this so and how would the benefits occur? Attorney-General Enderby believed that it was the current court system, with the adversarial system, along with the fault principle, that encouraged couples to hate each other.929 The situation was exacerbated, according to Enderby, by some judges gaining pleasure from hearing the sordid details of marriages. Even though 95% of divorces were uncontested, they still needed to go through the court system and this terrified some people.930 While it is one example from one parliamentarian, it is clear that there was a strong belief that divorce requirements and the court system did not

926 Australia, House of Representatives, Debates, volume 1, 6 March 1975, p.1158.
927 Australia, House of Representatives, Debates, volume 1, 28 February 1975, pp.932-933.
928 Australia, House of Representatives, Debates, volume 1, 12 February 1975, p.170.
930 Australia, House of Representatives, Debates, volume 1, 13 February 1975, p.322.
help couples seeking divorce. Some parliamentarians such as Donald Cameron (Liberal) believed that many of the problems could be avoided in the first place if there was better education in place for young couples so that they seriously thought about what marriage involved. He suggested such practices as giving at least three months warning and undergoing some professional discussions before marrying.\textsuperscript{931}

Whether changes to the court system and earlier education were the answers or not, many believed that they were and that such changes would benefit many people and society as a whole. Richard Gun believed that, with the bill, marriages would still be mutual, and in fact mutuality would be strengthened, as people currently were forced to remain married because of circumstances when they wished to divorce.\textsuperscript{932} Remaining married, under the wrong circumstances, was not helpful either to the couple or to society. Gun summarised his position along with those who argued along utilitarian lines by saying, “The law should not be an instrument for Old Testament retribution; it should be humane, compassionate and realistic. This Bill is humane, compassionate and realistic.”\textsuperscript{933} Gun’s statement created a false dichotomy between the secular and religious discourses. Gun attempted to portray the secular discourse as warm and caring, as opposed to the religious discourse which was cold and not understanding. Gun did this by referring to the Old Testament which is often seen as the sterner testament as opposed to the New Testament which is often seen as more loving. It was also argued within the secular discourse that children would benefit from the \textit{Family Law Bill}.

\textbf{8.2.3.2 Children}

The most common argument or claim heard about how the \textit{Family Law Bill} would positively benefit children was through state interventionism. Some parliamentarians argued that due to the effects that divorce proceedings had on children, and the special place of children in society, there was a need for the state to ensure that the children’s best interests were considered and accounted for. John Kerin precisely made these points in arguing for the liberal harm principle. Kerin in a second reading

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\textsuperscript{931} Australia, House of Representatives, \textit{Debates}, volume 1, 12 February 1975, pp.186-187.
\textsuperscript{932} Australia, House of Representatives, \textit{Debates}, volume 1, 12 February 1975, pp.172-173.
\textsuperscript{933} Australia, House of Representatives, \textit{Debates}, volume 1, 12 February 1975, p.174.
\end{flushleft}
speech argued that the state should not interfere in associations, especially marriages, and the state should leave people alone in domestic affairs unless it was to prevent abuse by some to others. 934 Furthermore, the state had an interest in the family because children were involved. Kerin noted that sexual matters should not be an issue as the state was secular and therefore religiously or morally neutral on such matters. 935

The Honourable James Cairns concurred with Kerin, although he was more straightforward and did not resort to political philosophical beliefs in depth. Cairns claimed that the protection of children was the strongest justification for the state to regulate marriage. 936 During the committee stage, the future Australian Democrats founder Don Chipp (Liberal) appealed to the harm principle again by saying that the state should not intervene in the private lives of people unless there was harm to someone else. Marriage fitted this description since society could be thought to have been built on it and children were involved. 937

While state interventionism to save children was the most common explicit argument used when the issue of children and marriage was discussed in the secular discourse, it was not the sole argument and concern. The Honourable Kevin Cairns (Liberal) mentioned once in passing that one of the great virtues of the bill was that it sought to give separate representation to children in the court proceedings. 938 Bruce Graham (Liberal) noted that there were some sections of the media that liked to focus on sensational claims that came from divorce proceedings and he thought that such attention was not in the best interests of children. 939 The secular argument therefore made it clear that a utilitarian reason for supporting the bill was that it would improve divorces for children caught up in them, since the state would be able to intervene to protect a child’s interests, they would be given their own representation, and they would not encounter the effects of media attention. This utilitarian concern for children however was overshadowed by the predominantly male parliamentarians

934 Australia, House of Representatives, Debates, volume 1, 28 February 1975, pp.946-947.
935 Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.947.
936 Australia, House of Representatives, Debates, volume 2, 9 April 1975, p.1376.
937 Australia, House of Representatives, Debates, volume 3, 19 May 1975, p.2430.
938 Australia, House of Representatives, Debates, volume 1, 13 February 1975, p.324.
939 Australia, House of Representatives, Debates, volume 2, 9 April 1975, p.1385.
expressing secular utilitarian concern for women and how women would benefit from the bill.

8.2.3.3 Women

Along with children, women were seen by the predominantly male parliamentarians as a group that needed specific protection from the effects of the Family Law Bill. Even female parliamentarians noted this. It was the example of a style of life, a way society had been organised being challenged by new legislation as a result of a multitude of social changes that had occurred in the previous decades. For example, during the committee stage, the new Opposition Leader, and future Prime Minister, Malcolm Fraser (Liberal) stated his dislike regarding how some parts of the proposed legislation sought to encourage women to work when they had expected that they would receive protection from the law even when they were divorced. He thought that this was unfortunate and wanted some safeguards put in place. It was unfortunate because many women grew up and lived in a way such that they imagined that they would never have to work as they would be provided for by their husbands, even after divorced.

This was essentially the same argument as the one in the Senate regarding the hypothetical woman who would be negatively affected by the proposed bill as she would have to find work for which she was ill-equipped because of her years as a housewife and away from the workforce. The most interesting comments on the issue came from the Honourable John McLeay (Liberal) when he said that he did not think it was unfair to label the bill as a man’s bill since women would have to make their own arrangements regarding several issues with finance and the law. They would be effectively worse off. The crux however was that McLeay admitted that he was one of the men who kept their wives from working and being financially independent to some extent.

941 Australia, House of Representatives, Debates, volume 2, 9 April 1975, p.1374.
942 Australia, House of Representatives, Debates, volume 2, 9 April 1975, p.1375.
While the Lower House was dominated by men, the men did acknowledge that they themselves had a role to play in the state of affairs. The Honourable Robert Katter Sr. (Country) noted that it was usually the men who played around and left their wives, usually with two or three children. The Honourable Ian Sinclair claimed that the bill unfairly changed the circumstances for women and that men should still be the principal provider of maintenance since the women took leave of their careers to help the men’s careers in such forms as childrearing, so the maintenance was a kind of compensation. Or in Sinclair’s words: “I think each has a responsibility within the marriage contract, but I believe that there is still a continuing responsibility for a man to maintain his wife and children.”

The issue of women, legal matters, and birth were issues from the very beginning of the debate. The Honourable Phillip Lynch (Liberal) noted on 12 February 1975 that according to the legislation the wife would have a positive legal duty to show that she needed maintenance, and there was even a chance that the wife would have to support her husband. For Lynch this changed completely the husband-wife dynamic. Hypothetically, this would have reversed the previous style of life. Donald Cameron reflecting on the entire debate noted that he disapproved of how women were portrayed in the debate as it did a disservice to them.

