



Voting on Belonging

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Abstract

In 2017, a Muslim cemetery project was proposed in the municipality of St-Apollinaire, just outside Quebec City. This proposal required a change in local zoning, which necessitated approval from citizens living around the targeted plot of land, through the use of diverse deliberative tools. Drawing on a small-scale empirical study conducted in 2017–2018 with key informants in the cemetery project, this article investigates how these actors lived through, engaged with, and operated within the bounds of law. To do this, I suggest employing a legal consciousness framework to examine how local life is also where everyday lived law occurs. The local governance of diversity in death thus requires a re-evaluation of the “local,” identity politics, relationships, and legal consciousness. Ultimately, this article proposes that local decision-making processes play an important yet underexamined role in the broader conversations on belonging.

Keywords: Law and religion, cemetery, legal consciousness, Quebec, case study, zoning

Résumé

En 2017, un projet de cimetière musulman a été proposé dans la municipalité de St-Apollinaire, tout près de la ville de Québec. Cette proposition nécessitait un changement de zonage local, ce qui exigeait l’approbation des citoyens vivant autour de la parcelle ciblée, et ce, par le biais de l’utilisation de divers outils délibératifs. S’appuyant sur une étude empirique à petite échelle menée en 2017–2018 auprès d’informateurs clés de ce projet de cimetière, cet article étudie comment ces acteurs ont vécu les limites de la loi, se sont engagés avec et ont opéré dans ces limites. Pour ce faire, je propose d’utiliser un cadre de conscience juridique pour examiner comment la vie locale est aussi le lieu où se produit le droit vécu au quotidien. La gouvernance locale de la diversité dans la mort exige donc une réévaluation du « local », des politiques identitaires ainsi que des relations et de la

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conscience juridique. À terme, cet article soutient que les processus de prise de décision locaux jouent un rôle important, mais qui est pourtant sous-examiné dans les conversations plus approfondies sur l'appartenance.

Mots clés: Droit et religion, cimetière, conscience juridique, Québec, étude de cas, zonage

Introduction

[I]n the domain of death, the government ... doesn't play the game, it plays for political gain, it plays the political game, but it doesn't play the game—... it doesn't take on the social responsibility.¹

—Participant 10

From the depths of Quebec's long winter in 2017, a new religious "crisis" emerged. This one wasn't a new legislative project,² or about religious symbols,³ or the construction of new religious edifices,⁴ or even about requests for reasonable accommodation. This time, it was about various Muslim communities in the Quebec City area seeking a place to bury their dead. Yet this "new" predicament involved the unavoidable cycle of life, and the inevitability of death. Thus, the labels of "new" and "crisis" may seem inopportune or misguided in the face of a shared eventuality.

The opening to this article captures the challenges encountered by the members of these Muslim communities in gaining public approval for their cemetery, as their choice of site involved rezoning by the municipality, and the site had to be approved by local citizenry. The designated plot of land lay forty minutes outside of the UNESCO heritage centre of Quebec City, in the quiet municipality of St-Apollinaire. The cemetery project came on the heels of the Quebec City mosque massacre, where six men were brutally killed by a gunman.⁵

Ultimately, while the cemetery project in St-Apollinaire did not come to pass, I argue elsewhere with Lori G. Beaman that this project encapsulates how "particular notions of community and authority are deployed that both reify and disrupt

¹ All translations of the participant statements are mine.

² In 2017, see: *An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies*, SQ 2017, c-19.

³ For example, the large crucifix prominently featured inside the Saint-Sacrément Hospital, a publicly funded institution in Quebec City that came under controversy around the same time. See Lori G. Beaman, "Our Culture, Our Heritage, Our Values: Whose Culture, Whose Heritage, Whose Values?" *Canadian Journal of Law and Society* 36 (3).

⁴ For instance: *Centre communautaire Essalam c. Ville de Mascouche*, 2018 QCCS 316; *Organisation de la jeunesse Chabad Loubavitch c. Ville de Mont-Tremblant*, 2019 QCCS 5238, permission to appeal granted (2020 QCCA 142); *Ville de Montréal c. Centre islamique Badr*, 2017 QCCS 57. The Quebec Human Rights Commission also released a legal opinion on zoning and religious edifices in 2014: see Commission des droits de la personne et droits de la jeunesse, *Avis sur les règlements de zonage relatifs aux lieux de culte dans l'arrondissement de Montréal-Nord* (Cat. 2.113-2.13) (15 January 2014): http://www.cdpdj.qc.ca/Publications/avis_zonage_lieux_culte_Mtl_Nord.pdf.

⁵ In December 2019, the gunman was found guilty of multiple charges of murder and attempted murder and sentenced to life in prison, with no prospect of parole for forty years (*R. c. Bissonnette*, 2019 QCCS 354). The sentence was subsequently overturned: *Bissonnette v. R.*, 2020 QCCA 1585. Application for leave to appeal to Supreme Court of Canada granted: *Quebec (Attorney General) v. Bissonnette* (SCC docket no. 39544) (27 May 2021).

boundaries between ‘us’ and ‘them’ and which work to include and exclude.”⁶ The local level has been highlighted as “central to the experiences of citizenship” yet often overshadowed by national or international religious issues.⁷ Despite this, however, diversity in death, as we have termed it, remains a persistent blind spot in public policy and planning.⁸ These observations highlight the significance of everyday life and determinants of belonging. They also accentuate the decisive role that law can play in either reinforcing or weakening the politics of difference at the local level. This article seeks to engage with decision-making tools implicating religious rights at the local level. Public consultations and deliberative mechanisms often highlight critical questions on the discretionary nature of these processes. They also call attention to the social responsibility of the actions taken. Lastly, these decision-making mechanisms also underscore concerns central to this special issue, namely, the use of democratic mechanisms to achieve distinct purposes when religious rights are at play.

Drawing on a small-scale empirical study conducted in 2017–2018 with key informants in the cemetery project,⁹ I investigate how these actors lived through, engaged with, and navigated law’s bounds. Twelve semi-structured interviews were carried out with local actors in the St-Apollinaire cemetery project between May and July 2017, using a snowballing method. While most participants were in favour of the project, albeit to varying degrees, one participant was resolutely opposed to it. In addition to the interviews, I also conducted participant observations during the public consultation held in March 2017 in St-Apollinaire. Whereas the first piece on St-Apollinaire, co-authored with Beaman, examines how “local life, through the lens of zoning, is where everyday lived religion occurs,”¹⁰ the present article is guided by legal consciousness research, which “refers to the ways in which people experience, understand, and act in relation to law.”¹¹

In this article, I contend that local decision-making processes play a significant yet underexamined role in the broader conversations on belonging. It is important to pay attention to unsuccessful projects, such as the St-Apollinaire one, since they too enrich our understanding of local relationships and the invariable presence of the state in these discussions on local governance.¹² The fact that neither the

⁶ Dia Dabby and Lori G. Beaman, “Diversity in Death: A Case Study of a Muslim Cemetery Project in Quebec,” in *Research Handbook on Interdisciplinary Approaches to Law and Religion*, ed. Russell Sandberg, Norman Doe, Bronach Kane, and Caroline Roberts (Edward Elgar Publishing, 2019), 420 at 436.