Women were an important concern along with children because they not only accounted for more than half of the population but, also because the male parliamentarians knew that the bill would change society in a significant way. The previous style of life encouraged women to be wives and mothers, but this would change with the bill. Discourse analysis makes it clear that whenever a parliamentarian noted the social significance of the bill, women and children were referred to. This was irrespective of whether the parliamentarian thought that their lives would be better or worse if the bill passed. Some parliamentarians such as Donald Cameron were able to recognise the belittling way parliamentarians spoke

945 Australia, House of Representatives, *Debates*, volume 1, 6 March 1975, p.1180.
about women. How the bill would affect men was another utilitarian concern in the Lower House.

8.2.3.4 Men

A unique element of the secular discourse in the House of Representatives was a utilitarian concern for men. It was however connected to women, and the issue of pregnancy and how this could affect men in light of the proposed Family Law Bill.

The Honourable William Wentworth (Liberal) was the most consistent petitioner on this issue, raising the point both during the second reading debate and the committee stage. On 12 February 1975 Wentworth claimed that the bill was unfair to both women and men, and regarding men, claimed that if a woman had an affair and a gestation period under twelve months, the man would be forced to adopt the child with full knowledge that it was not his own offspring.948 This was a reference to the twelve month period of separation needed to establish that irretrievable breakdown had occurred, the sole grounds for divorce. During the committee stage Wentworth reiterated the exact same point and connected it to the push to maintain fault within the legislation. Wentworth said: “The situation is absurd. No man should be put in that situation at all. I suggest that, for that reason, if for no other, the concept of fault has to be maintained in the Bill so that in this kind of case there could be instant relief.”949 Wentworth was also an example of cases where while generally in favour of the bill, the secular discourse was utilised at times to argue against it, or for certain modifications.

Other arguments were proffered concerning men and how the Family Law Bill could potentially disadvantage or be unfair to them. For example, John Fitzpatrick (Labor) spoke about women who had found a new partner who might be supporting them, while their husbands still had to pay alimony. If the husband was unable to do so then he could be thrown into gaol. Fitzpatrick stated his sincere sympathy for such men.950 The Honourable Ralph Hunt (Country) was concerned for the men who were away

948 Australia, House of Representatives, Debates, volume 1, 12 February 1975, pp.176-177.
949 Australia, House of Representatives, Debates, volume 2, 15 May 1975, p.2423.
950 Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.916.
for twelve months either serving in the forces, or injured in hospital, or in jail, and found themselves thus divorced. These utilitarian arguments centred around men and were practically orientated and applied to both sides of the bill, for and against. Men were always somehow connected to women in these secular utilitarian arguments, and it was unique to the Lower House. As with the Senate and the other case studies, the use of rhetorical devices such as the use of statistics, ad populum arguments, and arguments from authority and expertise featured in the secular discourse in the Lower House.

8.2.4 Statistics, argumentum ad populum, arguments from expertise and authority

The rhetorical devices used in the secular discourse in the House of Representatives were the use of statistics, ad populum arguments, and arguments from expertise and authority. These were mostly used in some form to support the bill although there were instances where they were used to oppose. The use of statistics was a rhetorical device most often used to support the bill, and featured from the very beginning of the debate in the Lower House. Prime Minister Gough Whitlam in introducing the bill cited a Morgan Poll that claimed 60% of people supported twelve months as a period of separation. Other parliamentarians such as Urquhart Innes (Labor) and Anthony Lamb referred to the statistic that 75% of divorced people remarried, claiming that this was proof that people still respected marriage, and in granting easier divorce it would allow more people to remarry to partners where the marriage would be more successful. Another oft cited statistic by multiple parliamentarians was the claim that some 95% of divorces were uncontested yet still had to go through fault proceedings, therefore the bill sought to overcome this problem. The Honourable Leslie Johnson during the second reading debate went into some depth regarding

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951 Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.929.
953 For Urquhart Innes Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.908; and for Anthony Lamb see Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.927.
954 See the Honourable Leslie Johnson mention this, Australia, House of Representatives, Debates, volume 1, 6 March 1975, p.1158. Another instance was when Attorney-General the Honourable Keppel Enderby mentioned the same statistic, see Australia, House of Representatives, Debates, volume 1, 13 February 1975, p.322. This has already been referenced.
statistics and claimed that 77% of women and 71% of men favoured no fault, and 61% and 59% respectively favoured twelve months or less as a period of separation. Johnson did however also note that one could not place too much faith in such polls.955

Appeals to authority and experts were a standard rhetorical device in the Lower House debates, particularly when the legal profession was seen to be supporting the bill. The Honourable Ransley Garland said that after talking to some people who were experts on the issue such as judges, he decided to support the bill.956 Horace Garrick noted that the lawyers with whom he had spoken agreed that the bill was completely fair to women and protected their interests along with those of children.957 Kenneth Fry noted his observation that fellow parliamentarians who had legal experience with divorce, thus politicians who had previously been lawyers, tended to support the bill.958 In a similar vein the Honourable George Erwin (Liberal) referred to Ray Watson QC and how the courts rarely saw any of the real facts when it came to divorce proceedings because of the current laws.959

While various parliamentarians appealed to the legal profession in support for the bill, showing the profession’s ad populum support for the Family Law Bill, institutions and organisations associated or auxiliary to the legal profession were also similarly invoked. Urquhart Innes was one who exemplified this approach. In his second reading speech, Innes claimed that the Family Law Bill did no more than help Australia meet its obligations to the United Nations Conventions on Civil and Political Rights to which Australia was a signatory. Innes referred in particular to Article 23 (1) wherein it noted that the family was a fundamental group unit of society and entitled to protection from society and the state.960 Innes went on to claim additional support from the Women’s Electoral Lobby which found no discrimination against women in the bill,961 and that the Senate Standing Committee on

955 Australia, House of Representatives, Debates, volume 1, 6 March 1975, p.1158.
957 Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.922.
958 Australia, House of Representatives, Debates, volume 1, 6 March 1975, p.1161.
959 Australia, House of Representatives, Debates, volume 1, 28 February 1975, pp.913-914.
960 Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.907.
961 Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.907.
Constitutional and Legal Affairs, the Law Council of Australia, and the Australian Council of Marriage Guidance Associations all agreed that twelve months was the preferred period of separation. Thus, Lower House parliamentarians appealed to a number of authorities or experts in the legal field for support in the secular discourse. At times these appeals had *ad populum* aspects.

A crossover pathway that occurred between arguments based on appeals to authority and expertise and *ad populum* arguments was to refer to letters that parliamentarians had received, although there was no indication of a letter writing campaign of the sort which had occurred at the time of the debate in the Senate. Numerous parliamentarians mentioned letters, and at times these were simply in passing. However, some parliamentarians such as Anthony Lamb noted that he had received two letters: one from the National Marriage Guidance Council of Australia; and one from the Tasmanian Marriage Guidance Council Inc. The peculiar nature of Lamb’s situation was that he represented the seat of La Trobe in Victoria, yet he received a letter from a Tasmanian organisation. John Kerin noted that he had received many letters, probably more against the bill than for it, but he had not received any letters from divorced people themselves. Kenneth Fry claimed that he had received hundreds of letters for and against the bill, and he claimed that the letters against the bill relied on hypotheticals and assumptions about undesirable social consequences that would occur if the bill was passed. While letters were mentioned, a letter writing campaign was not as influential an issue as it was in the Senate. The letters were however used as appeals to authority (the public), but they were an example of *ad populum* appeals.