⁷ Claire Hancock, “Accommodating Islamophobia: How Municipalities Make Place for Muslims in Paris,” *Social & Cultural Geography* 21, no. 4 (2020): 529.

⁸ See Dabby and Beaman, “Diversity in Death.” See also Lyliane Rachédi, Mouloud Idir, and Javorka Sarenac, “Carrés, cimetières et musulmans. Les impensés de l’immigration et de la citoyenneté au Québec,” *Diversité urbaine* 18 (2018): 47–66.

⁹ This study was conducted in collaboration with Lori G. Beaman in the context of a postdoctoral fellowship with the Religion & Diversity Project (SSHRC MCRI 2010–2017). University of Ottawa Ethics Research approval (file number 04-17-08).

¹⁰ Dabby and Beaman, “Diversity in Death,” 421.

¹¹ Lynette J. Chua and David M. Engel, “Legal Consciousness Reconsidered,” *Annual Review of Law and Social Sciences* 15 (2019): 335, at 2, https://digitalcommons.law.buffalo.edu/journal_articles/966.

¹² Tobias Müller, “Reconsidering the Spatiality of Religion and the State: Relationality and the Mosque not Built,” *Religion, State & Society* 47, no. 4 (2019): 475.

referendum nor the change to zoning may have even been legally necessary in the first place is worth flagging. It reflects the complexity of legal consciousness formation, as well as the unpredictability of how people experience and view law-based (administrative) democratic processes. As such, this article stands at the intersection of three elements, namely: the technical tool of the referendum, the public decision-making process, and our understandings of belonging. These elements work interactively to produce a certain type of 'localized' legal consciousness, which can be distinguished from legal consciousness found in courts or unions, for instance.¹³ This article elaborates on how the state and religious interests can operate on the same playing field, casting light on the complexity of relationships, community attachments, and how these are ultimately articulated.

A caveat is required before continuing. Given the exploratory nature of the study, as well as the small size of the municipality of St-Apollinaire, describing participants in any detail would, more likely than not, lead to their explicit identification. This would compromise the anonymity of my participants and contradict the commitments I undertook in seeking ethics approval for this research. Anonymity was a condition of my recruitment, and to reveal participant characteristics would therefore risk undermining their informed consent to participate and potentially cause certain individuals harm, which is not my intent. Despite the lack of nominative details on individual participants, their responses invite us to reflect on how a zoning modification can become an exercise in legal consciousness formation.

The article proceeds as follows. Part I examines the significance of the "local" in decision-making about religion and its complicated bond with diversity through the case study. Part II reflects on the idea(l) and implications of a referendum and its relationship to identity politics. Part III situates the case study and the actors within a legal consciousness framework. Finally, Part IV puts Chua and Engel's foundational elements of legal consciousness to work in framing the findings of the case study. Ultimately, I suggest that a legal consciousness approach offers a novel and constructive lens through which to examine the local governance of diversity in death.

I. Local's Import

It may be useful at this point to outline the proposed cemetery project in St-Apollinaire, before fleshing out its contours. What started off as a private commercial transaction became a media fascination in Quebec. While this project was not propelled by the terrible massacre that took place at the mosque in Quebec City less than a month earlier, it was often impossible to dissociate the two within the same conversation. Moreover, despite various cemetery projects having been explored by the Muslim communities for the better part of two decades prior to St-Apollinaire, no suitable transaction had been concluded for those living in and around the Quebec City area. While the St-Apollinaire municipal council was

¹³ For example, see: Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: Chicago University Press, 1998); Michael McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago: Chicago University Press, 1994).

unanimously in favour of the cemetery project, a public consultation session was held on 29 March 2017 to explain the project to those living in the area and facilitate dialogue between citizens. The zoning presentation during the public consultation was rapid and detail oriented. For those not well versed in regulatory talk, it may have felt somewhat overwhelming.¹⁴ This was evidenced in some of the questions asked in the latter part of the evening, when citizens had difficulty understanding who was eligible to vote if a referendum were called. As one participant recalled, top of mind was keeping the process of the public consultation from getting sidetracked or going off the rails:

we knew that this was a hot subject...we wanted order. That's what was important.
 –Participant 1

As explained at the public consultation, if concerned citizens wanted to put the zoning modification to a vote, there was a process to follow in the coming months, by first submitting an appropriately formulated referendum question (26 April 2017), which would pave the way for the organization of a referendum vote (held on 16 July 2017). Of the sixty-two people determined eligible to vote in the referendum,¹⁵ only thirty-five came out. By the very slimmest of margins—nineteen votes against and sixteen votes in favour—the zoning modification was rejected. Following this result, a different plot of land was sold by Quebec City to those wanting the cemetery project for the Muslim communities at the end of 2017.¹⁶ Official environmental approval was received in the fall of 2019.¹⁷

While the St-Apollinaire Muslim cemetery project was ultimately unsuccessful,¹⁸ it offers a critical snapshot into how religious communities, as well as local residents and officials, navigate their relationships with each other and law. This is articulated in the quote below:

The big challenge is the referendum aspect—the idea of questioning the project, the use, and not the users, i.e., Muslims. We could draw an analogy with the construction of a casino in a village—do we question the project or the users? Is the usage in the public interest? It's not the usage that's contested in our project, it's the users. Big challenge. Can we invalidate the results of a referendum aside from technical reasons?
 –Participant 4

These remarks offer a bird's-eye view of several intersecting themes in the St-Apollinaire story. The participant draws the lines between the project and the

¹⁴ I come back to this point later when drawing on Flynn's work on technicities.

¹⁵ Unlike other zoning projects, only owners with properties contiguous to the affected plot of land were determined eligible to vote.

¹⁶ Andrea Bellemare, "Muslims in Quebec City Finally Get Land for Burials," *CBC News* (4 August 2017), <https://www.cbc.ca/news/canada/montreal/quebec-city-mosque-cemetery-land-muslim-burial-grounds-1.4235158>.