While letters were mentioned, they were often mentioned in passing; connected to other aspects of the debate; or as rhetorical devices. One of the most common *ad populum* arguments that parliamentarians made was to refer to their electorates and how their electorates wanted them to vote. John Sullivan (Country) for example, representing the rural New South Wales seat of Riverina, claimed that he had spoken

962 Australia, House of Representatives, *Debates*, volume 1, 28 February 1975, p.908.
963 Australia, House of Representatives, *Debates*, volume 1, 28 February 1975, p.927.
964 Australia, House of Representatives, *Debates*, volume 1, 28 February 1975, p.946.
965 Australia, House of Representatives, *Debates*, volume 1, 6 March 1975, pp.1162-1163.
with his electorate and they were overwhelmingly opposed to the bill. Sullivan claimed that he had only received two letters in support of the bill: one from a man in Five Dock in Sydney, and the other from someone on behalf of some union members.\footnote{Australia, House of Representatives, Debates, volume 1, 12 February 1975, p.187.} Robert Viner stated how he had to reconcile his views with those of his electorate, so he spoke with the churches and other major groups and he was happy with how they had genuinely responded to him.\footnote{Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.932.} Albert James was more confident regarding an answer from his electorate as he believed that a majority favoured the bill in its entirety. James claimed that he intended to vote accordingly and he also mentioned how he had received letters and threats from people, with letters including from the Secretary of the New South Wales Australian Labor Party Women’s Committee, and the Catholic Worker.\footnote{Australia, House of Representatives, Debates, volume 2, 9 April 1975, p.1371.}

Different \textit{ad populum} arguments or appeals that were made were those that appealed to broader society or other societies, and usually in a vague sense. For example, the Honourable Phillip Lynch, in opposing the twelve month separation period, referred to England and Canada and their respective periods of separation as a model claiming that both countries had “similar social structures”.\footnote{Australia, House of Representatives, Debates, volume 1, 12 February 1975, pp.182-183.} Lynch went on to speak about how the number of divorces increased in England once the laws were liberalised, although he admitted that it might be a case where there was a backlog of cases, although he personally did not believe that was likely.\footnote{Australia, House of Representatives, Debates, volume 1, 12 February 1975, p.183.} There were broad appeals based on Australian society as well. Vincent Martin (Labor) claimed that the bill went completely against the concept of marriage as understood by Australian society.\footnote{Australia, House of Representatives, Debates, volume 2, 9 April 1975, p.1382.} Martin’s appeal here was a clear appeal to the shared historical memory of Australian society. Martin attempted to appeal to this and ask for continuity. Unknowingly he espoused Danièle Hervieu-Léger’s thesis of a shared historical memory of a community. John Coates however expressed the most apt \textit{ad populum} appeal when he said that the bill was “supported by the marriage guidance councils. It is supported by

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most churches and sections at least of other churches. I have no doubt that the Bill’s principles have majority support throughout the community.”

The secular argument, usually used in support of the bill but occasionally against, utilised similar arguments as those in the Senate and in the other case studies. Parliamentarians relied partly on arguments based on progressivism and modernity, but utilitarian arguments were the most common. Utilitarian arguments focussed effectively on the effects of the legislation on society in general, children, and women. In the House of Representatives there was also a focus on men. The use of statistics, \textit{ad populum} arguments, and various appeals to authority and expertise were rhetorical devices that were also commonly used. The overall argument was that the bill would help people and society in a number of ways; it was the modern and progressive action to take which implied a normative standard; and it was argued or alluded to that it was also something that other societies similar to Australia were also doing, therefore Australia should legalise ‘no fault’ divorce. Discourse analysis brought these assumptions to light, especially as the primary source or text was limited to Hansard. As I mentioned at the beginning of the chapter but also at the beginning of the thesis, such a limitation of sources is not unprecedented in the work of historians such as Le Roy Ladurie and Vovelle. However, there was also the religious discourse that was largely opposed to at least some aspects of the \textit{Family Law Bill}.

\section*{8.3 The Religious Discourse}

The religious discourse found in the House of Representatives debate had several notable features in common with the religious discourse used in the Senate. The religious discourse was largely opposed to the bill, or at least aspects of the bill. However, parliamentarians did not fail to highlight that there were religious people and organisations that were in favour of the bill. Religion was invoked to a considerable degree, and at times parliamentarians spoke about religion at length in relation to the bill and their personal beliefs. Some parliamentarians unknowingly

\footnote{972 Australia, House of Representatives, \textit{Debates}, volume 1, 28 February 1975, p.952.}
made appeals to historical memory and sought the social continuity that Hervieu-Léger described in her thesis. This existed not only in declarations of faith but also when religious issues were mentioned as issues in their own right. There were also some utilitarian arguments and appeals. There were also the standard rhetorical devices of statistics, *ad populum* arguments and appeals to authority and expertise. The struggle in a sense to speak for religion and Christianity was a significant aspect of the religious discourse and it is best to examine these arguments first. Declarations of faith are first explored, then religious issues, utilitarianism, and finally the rhetorical devices.

### 8.3.1 Declarations of Faith

While several parliamentarians made public declarations of their private faith, these declarations covered a spectrum of positions relating to the bill. While some as a result of their faith opposed the bill to varying degrees, others were unperturbed. Those who opposed the bill because of their faith openly said so. For example the Honourable Ralph Hunt said, “To remove the need to approach marriage with a sense of responsibility, tolerance, discipline and perseverance in the eyes of God or in the eyes of the contract itself is to destroy the fundamental principles of the Christian ethic, and I can have no part in it.”973 The Honourable Robert King (Country) claimed that, “Despite what some people might think or say, to me Australia is still recognised as a true democratic Christian country. The very basis of these features is linked to family life. De facto marriages, trial marriages and broken homes make some form of contribution to a standard of which no doubt we would not be very proud.”974 King was clearly making an appeal to historical memory and wanted the continuity that Hervieu-Léger described.

The Honourable Lionel Bowen (Labor) agreed with King’s general position.

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973 Australia, House of Representatives, *Debates*, volume 1, 28 February 1975, p.930.
974 Australia, House of Representatives, *Debates*, volume 1, 6 March 1975, p.1163.
into a marriage contract they deem it to be permanent and for life. That is the one way to get stability into marriage. It is the one way to guarantee family life. It is the one way to guarantee that children will have a good family environment. 975

Anthony Luchetti (Labor) was succinct in his declaration of the connection between Christianity and marriage, his belief in it and its superiority when he said, “I personally believe that marriage is a permanent, mutual, contracted union. It is a Christian philosophy and belief that marriage is permanent, mutual and binding.”976

While all these parliamentarians were staunch conservative Christians, there were parliamentarians who were more open-minded about the role of Christianity, their belief in it and its role in the issue of divorce. Philip Ruddock (Liberal) for example recognised that there was a range of different points of view on the matter.

My own philosophy is a personal one. I profess that I am a Christian. I have values about marriage that I hold very strongly. I believe marriage should be for life. Notwithstanding my personal views I acknowledge that there are differences, that there are people who do not have the same religious values that I have and the law has to operate in a sectarian society, and that it has to operate in a way different from the way I would like it to operate in absolute terms.977

The Honourable Denis Killen (Liberal) declared his respect for Christianity and the church but recognised that it needed to change or at least that it could not be comprehensive on the issue at hand.