¹⁷ "Environment Ministry Green-Lights Muslim Cemetery in Quebec City," *CBC News* (15 September 2019), <https://www.cbc.ca/news/canada/montreal/environment-ministry-green-light-muslim-cemetery-quebec-city-1.5284651>. The deed of sale was signed soon after: see Canadian Press, "Quebec City Mayor Signs Deed to Open First Muslim Cemetery," *Toronto Star* (19 December 2020), <https://www.thestar.com/news/canada/2019/12/19/quebec-city-mayor-signs-deed-to-open-first-muslim-cemetery.html>.

¹⁸ Müller, "Reconsidering the Spatiality of Religion," 475.

intended beneficiaries, as well as the distinction between the public interest and the common good. There is an interesting line that runs through that comment—between what is “acceptable” and what is “permissible.” Whereas the former speaks to the public interest, a perhaps fuzzier justificatory tool, the latter refers to technicity and governance elements that govern the choice that is made. The analogy between cemetery and casino projects, as drawn by Participant 4, is further revealing, as it challenges both the notions of *what* and *who*: namely, *what* becomes “acceptable” and *who* is identified as “permissible.” Translated to the cemetery project, we can formulate the questions as follows: “what kind of cemetery is acceptable?” And relatedly, “who is allowed to be buried there”¹⁹ and “who is allowed to pay their respects to the dead?” This “coded” language of permissiveness resonates in other examinations of the local governance of religion. This is helpfully illustrated in Julia Martínez-Ariño and Mar Griera’s recent study of French and Spanish cities, where the authors posit that there is a series of criteria that factor into how religious expression is understood and adapted to local conditions.²⁰ The casino/cemetery dichotomy is also noteworthy, as these sites span the divide between what, according to some, are secular spaces and religious or spiritual spaces. Once again, this division emphasizes not only the line between “suitable” and the “undesirable” projects but also the ultimate adaptability—to draw on Martínez-Ariño and Griera—to local contexts. The legal workings of local governance can enable a form of subtle othering, under the discourse of the common good, a point I will return to later on in this article. Within the context of casino projects, Alexandra Flynn calls attention to the “unique combination of legal technicalities and insider knowledge that characterizes municipal governance.”²¹ Flynn’s comment is relevant to the cemetery project as well, as it speaks to how key actors navigate local governance, the knowledge and understanding of local procedures and the intricacies of urban planning. Morality, inequality and even criminality emerge as part of the lexicon of zoning concerns on casino projects.²² Moreover, whereas a casino project may come across as financially interesting to the community (while perhaps still be seen as morally doubtful), a cemetery project does not offer the same economic incentive. Financial considerations aside, it comes down to the individuals and communities involved in these projects: this constitutes, I believe, Participant 4’s most salient point. The comparison between a casino and cemetery is helpful here to shed light on how what is acceptable and

¹⁹ Interestingly, opponents of the project framed their opposition in terms of the “exclusive” nature of the cemetery, on who could not be buried there, namely, non-Muslims. See Sophie Langlois, “Cimetière musulman à Saint-Apollinaire : que craignent les opposants?” *Radio Canada* (11 July 2017), <https://ici.radio-canada.ca/nouvelle/1044057/cimetiere-musulman-saint-apolinaire-referendum-opposants>.

²⁰ Julia Martínez-Ariño and Mar Griera, “Adapter la religion : négocier les limites de la religion minoritaire dans les espaces urbains,” *Social Compass* 67, no. 2 (2020): 233.

²¹ Alexandra Flynn, “A Tale of Two Casinos: Unequal Spaces of Local Governance,” *Journal of Law and Social Policy* 30 (2018): 99.

²² One example is the Pointe-Saint-Charles (PSC) casino proposal in 2005, where Loto-Quebec, a provincial crown corporation, sought to move its casino to the then underprivileged neighborhood of PSC in greater Montreal. Ultimately, this project was unsuccessful. See Radio Canada, “Le mouvement d’opposition prend de l’ampleur,” *Radio Canada* (4 December 2005), <https://ici.radio-canada.ca/nouvelle/285624/casino-opposition>.

what is permissible are (re)shaped within the confines of this project and the technicity of the language employed.

My aim here is not to repeat what has already been explored; nevertheless, certain elements of St-Apollinaire's geography and its "community" are key to a full understanding of the importance of "the local."²³ St-Apollinaire, a municipality of just over 6,000 inhabitants, according to the 2016 census,²⁴ is located on the highway leading from Montreal to Quebec City. The highway also separates the residential and industrial sides of the municipality, the former containing the everyday necessities of life, such as the supermarket, the pharmacy, the SAQ (provincial liquor store), other small businesses, a community hall, a recreation centre and, lastly, the town hall. Train tracks also cement the division between the two sides, with trains, both passenger and commercial, passing next to the residential side. The other side, by contrast, is generally occupied by more industrial businesses, which neighbour the highway, giving way to farmlands behind. Idiosyncratic to the Canadian landscape, a Tim Hortons also dots the industrial side, as well as a gas station and a small hotel. The highway thus acts as a handy divide between the two parts of the municipality. The proposed Muslim cemetery project was to be located on the industrial side of the municipality. This required a zoning change, to reflect the shift from an industrial use to a community one. The intending seller, a company named Harmonia, was already invested in certain funerary practices prior to the Muslim cemetery project, operating as a funerary centre and a cemetery for remains following cremation. As one participant explains, Harmonia's properties were divided from a technical point of view into two cadastral lots:

One that is for [the] building, one that is for [the] cemetery. And [they] installed a cemetery, a cemetery-park (parc-cinéraire in French), as [they] call it here, which is a cemetery where [they] inhumate remains following cremation.

–Participant 1

Again, the highway serves as a convenient landmark to understand Harmonia's property and the piece of land intended for sale. Whereas the building abuts the highway, the cemetery-park is nestled at the back, away from the noise of the passing cars, trucks and trains. This is clearly designed as a place to commune, to gather, and pay one's respects. In walking through the cemetery-park, we see that there are five distinct areas where remains could be stored, including a burial section under the canopy of the trees—with the names of the deceased etched in stone at their base. More traditional interment grounds are also available in the cemetery-park, with flat tombstones bearing names and dates of birth, as well as an area for urns to be placed, displayed vertically like volumes in a bookcase. There is also a work of art in the cemetery area—a vintage car from the late 1950s with long fins and a star painted on the front—positioned there so that people would have other things to look at while in the park. Beyond this landscape is a third parcel of

²³ See Dabby and Beaman, "Diversity in Death."