We are not dealing with a new heaven; we are dealing with a very old world in which the cold admonitions of the cloisters will not protect human nature. We are also dealing with a society that still asserts, albeit in a hesitant fashion, that it is a Christian society. It is quite fundamental to the whole of the Christian doctrine and ethic to accept the doctrine of the indissolubility of marriage. To observe that is not to invite honourable members to go back to the last century or to the century before that when the great distress which was suffered by many people waited a long time for the legislature to intervene. There has been a change on the part of the Christian Church itself, beginning many years ago with the acceptance

975 Australia, House of Representatives, Debates, volume 1, 6 March 1975, p.1175.
976 Australia, House of Representatives, Debates, volume 2, 15 May 1975, p.2431.
977 Australia, House of Representatives, Debates, volume 1, 28 February 1975, pp.910-911.
of what was described as the Matthean exception and the development in ecclesiastical authority of the Pauline privilege. But I respect, I trust immaculately, the doctrine of the Christian Church regarding the indissolubility of marriage. But the fact is that our society, wrestling with its inherent imperfection, has been brought to the stage where it must legislate in this field. The great question that we are asked here today is this: In what manner do we seek to legislate?\footnote{Australia, House of Representatives, \textit{Debates}, volume 1, 28 February 1975, p.923.}

On the issue of the extent to which Christianity could claim exclusivity to the issue, Maxwell Oldmeadow (Labor), who noted that that he had been involved in the Methodist church for over 30 years and clarified that while he supported the bill it did not mean that he spoke on behalf of other Methodists,\footnote{Australia, House of Representatives, \textit{Debates}, volume 1, 28 February 1975, p.936.} highlighted that Christianity did not have exclusivity on the issue of divorce as it was a human concern and a result of social behaviour.

However, social behaviour and human concern are not subject which are the exclusive prerogatives of Christians. It is the epitome of arrogance to think so. The attitude of ‘we know best’ in matters which concern legislation for the whole community as distinct from those of us who hold interpretive religious positions is one which is gravely misunderstood and dallies with the sin of self-righteousness.\footnote{Australia, House of Representatives, \textit{Debates}, volume 1, 28 February 1975, p.936.}

Oldmeadow continued, “My plea then is unashamedly on the grounds of personal Christian conviction and my conscience vote on this issue is consistent with a lifelong experience of situations both within and outside the Church – situations of misery, distress and trauma.”\footnote{Australia, House of Representatives, \textit{Debates}, volume 1, 28 February 1975, p.937.}

The Honourable Charles Kelly (Liberal) was the only parliamentarian however who noted his religious belief and its role regarding the bill, yet he also acknowledged his own personal shortcomings and how religion was simply a vehicle for gossip and intrigue.
I am a puritan person; I am a puritan by nature. However, I have found with some concern that I am much more interested in other persons’ morality than my own…If I could think of a form of law that would make marriage permanent, I would do my best to have it passed and then to enforce it. But because I know I cannot do that and because I know there is no way of making people good in the sense that I use the word, I am going to vote for the Bill. 982

Thus, while declarations of faith were common and were used to justify a parliamentarian’s position towards the bill, it was not the case that religious justification equated to a certain position to the bill as it was used for and against. No parliamentarians noted changing their position because of another parliamentarian’s religious position.

8.3.2 Religious Issues

Other than explicit declarations of faith, religion was invoked numerous times during the debate over several issues. The invocation of religion did not neatly fit into one position. There were those who believed and appealed to historical memory and continuity claiming that Christianity had supported Australian society to date and it needed to continue and the bill was an attack on this. The Honourable Ralph Hunt said that there was no better way to destroy society than passing the bill. 983 Peter Fisher claimed that as a Christian, twelve months as a separation period would weaken marriage. 984 Anthony Luchetti claimed that the churches were being pushed back from society by calls from people that marriages should be secular and civil. 985

There were invocations of religion by parliamentarians who were positive towards religion and thought that religion should not be disregarded, and religion should not disappear from the realm of marriage. Daniel McVeigh (Country) was a parliamentarian who realised the importance of the bill in terms of changing a style of life. He appealed to historical memory and continuity in opposing the bill when he claimed that the family unit was the basis of Australian society and it had served

982 Australia, House of Representatives, Debates, volume 2, 9 April 1975, p.1377.
983 Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.930.
984 Australia, House of Representatives, Debates, volume 2, 9 April 1975, p.1370.
985 Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.944.
Australia so well that he did not want to be a part of the generation that was responsible for changing it. He believed that the marriage vows taken were before God and man. McVeigh also went on to claim that legislation based on God’s law should be given the absolute priority that it deserved. Phillip Lucock was more conciliatory when he claimed that he had married divorced people in his church so there were understanding sections of the church. He went on to say that the church should never forget its ethic and for what it stood; otherwise civilisation would be lost.

There were then religious invocations from people who were seemingly neutral or understood the importance and limitations of religion in society. For example Ian MacPhee recognised that people’s spiritual convictions must essentially remain their own and with Parliament having to recognise the diversity of opinions on marriage in Australia, it needed to cater for those who just believed in civil marriages and those who still saw themselves as married in God’s eyes. For parliamentarians such as the Honourable Ransley Garland it was clear that they were concerning themselves with civil marriages, especially since there was no established church in Australia. For Garland people were able to believe what they wanted in Australia but there was a distinction between good law and religious belief.

There were also invocations of religion by those who were opposed to, or were critical of, certain features of religion. Robert Whan who mentioned that law and religion to date had been too preoccupied with sin and it was one reason why only a third of Australians had a strong connection to churches according to a recent opinion poll. Robert Ellicott QC argued that divorce should not be approached from the perspective of finding fault, as it would then be a perfectly humane and even a Christian approach to the problem of divorce. Such thoughts were echoed by the Honourable James Cairns who said that Christ was known for his compassion and

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986 Australia, House of Representatives, Debates, volume 1, 12 February 1975, p.170.
987 Australia, House of Representatives, Debates, volume 1, 12 February 1975, p.172.
988 Australia, House of Representatives, Debates, volume 1, 12 February 1975, pp.188-189.
989 Australia, House of Representatives, Debates, volume 1, 12 February 1975, pp.164-165.
990 Australia, House of Representatives, Debates, volume 1, 12 February 1975, p.169.
991 Australia, House of Representatives, Debates, volume 1, 12 February 1975, p.177.
992 Australia, House of Representatives, Debates, volume 1, 13 February 1975, p.328.
slowness to judge people. Cairns claimed that Christ would have approached the bill in the same manner.993

There were only a few times when a Christian church, sect, or organisation was extensively mentioned in the House of Representatives debate, and such mentions were invariably negative. Once was when Richard Klugman (Labor) railed against the Festival of Light. Discussion of the Festival of Light did not feature as predominantly as it did in the Senate, and it was only Klugman who spoke about the organisation. Klugman’s opposition to the Festival of Light was founded on his belief that essentially the organisation did not represent typical society,994 and he made it clear that he did not accept the organisation’s argument that the bill should not pass because in the Soviet Union such divorce existed.995 Klugman concluded his speech against the Festival of Light by urging fellow parliamentarians to follow their own beliefs and not to succumb to the pressure placed on them by the Festival of Light and clergy because both groups were professionally employed to force their own views onto the rest of society.996 The only other time that a Christian group was explicitly mentioned in relation to the bill was when the Honourable Andrew Peacock (Liberal) sought exemptions for Roman Catholics during the committee stage, asking for injunctive relief to be allowed for people whose religion did not or rarely granted divorce.997

Thus when religion was invoked other than as declarations of faith, it often covered a number of topics, usually in opposition to the bill or aspects of it. Discourse analysis highlights the assumptions that underlined many of these appeals and arguments were appeals to historical memory and a desire for continuity as the method through which to oppose the bill or aspects of the bill. Utilitarianism again was a feature in the debate in the House of Representatives.