²⁴ Statistics Canada, "Census in Brief: Municipalities in Canada with the Largest and Fastest-Growing Populations between 2011 and 2016" (February 8, 2017) www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016001/98-200-x2016001-eng.pdf (accessed July 26, 2020).

land, featuring mature trees, chosen for the Muslim cemetery project. Interestingly, Harmonia was recognized as a “cemetery” by the Ministry of Health and Social Services and the land use had been recognized by the municipality of St-Apollinaire since 2009. The company acknowledged at the time that it did not proceed with an official request to the Ministry of the Environment to inhumate remains after cremation, because it had no immediate plan to do so. The shift in interpretation came, in this case, when it was understood that the dead would be buried in their full form, rather than solely their remains following cremation. As recounted by Participant 1, the shift between remains and bodies was seen as a formality, though this interpretation was evidently not shared by all:

This [the municipality’s decision to change the use of the land officially] was a bad interpretation of the law. We did not object because we wanted to have a democratic choice, we wanted to see how the community [of St-Apollinaire] would welcome the establishment of a Muslim cemetery. Umm...and so we decided to play the game. But...I am of the opinion that once the Ministry of the Environment’s conditions were met, [and] those of the Ministry of Health, remains could be buried in this private cemetery. And now we are stuck in a social debate that is out of place, both from a social and legal point of view.

–Participant 1

It is noteworthy that this participant adopts the language of democracy and choice, emphasizing a conscious decision not to impose their will, and also, to abide by the outcome. The participant sees the cemetery project as a bit of a social experiment. The use of the word “game” by the participant is also revealing, as it both resonates with, and complexifies this article’s epigraph. It is not only the government who plays the game, but also the actors in the cemetery project. Ultimately, however, this quote discloses that the rules of the game shifted once new actors were added to the picture. In such a context, the grey zone, which had operated reasonably well until then, was no longer tenable. A zoning change was thus required. Yet, as explained by another participant, the modification to the zoning was indifferent to the religious belonging of those being buried:

We don’t speak of multifaith cemeteries or cemeteries belonging to one faith in particular. We permit a “cemetery” use in the regulation. So in terms of zoning, we don’t need to make a distinction. It’s really in terms of the use—who will be buried there— [that a distinction is made]—that changes nothing in terms of the zoning regulation. But—to come say that we are going to put a business there—for instance, a car dealership that will only sell Mazdas, it won’t sell Ford [cars]. You know, it’s ... the basic use, it’s the same. So it’s the same principle. In terms of zoning, we cannot make any distinctions at that level.

–Participant 3

While Participants 4 and 3 share the same understanding of the use, the potential users are seen as a point of friction between the two participants. The technicalities of local governance materialize here, irritating zoning’s otherwise neutral grammar and highlighting the disparities between possible beneficiaries. The shift in the zoning required a localized consultation, rather than an inclusive one, as explained here:

it’s the same principle as if we had put in a request for a car dealership which was not permitted in the zone, whereas here it’s a cemetery, a use to add, much like

another. So we don't make a distinction, it was not a use permitted for [lot] 104(i) and we simply add it. It stops there.

–Participant 3

The difference, as explained by this participant, resides in whether the people in the concerned or contiguous zones want the modified regulation to be submitted to a vote. In that case, according to this participant, “we move into the *Act respecting elections and referendums in municipalities*—it’s the chief electoral officer who comes into play—it’s a different law that defines the rules of the game.” It is worth noting that since the St-Apollinaire cemetery project in 2017, a rethink of municipal powers by the then-provincial Liberal government set out an alternative to holding a referendum, so long as the municipality had adopted a public participation policy.²⁵

The bucolic setting of St-Apollinaire offers a thought-provoking milieu to explore commonplace experiences of a particular legal situation and decision-making processes. Yet as noted by Participant 1, the questions raised by the cemetery project also highlighted “a social debate that is out of place,” because a simple land use approval process became a surrogate referendum on the belonging of the Muslim “other.” The next section engages with the decision-making tools at the centre of this project.

II. A Referendum by Any Other Name?

People are going to see the little paper and it's not going to say, "Are you against Muslims in St-Apollinaire?"—it will say, "Do you approve of Regulation 803-2017?"

The person in the booth will be aware of what they're answering, you know.

–Participant 3

A referendum occupies a particular place among decision-making processes. As an instance of direct democracy, the referendum stands out among other decision-making processes. The way legal actors must participate in the process can have an impact on their legal consciousness of the subject matter.²⁶ Laurence Morel defines a referendum as “a vote by the electorate on a question or a policy.”²⁷ In some settings, it is considered an everyday tool of decision-making, good government, and part and parcel of their constitutional structure.²⁸ It may be considered a “mundane” decision-making mechanism, but it is in no way an innocuous legal

²⁵ *An Act mainly to recognize that municipalities are local governments and to increase their autonomy and powers*, SQ 2017, c 13, art. 80.1–80.3. As noted by Isabelle Porter, only two cities in the province have adopted public participation policies *in lieu* of a referendum mechanism since the 2017 revision of the law. This suggests that the new deliberative tool may come with its own participatory, structural and/or institutional difficulties. See: Isabelle Porter, “Les villes ont changé d’avis à propos des référendums municipaux,” *Le Devoir* (6 February 2020), <https://www.ledevoir.com/politique/ville-de-quebec/572279/la-ville-de-quebec-n-abolira-pas-les-referendums-municipaux>.

²⁶ See Porter, “Les villes ont changé d’avis.”

²⁷ Laurence Morel, “Référendum et volonté populaire : la critique démocratique du referendum,” *Participations* 20, no. 1 (2018): 53 at 57 (my translation).

²⁸ This is the case in Switzerland, where the referendum process is part and parcel of its Constitution, as elaborated in articles 138–42 (Federal Constitution of the Swiss Confederation of 18 April 1999 [Switzerland], CHE-010, available at <https://www.refworld.org/docid/3ae6b6040.html>). See Amélie Barras’ contribution to the special issue on this point: “Formalizing Secularism as a Regime of Restrictions and Protections: The Case of Quebec (Canada) and Geneva (Switzerland).”

instrument—rather, it is a necessary constitutional mechanism. In other settings, such as Quebec, recourse to referendums in municipal politics is built into the decision-making structures.²⁹ However, the referendum, as a broader decision-making tool, occupies a unique place in Quebec identity politics, as illustrated through the (failed) 1980 and 1995 referendums on Quebec's independence. Geneviève Zubrzycki explains that the referendum also feeds into Quebecers' complex relationship with religion and secularism.³⁰ A referendum rarely leaves a person indifferent to the result. Particularly relevant to my interests here, the mechanisms and consequences of the vote also illuminate one's relationship to, and awareness of, law.