993 Australia, House of Representatives, Debates, volume 2, 9 April 1975, p.1376.  
994 Australia, House of Representatives, Debates, volume 1, 13 February 1975, p.333.  
995 Australia, House of Representatives, Debates, volume 1, 13 February 1975, p.334.  
8.3.3 Utilitarianism

The religious discourse utilised utilitarian arguments and sentiments, and largely the same ones as the secular discourse however it was to a lesser extent. It featured early in the debate concerning the negative consequences to society. One of the first topics the Honourable Francis Stewart covered on 12 February 1975 was the costs that the Family Law Bill would entail. First there were the costs associated with establishing and maintaining the new Family Court, then there were the social costs of divorces, the financial and emotional costs of families breaking up, increased demands upon the Australian Legal Aid Office, increase in demand for childcare centres, increase demand and costs for mental health, and also a rise in anti-social behaviour. Stewart argued that ultimately the taxpayer paid for all this. 998 Alan Jarman (Liberal) continued in a similar trend involving religion and Danièle Hervieu-Léger’s historical memory and community.

The effects of this Bill could be to transform and destroy the Christian values upon which our family life has been based in the past. Once the accepted Christian principles of the family are eroded the end result must eventually be a lack of respect for the traditions of marriage with the resultant growth of fragmented and broken families and a consequent lack of parental control and a possible increase in anti-social behaviour. 999

If Jarman gave utilitarian examples focusing on society to oppose the bill, he also relied on a hypothetical example involving women. Jarman asked what a woman who was in her 50s or 60s would do if she was divorced. 1000 Daniel McVeigh agreed and argued that previously society had placed women on a pedestal but the bill downgraded women and created for them a kind of slavery. 1001 Thus while utilitarianism was not as extensively used to oppose the bill, when it was, it showed similarities to the utilitarian arguments in the secular discourse. It is also clear that the utilitarian argument at times overlapped with other arguments in the religious discourse in much the same way as overlapping occurred in the secular discourse between different arguments.

999 Australia, House of Representatives, Debates, volume 1, 12 February 1975, pp.166-167.
1000 Australia, House of Representatives, Debates, volume 1, 12 February 1975, p.168.
1001 Australia, House of Representatives, Debates, volume 1, 12 February 1975, p.171.
8.3.4 Statistics, *argumentum ad populum*, and appeals from authority and expertise

The rhetorical devices used in the religious discourse were the same as those in the secular discourse. The differences exist in which devices were used more often, with the religious discourse relying more on appeals to religious authorities. Examples of this include Phillip Ruddock stating that after consulting the Methodist church in Canberra he had decided that the churches were largely supportive of the period of separation in the bill;\(^{1002}\) the Honourable Andrew Peacock claiming that a person could remain feeling Christian notwithstanding supporting the bill as at least in Victoria there had been some religious support from the Catholic, Anglican, Methodist and Presbyterian churches, along with both liberal and orthodox Judaism.\(^{1003}\) The Honourable Leslie Johnson however noted that the Roman Catholic Archbishop of Melbourne the Most Reverend Dr. E. B. Little said that the bill did not preserve the ideal of marriage as a lifetime bond of protection and real support.\(^{1004}\)

While statistics were used, they were not used as much as in the secular discourse. Alan Jarman was the first to use statistics and he claimed that according to a Gallop poll published in the Melbourne *Sun* in January 1975, only 27% of people wanted easily available divorce.\(^{1005}\) Jarman also noted how he had received hundreds of letters opposing the bill and perhaps only 10 in favour.\(^{1006}\) This statement was most likely hyperbolic.

Vincent Martin referred to *ad populum* arguments or appeals during the committee stage when he said that he was a practicing Christian much like most Australians and parliamentarians, and as a result he would hate to see marriage watered down solely to its legalistic meaning.\(^{1007}\) There may be some truth to the claim that a majority of Australians were Christian or at least certain sections. Most Australians identified as Christians in the census. Anthony Lamb recounted an experience he had in his Victorian electorate of La Trobe. He organised a public debate on the bill with

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\(^{1002}\) Australia, House of Representatives, *Debates*, volume 1, 28 February 1975, p.912.

\(^{1003}\) Australia, House of Representatives, *Debates*, volume 1, 28 February 1975, p.930.

\(^{1004}\) Australia, House of Representatives, *Debates*, volume 1, 6 March 1975, p.1159.

\(^{1005}\) Australia, House of Representatives, *Debates*, volume 1, 12 February 1975, p.167.

\(^{1006}\) Australia, House of Representatives, *Debates*, volume 1, 12 February 1975, p.166.

Victorian senator Alan Missen. Lamb claimed that they were abused by people from outside the electorate and he saw a link between them and the people who had opposed abortion two years earlier. Lamb went on to say, “The opponents of this Bill say that the Bill is unChristian. The role of the state is to concern itself with the secular side to marriage and not to impose the beliefs, values or doctrines of religion in any particular religion – on the public.” This example presumably would show that there was some organised religious opposition to the bill outside Parliament, and corroborates claims made by some about the letters they had received. All of this should not be overemphasised as Peter Fisher noted regarding the letters:

> It is also not correct to quote religious denominations or community organisations as strictly adhering to one view or another. Within every church there are divisions of opinion, as there are within other groups. In the majority of representations, however, one thing is quite evident, and that is that this legislation’s intent and content are not understood. There is a clear lack of communication with the electorate at large on this Bill, as there is on many initiatives of the Government in Parliament.

Thus while not as frequently invoked as in the secular discourse, the religious discourse exhibited the same rhetorical devices as the secular discourse. There were also similarities within utilitarian arguments. What was distinctive about the religious discourse was that it featured declarations of faith, and various religious issues. Discourse analysis made it possible to see the assumptions behind some of these arguments and appeals such as appeals to historical memory and community. This is analysed more below.

### 8.4 Analysis

In the Senate debate analysis, Henry Finlay noted that the debate was a contest between traditional moral attitudes to divorce and practical considerations of life. The practical considerations of life won the debate and this can largely be transferred

1008 Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.925.
1009 Australia, House of Representatives, Debates, volume 1, 28 February 1975, p.925.
1010 Australia, House of Representatives, Debates, volume 2, 9 April 1975, p.1369.
1011 See section 7.1.1 of this thesis or Henry Finlay’s To Have but not to Hold, op.cit., p.50.
to the debate in Lower House as well. Discourse analysis however enables to see how this contest occurred despite there being similarities between the secular and religious discourses in the Lower House with those in the Senate debate.

Both discourses contained progressivist, modernity, and utilitarian arguments. There was the use of the standard rhetorical devices of statistics, *argumentum ad populum*, and appeals to authority and expertise too. Discourse analysis shows that those who argued progressivist arguments assumed that progressivism was good, along with modernity as well. In regards to modernity, it was often portrayed as something that had to be accepted. Parliamentarians acknowledged the change in the styles of life that occurred with modernisation. As a result the law needed to change too.

Discourse analysis was able to categorise the religious discourse into several categories: declarations of faith, religious issues, and utilitarianism. For the religious discourse declarations of faith were not reasoned arguments but essentially personal appeals that parliamentarians made that failed to convince their fellow parliamentarians. Declarations that the public at large were behind them likewise were unsuccessful. Religious issues which emerged were portrayed as challenges to the historical memory and community of Australian society. These were challenges that the religious discourse sought to resist by opposing the *Family Law Bill*.

Intertextuality in the debate one was feature that discourse analysis highlighted. In the Lower House there was not as great a focus on a concerted letter writing campaign as there had been in the Senate. Those who did refer to it claimed that the letters supported their view and such claims were usually made by those opposing the bill. Other modes of argument appeared in the debate with parliamentarians describing experiences that they had had, such as one parliamentarian referring to a meeting he had had with an organised group of protesters against the bill who were not from his electorate. From this it is known that there were many other voices in the debate outside Parliament in the public sphere. This thesis, however, in part to draw limits, focuses on parliamentary debates. Discourse analysis therefore shows that there is more research that exists and is open to investigation.
The religious affiliations of the parliamentarians in the Lower House could not be determined significantly just as it was the case in the Senate. As a result there is no religious affiliation analysis in this chapter. Some analysis of the House of Representative’s composition is possible along with the religious affiliations and views of some prominent members.