A referendum offers a peremptory answer to an often complex question. It transforms a sea of grey into the preordained fields of black and white. It can also be interpreted as a way in which to bypass otherwise thorny debates about rights with a simple "yes" or "no." In the landscape of religious claims, this takes on particular significance, as democratic tools are employed against democratic imperatives, making for a volatile mixture before the law. Yet it is important to remain aware of the resonance of these tendencies at a microlevel and their rapid influence on the macro tendencies of the politics of regulation of religious diversity. This is seen perhaps most clearly in the 2009 Swiss referendum on the banning of minarets.³¹ Mariana Valverde highlights that the choice of focusing on the building, rather than the person, in Switzerland, is strategic and by no means innocuous:

In liberal legal systems, it is far easier to try to expel minarets from a city or a country than to expel or discriminate against populations. Buildings have no human rights. And municipal codes are not usually subject to constitutional equality provisions, since, as the North America planning mantra goes, local rules govern "time, space, and manner," not persons.³²

Valverde's comment is confirmed by the jurisprudence before the European Court of Human Rights, where the applications to contest the minaret ban were found to be inadmissible. In these cases, the claimants were not considered "victims" *per se*.³³ Yet Valverde's argument needs to be nuanced when thinking not of religious buildings, but rather, of cemeteries, since the latter do hold distinct and tangible rights. This is all the more evident in Quebec.³⁴ Catholic cemeteries still retain distinct rights as evidenced by the *Act respecting Roman Catholic cemetery*

²⁹ *Act respecting land use planning and development*, CQLR c A-19.1, art. 113, 123 and following.

³⁰ See Geneviève Zubrzycki, *Beheading the Saint: Nationalism, Religion, and Secularism in Quebec* (Chicago: Chicago University Press, 2016).

³¹ See, for instance: Marco Antonsich and Phil I. Jones, "Mapping the Swiss referendum on the minarets' ban," *Political Geography* 29, no. 2 (2010): 57–62. The construction of minarets, following the 2009 popular referendum, is now prohibited explicitly under article 72(3) of the Swiss Constitution.

³² Mariana Valverde, *Everyday Law on the Streets: City Governance in an Age of Diversity* (Chicago: University of Chicago Press 2012), 193.

³³ See *Ouardiri v. Switzerland* (ECtHR, 2nd Section, app. no. 65840/09) (28/06/2011) and *Ligue des Musulmans de Suisse and Others v. Switzerland* (ECtHR, 2nd Section, app. no. 66274/09) (28/06/2011).

³⁴ See Nicholas Kasirer, "La mort du positivisme? L'exemple du cimetière," in *Transformation de la culture juridique québécoise*, ed. Bjarne Melkevik (Sainte-Foy: Presses de l'Université Laval, 1998), 199–220.

companies.³⁵ The *Funeral Operations Act*,³⁶ adopted in 2016, shifts the focus to cremation and funerary operation services and represents a secularization in death practices. Most salient to our article, this modification leaves minority religious communities who bury their dead outside of the new framework, a point made by a few of my participants during the study. This legislative shift is also noted by Mariève Lacroix and Jérémie Torres-Ceyte, who suggest that “private law in Quebec seems to be progressively evacuating all references to the sacred aspects of life and death, and consequently, to various funerary rites.”³⁷ This change is problematic, as corroborated in Lyliane Rachédi, Mouloud Idir, and Javorka Sarenac’s study commissioned by the then Quebec Ministry of Immigration, Diversity and Inclusion following the Quebec City massacre, where they “insist on the moral, ethical and political urgency of treating Muslim sites as a citizen’s right and legitimately democratic.”³⁸ In this complicated context, cemeteries still retain a privileged legal status, but one of variable geometry. I suggest that the governance of death abuts democratic imperatives.³⁹

Yet one cannot appreciate the real significance of what purports to be the prevention of an “unremarkable” zoning change without acknowledging the context in which it is taking place—one marked by a rise in Islamophobia and right-wing discourse in Quebec.⁴⁰ Thus, while our participant’s statement at the outset of this section is *technically* accurate—insofar as the vote concerns the particular plot of land—it does not address the intensification of racism and discrimination directed at minority religious communities, and Muslim communities in particular, in Quebec. Banning people from wearing religious symbols and, more broadly, leading (public) religious lives, as successive provincial governments of all stripes (Liberal party, Parti Québécois, and the Coalition Avenir Québec) have sought to do since 2010, reflects and perpetuates racist and discriminatory attitudes towards Muslims.⁴¹ The Quebec City massacre in 2017 highlights alarming levels of

³⁵ *Act respecting Roman Catholic cemetery companies*, CQLR c C-40.1.

³⁶ *Funeral Operations Act*, CQLR c A-5.02. This act repealed the *Burial Act*, CQLR c I-11.

³⁷ See Mariève Lacroix and Jérémie Torres-Ceyte, “Les rites funéraires et les obligations juridiques à l’endroit des morts en droit privé québécois,” in *Les rites et usages funéraires : essais d’anthropologie juridique*, ed. Jean-François Boudet (Aix-en-Provence: Presses Universitaires d’Aix-Marseille, 2019), 93, at 101 (my translation).

³⁸ Rachédi, Idir, and Sarenac, “Carrés, cimetières,” 51 (my translation). It should be noted that the Ministry is now known as Immigration, Francization and Integration, modified by the Coalition Avenir Québec (CAQ) since they came to power in Quebec in 2018.

³⁹ This resonates with Robert Cover’s opening sentence in “Violence and the Word,” *Yale Law Journal* 95 (1985–1985): 1601: “Legal interpretation takes place in a field of pain and death.” My thanks to Olivier Barsalou for making this heady connexion.

⁴⁰ See Aurélie Campana and Samuel Tanner, “Meanwhile in Canada: anti-Muslim Ordinary Racism and the Banalization of Far-Right Ideology,” *TSAS Research Report* (TSAS RR 2019-01), <https://www.tsas.ca/publications/anti-muslim-ordinary-racism-and-the-banalization-of-far-right-ideology>.

⁴¹ Chronologically: Bill 94, *An Act to establish guidelines governing accommodation requests within the Administration and certain institutions*, 1st sess., 39th Leg., Quebec, 2010; Bill 60, *Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests*, 1st sess., 40th Leg., Quebec, 2013; *An Act to foster adherence to State religious neutrality* (cf. note 2); *Act respecting the laicity of the State*, SQ 2019, c. 12. On the (ongoing) debate on the constitutionality of the latter, see *Hak v. Procureur général du Québec*, 2021 QCCS 1466. Parties on both sides have already announced their intentions

racism and hate propaganda directed at Muslim communities, as noted in many recent studies.⁴² Moreover, the Quebec Human Rights Commission, in a 2019 report, highlights that despite a rise in hate crimes, a majority still go undisclosed.⁴³ In coming back to the participant's quote, while the technical decision concerns a zoning change, it is one encoded with "complex emotional inheritances."⁴⁴

In elaborating the story of St-Apollinaire, I have endeavoured to tease out how the local is interwoven in the governance of religious diversity. As Valverde notes, certain issues, which are the subject of delicate negotiations between developers and urbanists in cosmopolitan cities, often become what she calls "lightning rods" for the apprehensions and concerns linked to cultural differences that usually remain implicit.⁴⁵ Cemeteries further complexify these fears. And, in Quebec, Lacroix and Torres-Ceyte suggest that "the intangibility of mortal remains, which is founded on the sacredness of the corpse, is nevertheless tempered, if not secularized."⁴⁶ I have already argued elsewhere, with Beaman, that cemeteries are overlooked in the governance of religious diversity.⁴⁷ Undoubtedly, St-Apollinaire constituted one such "lightning rod." But it enables us to experience how law organizes and regulates the local, as well as articulating resistances, negotiations, and navigations of the local actors that are part of this complex landscape. It also constitutes an interesting vehicle through which to reformulate concepts and, in the best-case scenario, propose an "experimental process"⁴⁸ in the governance of religious diversity.

Valverde's interpretation of the governance of religious difference can also be contrasted with that of Martínez-Ariño, who indicates that local governance plays an important role in the location of religion, often mirroring the domestic

to appeal the decision. Furthermore, the current provincial government's protracted refusal to recognize the existence of systemic racism further aggravates relations with communities in Quebec. See Konrad Yakabuski, "François Legault's denial of systemic racism reveals Quebec's great divide," *The Globe and Mail* (June 10 2020), <https://www.theglobeandmail.com/opinion/article-francois-legaults-denial-of-systemic-racism-reveals-quebecs-great/>.

⁴² See Gada Mahrouse, "Minimizing and Denying Racial Violence: Insights from the Québec Mosque Shooting," *Canadian Journal of Women and the Law* 30, no. 3 (2018): 471–93; Maryse Potvin, "Discours racistes et propagande haineuse. Trois groupes populistes identitaires au Québec," *Diversité urbaine* 17 (2017): 49–72; Maryse Potvin and Mélanie Beauregard, "L'attentat à la mosquée de Québec dans la presse écrite québécoise entre le 30 janvier et le 1^{er} mars 2017," *Religiologiques* 39 (2019): 51–89; Philip S. S. Howard, "Moving Us Nowhere: The Politics of Emotion and Civility in the Wake of the Quebec City Massacre," *Canadian Ethnic Studies* 51 no. 1 (2019): 1–24.

⁴³ Commission des droits de la personne et droits de la jeunesse, *Les actes haineux à caractère xénophobe, notamment islamophobe : résultats d'une recherche menée à travers le Québec* (August 2019), http://www.cdpdj.gc.ca/Publications/etude_actes_haineux.pdf [Cat. 2.120-1.34].

⁴⁴ Talal Asad, "Trying to Understand French Secularism" (2006), [http://www.urbanlab.org/articles/Articles%20S.%20Mayor/Asad,%20Talal.%20Trying%20to%20Understand%20French%20Secularism".pdf](http://www.urbanlab.org/articles/Articles%20S.%20Mayor/Asad,%20Talal.%20Trying%20to%20Understand%20French%20Secularism), at 513.

⁴⁵ Valverde, *Everyday Law on the Streets*, 192.

⁴⁶ Lacroix and Torres-Ceyte, "Les rites funéraires," 94 (my translation).

⁴⁷ Dabby and Beaman, "Diversity in Death," 423–26.

⁴⁸ Personal notes taken during Stéphane Bernatchez, "Le droit de la gouvernance : nouvel ordre juridique pour le XXI^e siècle" (Conférence Groupe de réflexion en droit privé, held at UQAM) (25 November 2019), https://www.gr-dp.com/images/conferences/GRDP_11_2019.pdf. Bernatchez's comments were directed at governance *writ large*, rather than aimed at questions of religious diversity.

integration processes at the national level.⁴⁹ Local governance, in the context of religious diversity, offers a privileged moment of reflection, as it can act as a “translator” of other claims, but it can also create a distinct, lived, and malleable space for religious diversity. In other words, local governance acts as a site of situated translation between the national level and its tangible application.⁵⁰

According to Colleen Sheppard, participation and deliberative democracy are learnt through the very practice of democracy,⁵¹ a point not lost within the context of our case study. Yet this practice of democracy can also be a source of criticism. Indeed, the referendum—the apparent democratic mechanism *par excellence*—ends up delivering such a bitter disappointment to those espousing what one might imagine as more substantive and inclusive social democratic values. A few signposts are needed at this point, in order to contextualize the actual democratic exercises that took place in St-Apollinaire. First, the public consultation duly organized and held in late March 2017, while having an educational purpose, was a one-off, rather than a sustained exercise of discussion and deliberation between citizens. In this regard, it does not fit with the idea of a “minipublic,” which requires a sustained engagement and a curated group of representative citizens.⁵² Yet those who strongly opposed the project—the great majority of whom were not even eligible to vote in the referendum—invoked and provoked a “not in my back yard” (“NIMBY”⁵³) mentality.⁵⁴ It is worth considering whether the various bills on the regulation of religion in Quebec, both proposed and passed, also gave a distinctive shape to the NIMBY arguments put forward.⁵⁵ While many of the objections made to the project during

⁴⁹ Julia Martínez-Ariño, “Governing Islam in French Cities: Defining ‘Acceptable’ Public Religiosity through Municipal Consultative Bodies,” *Religion, State & Society* 47, no. 4–5 (2019): 424.