Despite having approximately twice as many members as the Senate, there was only one female representative in the Lower House: Gloria Joan Liles Child of Henty in Victoria. As the sole female representative, she unfortunately did not speak in the debate in the House. It is not a case that this thesis downplays the role of women. In many situations women were either barred from parliament or there were so few parliamentarians that the few female parliamentarians simply did not speak on the issues. Whenever one did speak it was duly noted. Women however were important to the thesis as they appeared throughout the debates as a serious utilitarian concern and justification for the men, especially in this last case study.

Some religious affiliation analysis is possible thanks to Roy William’s book *In God they Trust?: The Religious Beliefs of Australia’s Prime Ministers, 1901-2013*. The debate was notable that it did feature a total of six either past, current or future Prime Ministers: Gorton, McMahon, Whitlam, Fraser, Keating and Howard. Gorton and McMahon did not speak significantly, perhaps due to their parliamentary careers being in their twilight; Whitlam effectively only introduced the bill; while Fraser, Keating and Howard spoke. Williams’s book is the most comprehensive account of the beliefs of the aforementioned six. It is important to mention this briefly as determining the religious beliefs of a significant number of parliamentarians was difficult, resulting in self-declaration in the debate as being perhaps the only possible way.

Of the Prime Ministers who did speak, Williams described Whitlam as a ‘fellow-traveller’, meaning that he admired Christianity and followed the basic non-theological concepts, but he could not be classed as a practicing Christian. Williams noted that while coming from a Baptist background, Whitlam only had a respect for

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Christian history and culture and knew a lot about Christianity, but most likely did not believe.\textsuperscript{1013} Williams described Malcolm Fraser as an ‘enigmatic Presbyterian’, which means that while stating that he was a Christian, in time he questioned the beliefs.\textsuperscript{1014} Williams concluded that at least in 2010 Fraser was a “thoughtful agnostic”.\textsuperscript{1015}

Williams described Paul Keating as more than a nominal Christian because of his deeply-felt Catholicism and listed several incidents during his political career which showcased an underlying religiously inspired worldview.\textsuperscript{1016} Williams’s treatment of John Howard indicates that he is a Christian, and while he did not emphasise it as part of his political persona his religion did exercise a certain influence on him: and Howard tried to act according to his conscience, despite some publicly perceived un-Christian responses to issues as Prime Minister.\textsuperscript{1017}

While each of the Prime Ministers or parliamentarians filled a place on the religious spectrum, neither of them referred to religion in their speeches, let alone extensively. There was a divide it seemed between personal belief and public action. This would correlate with the finding that personal religious belief was limited in its impact in the Senate, and also in the first two case studies. Therefore, in both the Senate and the House of Representatives the secular discourse prevailed over the religious discourse. The secular discourse used utilitarian practical arguments along with progressive arguments, while the religious discourse made appeals to religion which seemed to fall largely on non-religious deaf ears. In the case of ‘no fault’ divorce, ultimately Finlay’s statement that practical considerations trumped traditional moral attitudes is correct. The underlying appeals to historical memory and community, drastic changes to styles of life did not stop the \textit{Family Law Bill}. Even those who saw the bill in a religious dimension and as a threat to traditional life did not claim that it was a process of secularisation. It is difficult to claim that the bill was an example of secularisation as it was not the conscious goal of the Whitlam Government, and some appeals were made to defend certain religious practices and situations such as

\begin{itemize}
  \item Williams, \textit{In God they Trust?}, op. cit., pp.161-170.
  \item Williams, \textit{In God they Trust?}, op. cit., p.25.
  \item Williams, \textit{In God they Trust?}, op. cit., p.181.
  \item Williams, \textit{In God they Trust?}, op. cit., pp.193-208.
  \item Williams, \textit{In God they Trust?}, op. cit., pp.209-230.
\end{itemize}
Catholics and divorce. This does not deny that secularisation did occur incidentally. Callum Brown’s thesis that secularisation is not a linear process and that it can wax and wane alongside religionisation is true. The parliamentarians simply held that they could not enforce any religious belief on Australians although Australians were free to believe what they wanted to in regards to religion. This was demonstrated both through the parliamentary debates in the Senate, and the House of Representatives.

8.5 Conclusion

The analysis in this chapter and case study would not have been possible without Norman Fairclough’s discourse analysis. With discourse analysis the underlying assumptions of the appeals and arguments made in the secular and religious discourses would not have been visible. Even the classification of the discourses into subcategories was only possible with discourse analysis and its treatment of assumptions, intertextuality, difference, and the role it gives to texts and voices. Relying solely on Hansard was possible with the discourse analysis methodology and recourse to the theoretical precedence of the French Annales school and in particular the work of Le Roy Ladurie and Vovelle. In particular it is Vovelle as he relied on legal testaments to examine the transformation of people’s attitudes to religion and death; themes that are touched upon in this thesis.

This chapter, and this case study, are important and necessary to the thesis because they show how divorce in the 1970s was debated and what Federal parliamentarians thought about the issue and religion. It forms the last example spanning a period of approximately 80 years that shows how parliamentarians thought about religion in Australia and how it always came second to practical matters. The chapter and case study show that once cremation and Sunday entertainment (the realms of death and work and leisure) were accounted for, divorce or the realm of marriage and love was no different a concern for Australian parliaments. In this way, all the major areas of a person’s life had been dealt with by Australian parliamentarians, and religion did not succeed in any area. This however did not mean that Australia had undergone a process of secularisation at the hand of the parliamentarians. As Brown’s thesis argues, secularisation is not a straightforward process and religionisation can occur
simultaneously with secularisation and each can become stronger in different areas in a society. No fault divorce was not an example of secularisation in Australia because it was not the aim or goal of the parliamentarians or the Government; and many religious institutions were in favour of the bill. All three case studies and the aims of this thesis are discussed in greater detail in the conclusion.
CONCLUSION

This thesis examined twentieth century parliamentary debates in Australia. It focussed on three case studies: the legalisation of cremation; the liberalisation of Sunday entertainment or Sabbatarianism; and the liberalisation of divorce through the *Family Law Act 1975* (Cth). This thesis contends that religious arguments and concerns were always secondary to secular, practical, and utilitarian concerns. This is despite the fact that these areas of the law and social life had religious roots. The case studies appeared chronologically, and in each case study, the secular and religious discourses grew more distinct.

In the various parliaments, ideas of modernity, practicality, and utilitarianism determined the contours of the debates as their assumptions were assumed by both sides. None of these ideas are intrinsically antithetical to religion; it was simply the case that in the debates these ideas were cast as alternatives to the arguments and assumptions that made up the religious discourse. The parliamentary debates show that the notion of ‘secularisation’ in Australia, at least in its political and social life, was not a conscious process. Secularisation was never advocated by a parliamentarian, nor were secularising arguments featuring ideas such as modernity, practicality, or utilitarianism ever espoused in order to explicitly secularise society. The assumption always was that a person’s religious beliefs were a private matter. Legislation affected public life and this led to practical and utilitarian arguments. Each of the case studies showed this in its own way.