⁵⁰ There is an interesting parallel to be drawn here between Martínez-Ariño’s localized translation and Merry’s work on *vernacularization*: “[a]s ideas from transnational sources travel to small communities, they are typically *vernacularized*, or adapted to local institutions and meanings. [...] Human rights language is similarly extracted from the universal and adapted to national and local communities.” See Sally Engle Merry, “Mapping Transnational Human Rights and Local Activism: Mapping the Middle,” *American Anthropologist* 108, no. 1 (2006): 39 [references omitted]. In both cases, those playing the role of intermediary (or translator) between the norm and its application can transform it to better fit in localized circumstances.

⁵¹ Colleen Sheppard, *Inclusive Equality* (Montreal: MQUP, 2010), 120.

⁵² See Volkan Gül, “Representation in Minipublics,” *Representation* 55, no. 1 (2019): 31–45. The literature on minipublics is broad, though scholars agree that minipublics generally refer to a group of citizens who deliberate together on a particular issue or question and share their findings and reflections with elected officials. The period of deliberation time varies from one setting to another but is usually quite sustained. On minipublics’ earliest introduction, see Robert A. Dahl, *Democracy and its critics* (New Haven, CT: Yale University Press, 1989). My thanks to Dominique Leydet for discussing minipublics with me.

⁵³ NIMBY has been pervasive in discussions involving religious minorities, but not exclusively. See Valverde, *Everyday Law on the Streets*, 204–208; Joyce Marie Mushaben, “A Funny Thing Happened on the Way to the Mosque: Promoting Civil Society and Religious Pluralism through Local Conflict,” *Citizenship Studies* 18, No. 6–7 (2014): 707–23; Frédéric Dejean, “L’encadrement urbanistique des lieux de culte : le pouvoir local à l’épreuve de la diversité religieuse à travers l’exemple de Montréal,” *L’Information géographique* 80, no. 1 (2016): 130–55; Mar Griera, “Governing Religious Diversity through Interreligious Initiatives: Affinities, Ambiguities and Tensions,” in *Religious Diversity and Interreligious Dialogue*, ed. Anna Körs, Wolfram Weisse, and Jean-Paul Willaime (Cham: Springer, 2020), 89–102.

⁵⁴ This was evidenced by demonstrations against the project, media interviews, social media presence and the “corralling” of eligible voters the day of the referendum to ensure that the project was not passed.

⁵⁵ See note 41.

the consultation were not on point (or even related to the question put forth), Valverde indicates that if local zoning discussions are derailed by a few ardent opponents, it becomes germane to enquire *where* talks on diversity processes can occur.⁵⁶ She notes, “[t]he mismatch between what people want to talk about and what the legal framework allows and requires has predictable results.”⁵⁷ This is relevant and echoes many of the difficulties faced in the particularized context of Quebec. Second, the referendum that took place in July 2017 was open to a limited group of people, namely those with properties connected or contiguous to the lot targeted by the zoning change. Drawing on Michael Sawad’s work, a referendum, as an exercise, can be considered as “enact[ing] an ‘expressive’ form of representation.”⁵⁸ Within the circumscribed group of property owners, only 56.45 percent of those eligible came out to vote (thirty-five of sixty-two eligible voters). Given that just over half the eligible voters expressed their views, it remains difficult to glean broader messages from this particular referendum exercise.

III. Awareness and Law

Whereas Parts I and II set out the story of, and decision-making processes related to, the St-Apollinaire Muslim cemetery project, Part III proposes that the localized narrative can be further illuminated through a legal consciousness framework. While legal consciousness research has a variety of strands,⁵⁹ there is general consensus that this theoretical approach focuses on everyday experiences and interactions with law. In their seminal work on the common place of law, Ewick and Silbey argue that “[a]lthough the law may appear remote from our taken-for-granted world, it also has a commonplace materiality pervading the here and now of our social landscape.”⁶⁰ They explain that law exists not only in a multiplicity of settings, it pervades daily life in myriad ways. Drawing on experiences from “ordinary” Americans, they describe “how commonplace transactions and relationships come to assume (or not assume) a legal character.”⁶¹ The focus on the “commonplace” allows Ewick and Silbey to glide between elements that constitute what they call *legality*—referring, in their words, to “an emergent feature of social relations rather than an external apparatus acting upon social life.”⁶² Ewick and Silbey’s attention to everyday citizens and actors extends along a continuum of legal consciousness research, which has concentrated predominantly (albeit not exclusively⁶³) on marginalized

⁵⁶ Valverde, *Everyday Law on the Streets*, 205.

⁵⁷ *Ibid.*

⁵⁸ Michael Sawad, “Representation and Democracy: Revisions and Possibilities,” *Social Compass* 2–3 (2008): 1007.

⁵⁹ For recent scholarly diagnoses of the various branches of legal consciousness research, see, most notably, Chua and Engel, “Legal Consciousness Reconsidered”; Simon Halliday, “After Hegemony: The Varieties of Legal Consciousness,” *Social & Legal Studies* 28, no. 6 (2019): 859–78.

⁶⁰ Ewick and Silbey, *The Common Place of Law*, 16. Ewick and Silbey articulate their study of the everyday place of law in three different settings, namely: before the law, under the law, and against the law.

⁶¹ *Ibid.*, 17.

⁶² *Ibid.*

⁶³ Recent studies have challenged the traditional ambit of legal consciousness studies and the actors who are usually the focus of these everyday investigations. For instance: Pascale Cornut St-Pierre,

groups.⁶⁴ Thus, legal consciousness research has been understood as a vehicle through which to challenge, and concurrently illuminate, the existing legal hegemony, as accomplished by a variety of methodological approaches.⁶⁵ Yet the currency of the everyday began to wane in Silbey's opinion, as voiced in her 2005 piece, where she argued that legal consciousness studies needed to be "redirected" to take the social back into account. She explains that in seeking to research what she calls "authentic voices," we may lose a part of the social analysis which is vital to legal consciousness studies.⁶⁶ Silbey's *cri de cœur*—or terminal diagnosis according to others⁶⁷—was not seemingly heeded by scholars. Halliday suggests that, if anything, those conducting research into legal consciousness have done so in increasingly diverse settings, giving rise to a multiplicity of new and broad-ranging topics.⁶⁸ As Chua and Engel note, the multiplicity of actors and subjects that now engage with a legal consciousness framework should be commended, rather than understood as

exposing a conceptual flaw [...] [T]he diversity of approaches in these publications [in the last thirty-five years with legal consciousness in their title] illustrates an important strength of sociolegal studies as a field in which scholars share a commitment to examining the place of law in social life but have varied intellectual motivations.⁶⁹

Recent appraisals of legal consciousness research thus indicate that this approach is still a going concern. In their review of the field, Chua and Engel posit three elements common to all strands of legal consciousness research, namely: *world-view*, which "emerges from their [the individuals'] prior experience, and [...] influences how they perceive and respond to new experiences—and whether they should mobilize the law"; *perception*, which "refers to individuals' interpretations of specific events"; and lastly, *decision*, which "may at times involve deliberate choices to use the law but at other times leave it dormant. A decision and its outcome form a

"Investigating Legal Consciousness through the Technical Work of Elite Lawyers: A Case Study on Tax Avoidance," *Law & Society Review* 53, no. 2 (2019): 323–52.