The first chapter stated that one of the key aims of this thesis was to write about Australian religious history in a new way due to the shortcomings of Australian history, and Australian religious history. These shortcomings were that religion and religious history were marginalised in general Australian histories altogether, or when they were mentioned it was in the usual specified areas. Religion was often also linked to ethnicity, such as the Irish and Catholicism. Australian religious histories had unique tropes of their own such as engaging with religion along denominational lines, or treating religion in a triumphalist manner. This thesis is in
part an attempt to write a history that incorporated religion as a central issue and showed how it affected many areas of life, and styles of life, while simultaneously not being excessively caught in the tropes of denominationalism, ethnicity, or specific politics and personalities. The first chapter examined these issues and set out the aims of this thesis.

This thesis has achieved its goal to write a history free from the restraints of previous historiography. It did not focus on a particular denomination, although its focus was Christianity. The thesis considered Christianity in a neutral manner. Politics in the form of parliaments, parliamentarians, and political debate was the locality of scrutiny, and through the particular case studies, all of society was affected. The thesis also demonstrated that it is possible to examine the process of secularisation by utilising one form of evidence: parliamentary debates, or Hansard. This allows Hansard to become an important historical source for future Australian religious historical work. Hansard and the case studies support Callum Brown’s theory that secularisation is not a predetermined linear process. The parliamentary debates were a particular type of evidence that allowed secularisation to be examined. However, in the case of Australia, secularisation was not a conscious act.

The second chapter detailed the theory and methodology that made the thesis a viable work. The work of such historians as Emmanuel Le Roy Ladurie and Michel Vovelle, who were a part of the French *Annales* school, provided the justification and inspiration for working with a small body of primary sources. Le Roy Ladurie in his most famous work only used the records of interrogations in one book, while Vovelle’s work that was discussed, concerned the analysis of wills. Therefore it was not inappropriate to rely on Hansard for the thesis.

The major feature of the methodology was the use of Norman Fairclough’s discourse analysis. Without Fairclough’s discourse analysis, it would have been impossible to analyse the debates within the various parliaments, and recognise the various arguments and appeals as subcategories of the major strands in both the secular and religious discourses. Fairclough’s discourse analysis showed that while both
discourses existed in all of the debates, in each case the secular discourse ultimately dominated due to practical concerns.

The use of discourse analysis as a methodology also supported several of the theories utilised in the thesis and introduced in Chapter 2. The analysis of the discourses showed that there was no conscious secularisation underway by parliamentarians, and that if there was such a process underway it was not straightforward or linear since there was opposition to the “secularising” bills and some called for more religion. This supports one of Callum Brown’s claims regarding secularisation: that it is not straightforward and linear, that secularisation is not permanent and it can be reversed at any time in the future, and secularisation and religionisation can co-exist in society simultaneously affecting different areas of life. Those who did oppose the bills at times appealed to the past and relied on historical memory and community as described in Danièle Hervieu-Léger’s work. They expressed concerns about changes in “styles of life” to use the phrase used by Peter N. Stearns in this thesis. These supportive connections between the theories utilised in the thesis would not have been possible without the methodology of discourse analysis. Thus the theory and methodology worked together to make the thesis possible and cohesive.

These theories and methodologies are available to future researchers and historians, especially in the field of Australian religious history. These theories and methodologies demonstrate that new work and approaches are possible. In this way, the assumptions about Australian religious history and its scholarship are questioned. This questioning is the key to further developments in the Australian religious history field in much the same way as Wayne Hudson’s recent book *Australian Religious Thought: Six Explorations*,\(^\text{1018}\) sheds new light on the high level of religious thought in Australia, previously disregarded by Australian historians.

The first case study concerned death, and the changes to the disposal of the dead. Chapters 3 and 4 covered the legalisation of cremation in South Australia and New South Wales. After giving an overview of the literature on the subject, particularly in

Australia, and an examination of some pro-cremation literature in the nineteenth century, the legalisation of cremation in South Australia was seen to be relatively easy. Religion was hardly invoked at all and the concerns were primarily utilitarian, principally public hygiene and monetary cost to people, so long as cremation was permissive and not compulsory. The entire process took thirteen months. South Australia’s unique political, religious and social history no doubt had a role to play in its progressive outlook. The bill was introduced by John Langdon Parsons who was a Baptist minister, yet even for him religion did not feature greatly. Cremation could be seen to align with some of Parsons other progressive concerns such as Aboriginal rights. It was not possible to analyse the religious affiliations of the parliamentarians.

Chapter 4 on New South Wales and the cremation debate in 1886 provided many more opportunities for discourse analysis. The failure of legalised cremation in the 1880s was not necessarily the result of a strong religious opposition, but the bill becoming stuck due to parliamentary procedures. While the original bill was introduced by a progressive doctor and argued along secular and utilitarian lines, there was not sufficient support for the measures, it was not helped by fears that cremation would be compulsory. There were some religious arguments against John Mildred Creed’s bill but in their own way they were not substantial. A discursive analysis showed that more common features on both sides of the debate were the use of emotive language and fear.

When it came to the realm of death, the cremation case study showed that religious reasons eventually succumbed to secular, practical reasons. Mounting necessity eventually forced the abandonment of religious and traditional practice. There was some religious resistance early in New South Wales. The opinions of religious authorities were sought, and it was not the intention of pro-cremationists to secularise society. The first case study shows an Australian compromise in religious practice. Laws and social practices derived from Christianity were changed if there were sufficient practical reasons for doing so. The importance of religion was recognised by some religious arguments but it was assumed that religious beliefs were a private matter.
Chapters 5 and 6 concerned the liberalisation of Sunday entertainment, or Sabbatarianism, in New South Wales, South Australia, Victoria, and Western Australia. The topic was chosen since Sunday or the Sabbath is a symbol of Christian practice, and extended the thesis into the realm of time.

Chapter 5 introduced Sabbatarianism in Australia by providing a historical and legal background. The chapter also examined New South Wales which was the first state to liberalise its laws. Discourse analysis showed the different assumptions and arguments that featured even in the same Parliament, as in New South Wales discourses of progressivism and modernity were more common in the Legislative Council than in the Legislative Assembly. This featured due to the changes that society had undergone since the seventeenth century when the laws were formulated in England. To use the terminology of Stearns, there had been such a great change in the style of life practiced by people that the law was portrayed as simply being outmoded. An appeal on historical memory was not possible in this case because of such remoteness. It meant that a more immediate historical memory had to be invoked in this case study.

Chapter 6 examined South Australia, Victoria, and Western Australia, and discourse analysis revealed that it was similar to the previous chapter. The case study showed clear examples wherein secular and religious discourses coexisted simultaneously in the debate, yet again in all states the secular discourse ultimately prevailed, relying on practical considerations. Chapter 6 also demonstrated that shortly after New South Wales liberalised its laws, other states followed, at times referring to New South Wales in support for liberalisation. Western Australia was the exception, not liberalising its laws for another 30 years.

The Sabbatarian or Sunday entertainment case study was methodologically possible through discourse analysis. Discourse analysis divided the discourses into either secular or religious, and in each there were several subcategories. The case study saw some simple statistical analysis in the form of religious affiliation of the parliamentarians, however problems with this were noted. The case study demonstrated that the realm of work and leisure was the next area after death that
was challenged by liberalising legislation. Much like the cremation case study however, there was some religious resistance to the bills. The Sabbatarian case study also demonstrated different views of what constituted worship, work, and leisure, but also a desire for an accommodation between all of these activities in a modern society. The Sabbatarian case study and the cremation case study demonstrated the piecemeal abandonment of laws that had religious roots when practical matters arose in a significant area of life: once death was taken care of, important aspects of people’s lives could be changed. It is important to stress again that this does not mean that there was a conscious process of secularisation underway.

The success of the theories and methodologies used in the second case study further strengthen the claim that the thesis shows a way in which Australian history, religious history, and also the process of secularisation in society, can be studied through a particular source: parliamentary debates or Hansard. Hansard allows new histories to be written and is able to make a contribution to the scholarly debates regarding secularisation.

The final case study concerned the style of life to do with love and marriage, a third large style of life to affect all people. ‘No fault’ divorce was examined in chapters 7 and 8. This case study differed from the previous two case studies in that it focussed on the Federal Parliament and not various State Parliaments. Chapter 7 itself focussed on the Senate of the Australian Federal Parliament from 1973 to 1975. After an overview of divorce law in Australia and the setbacks that Attorney-General Lionel Murphy and the Whitlam Government faced in introducing the bill, the secular and religious discourses were examined. The examination of these discourses was possible by the use of discourse analysis, and its analysis was the most developed in terms of subcategories. Discourse analysis enabled the analysis of events external to the textual debate such as letter-writing campaigns and this was discussed briefly. A statistical analysis of religious affiliations however was not done owing to the difficulties in establishing the religious affiliations of parliamentarians to a significant degree.
Chapter 7 demonstrated that while there were religious and secular discourses simultaneously, the religious discourse again did not dominate. A key difference however this time was the procedural setbacks that the Whitlam Government faced in the Senate regarding the legislation, rather than the religious discourse being successful. While debate was heated with appeals to religious authorities, perhaps due to the social changes that had occurred in the preceding decades (helped by legislative changes examined in this thesis), the religious authorities were divided amongst themselves regarding the action to be taken. Some opposed to the legislation unsuccessfully tried to paint religious authorities as united in opposition to the legislation but that simply was not the case. The chapter demonstrated that ‘no fault’ divorce, the realm of marriage and love along with child-rearing, was perhaps the last major defence for those who sought a continuation of a historical memory of Australia as an active Christian country.

Chapter 8 focussed on the House of Representatives and the debate was largely similar, with exceptions such as an examination of the utilitarian impact on men, while the letter-writing campaigns were not a concern. The methodology of discourse analysis was utilised significantly and a form of parliamentarian religious affiliation was referred to through the work of Roy Williams, as several past, current, and future Prime Ministers were members of the House of Representatives for the debate. Discourse analysis made it clear that the most intimate area of human life was bitterly contested by parliamentarians, and that while religion was a significant concern for most people, the religious ideal gave way to practical issues once again. In this way, the House of Representatives and the Senate as well in this case study do not differ from the previous two case studies in that in the Australian context secular practical considerations trumped religious idealism.

It needs to be noted regarding the ‘no fault’ divorce case study however that there was a free vote in the Federal Parliament. This meant that all parliamentarians were able to vote as their consciences directed them, free from any party allegiance, affiliation, or traditional stance on the issue. In this way, the third case study exhibited the freest discourses in the entire thesis. The parliamentarians had the possibility for consensus voting rather than strict party voting, and implicit
arguments were used more as members and senators were freer to simply agree and disagree with each other. Discourse analysis in the third case study was the most fruitful and extensive. The importance of women and children to the case study should not be lost. It was the case study where both groups were individually identified and discussed at length. There was utilitarian concern for both groups from both the religious and secular discourses. This meant that all parliamentarians recognised the importance of the legislation, but also the important role that both groups played in society.

The third and final case study developed on from the previous two case studies. While secular and religious discourses existed simultaneously and the secular discourse was always successful, it did not mean that there was a clear process of secularisation underway. At no stage did any of the parliamentarians advocate secularisation as an aim of any of the bills. This agrees with Brown’s secularisation thesis that it is not linear or straightforward, that the levels of secularisation in a society can wax and wane over time, and that both secularisation and religionisation can exist in the same society simultaneously in different areas of life. While parliamentarians may have become more religious overtime (something that is not known), they passed significant social legislation that undermined laws that were first formulated owing to religious concerns and issues.

The three case studies fit together as they are concerned with the major events, themes, and motivations which comprise an individual’s life. This means that during the course of the twentieth century in Australia, Australian society saw great liberalisation in areas where traditional laws and practices were originally religiously influenced. It was not a conscious secularisation by the parliamentarians, but a continual accommodation to the practical necessities of life.

In conclusion this thesis showed via three case studies, the legalisation of cremation, Sunday entertainment, and ‘no fault’ divorce, that parliamentary debates in twentieth century Australia progressively became more secular or were consistently secular due to practical matters that had to be dealt with. Religious concerns were repeatedly mentioned and at times expounded upon. These religious concerns were always
influential for some parliamentarians, but they were, barring one or two exceptions, never influential enough to stop social change. These legislative changes changed social practices, or styles of life to use Stearns’s term, and in turn helped the secularisation of social practices in Australia, although this was never the intention of any of the politicians. The thesis undermines the claims, sometimes made by politicians for example, that Australia was always an active Christian country. Such appeals to historical memory and shared community as formulated by Hervieu-Léger are challenged by the three case studies in this thesis.

The thesis also highlights a new way in which religious history in an Australian context can be done. Religion in the thesis effectively meant Christianity, but it did not concern itself with a specific denomination. The influence of religion in the political field was shown by how it affected the rest of society. This meant religious history was also not limited to predetermined areas, nor did it focus on such tropes as ethnicity. In this way, the thesis is an example of religion being incorporated into Australian history in such a way that it is treated with the respect and influence that it deserves. This is the thesis’s historiographical contribution, and it was possible by utilising the theories and methodologies of various social historians, sociologists of religion, the French Annales school, and discourse analysis. The thesis also highlighted the usefulness of Hansard as a historical resource, especially in the field of religious history, and in contributing to the debate regarding secularisation.

A last remaining note concerns avenues for future research. Some possibilities for future research have already been mentioned regarding specific case studies. Future research however is not limited to these suggestions. Other possibilities include the extension of the case studies to all states, but it needs to be done in such a way that it does not then replicate the work of for example, Robert Nicol regarding cremation. Extensive archival and newspaper research might be possible to help determine if the religious affiliations can be established for all the parliamentarians in all the parliaments in the various case studies. This would be quite labour intensive and might be a worthwhile project after the thesis. It would provide a number of benefits in the field of Australian political history as well. This archival and newspaper research however could also open the possibility to contrast the discourses in
Parliament with those outside Parliament. Methodologically, this would be extremely fruitful in terms of discourse analysis. Another important area is an extension of case studies to include such social changes as the legalisation of homosexuality, and a derivative contemporary issue, same-sex marriage. Future research however does not need to be limited to Hansard as a text. Early stages of this thesis included examining television guides at Easter to determine the number of hours of religious programming compared to secular sports programming; and an examination of changes in religious language in epitaphs on tombstones through time. Thus television programmes and epitaphs or tombstones are the texts. Texts in general, conventional or unconventional, bear many possibilities in exploring the changing nature of religion and secularity in Australian history and society, through the use of time-honoured and new historical methodologies, and thus allow new ways in which Australian history, and Australian religious history can be done. This thesis is a template and proof that such new histories are possible within the Australian context.
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This is a selected bibliography of the thesis. All sources that appear in the footnotes feature below. In the first section are the legal and primary sources (Hansard). In the second section are the books, journal articles, and websites. Only a few entries from the *Australian Dictionary of Biography* appear here as a few hundred entries were sought in attempts to establish the religious affiliation of parliamentarians. Within Hansard, especially for the House of Representatives in the Commonwealth Parliament, the organisation into volumes was slightly different to that of the Senate. For this reason, the footnotes in chapter 8 were slightly different to chapter 7. Also, more information is provided for the House of Representatives Hansard below. The general rule for the bibliography is that it is alphabetical, and when there is more than one source by the same author, the sources appear in chronological order.

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