⁶⁴ The literature on legal consciousness is broad. For a sampling of early seminal studies, see: Austin Sarat, "'...The Law Is All Over': Power, Resistance and the Legal Consciousness of the Welfare Poor" *Yale Journal of Law & the Humanities* 2, no. 2 (1990): 343–79; Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (Chicago: Chicago University Press 1990); David M. Engel, "How Does Law Matter in the Constitution of Legal Consciousness?," in *How Does Law Matter?*, ed. Bryant G. Garth and Austin Sarat (Evanston, IL: Northwestern University Press, 1998), 109–44.

⁶⁵ Halliday suggests four different types of research into legal consciousness in "After Hegemony," at 860 and following. Chua and Engel, by contrast, propose three different schools of legal consciousness research in "Legal Consciousness Reconsidered," at 4–11.

⁶⁶ Susan S. Silbey, "After Legal Consciousness," *Annual Review of Law & Social Sciences* 1 (2005): 359. Accordingly, one shouldn't have to make a choice between "law in action," guided by policy-based studies, and "law on the books," which invites otherworldly questioning; rather, "legal consciousness should be a tool for examining the mutually constitutive relationship between these two." See 358–59 more broadly.

⁶⁷ See Kathryn M. Young and Katie R. Billings, "Legal Consciousness and Cultural Capital," *Law & Society Review* 54, no. 1 (2020): 33, 35.

⁶⁸ See Halliday, "After Hegemony," at 859–60. See also Chua and Engel, "Legal Consciousness Reconsidered," at 12. *Contra*, Katherine E. Hull, suggests that further consideration needs to be given to the institutional level, particularly with regard to future work on LGBT people, to avoid generating single-issue portraits. See "Legal Consciousness in Marginalized Groups: The Case of LGTB People," *Law & Social Inquiry* 41, no. 3 (2016): 569.

⁶⁹ Chua and Engel, "Legal Consciousness Reconsidered," at 13.

new experience that can reconstitute the individual's worldview and perceptions for the future."⁷⁰ As Chua and Engel point out, all legal consciousness research is and always has been relational in some way, which facilitates a certain interconnectedness between the various elements.⁷¹ In the last part of my article, I offer a legal consciousness–informed reading of my case study. While Chua and Engel's relational turn to legal consciousness has definite appeal,⁷² I consider that a layered approach (*étapiste*) constitutes a first practical step to better understand the components that make up a legal consciousness framework when overlapping with religious considerations.

Part IV should therefore be understood first and foremost as an exercise in legal consciousness studies, with a nod to the relationships that underpin the cemetery project. In the context of the St-Apollinaire case study, where individual citizens and specific communities' interests and rights are at stake, a legal consciousness approach holds particular promise for understanding the complex interplay between belonging and decision-making.

IV. Legal Consciousness about the Cemetery Project

In this final part of the article, I re-construct the St-Apollinaire case study, while paying specific attention to the dimensions of legal consciousness that Chua and Engel identify: worldview, perception, and decision.

Worldview

But you agreed to let me come live in your society, you opened your arms, but you also have to take me and my way of living with you as a whole. I will not ask for favours. I only ask that you respect my faith. And that is not negotiable. [...] We're not going to go over countless villages to find a cemetery.

–Participant 9

In situating themselves on Quebec soil, this participant speaks not only to their conception of the host society but also to their personal identity and the (im) movability of their faith. Eloquent in their remarks, Participant 9 further indicates that they are seeking equity, rather than differential treatment—the latter suggesting recourse before the courts to get it recognized. This participant's worldview coheres with that proposed by Chua and Engel, since it is “manifest[] in individuals' construction of self or identity, and it plays out in their relationships with other people, groups, and institutions, as well as the natural and spiritual worlds in which

⁷⁰ Ibid., 3.

⁷¹ Chua and Engel draw on Jennifer Nedelsky's work (amongst others) on relational theory, to explain both interdependence and interconnectedness in a legal consciousness framework: see Chua and Engel, “Legal Consciousness Reconsidered,” at 16; Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (Cambridge: Oxford University Press, 2011). In a recent study on US citizenship, Leisy Abrego explains that “[i]ndividuals do not acquire legal consciousness in a vacuum; they do so as members of social networks and in relation to how others in their social groups experience the law.” See “Relational Legal Consciousness of U.S. Citizenship: Privilege, Responsibility, Guild, and Love in Latino Mixed-Status Families,” *Law & Society Review* 53, no. 3 (2019): 641, at 644.

⁷² Chua and Engel readily acknowledge that their relational legal consciousness approach has not been fully theorized or chronicled. See “Legal Consciousness Reconsidered,” 20–21.

they live.”⁷³ This worldview can be compared with another participant’s, a person who sees themselves as a “decoder” of diversity interests, straddling both academic and social worlds:

Being on the ground, I was certainly, in a way, instrumentalized by the different groups—the different actors—to be able to serve as a mediator of sorts between the various jurisdictions; Quebec City, the police of Quebec City, the municipalities as well as the different groups. So that’s that. [...] I found myself unwillingly at the heart of a sort of storm.

–Participant 12

This participant’s experience resonates with another part of Chua and Engel’s understanding of worldview, where the participant acts as a local translator between different individuals and groups. This comes back, in a certain way, to Merry’s *vernacularization*, where there is a fine-tuning of rights to a local setting. It is worth noting that all participants in the study, including those cited here, situated themselves and their relationships. This “relational situatedness” also highlights whether and what kind of influence these relationships had, and ultimately, whether (and, if so, how) they marshalled the law in the cemetery project. The worldviews shared here draw on different elements of consciousness about law: on the one hand, attending to the question of individuals’ worldview enables us to situate participants in their present and past lived experiences; on the other, it enables us to always locate participants between various groups of actors. Worldviews, therefore, allow for the reader to recognize the in-betweenness of worlds, which both animate and are animated by legal consciousness.

Perception

It’s an incredible banalization of Islamophobia, right down to the level of the grave.

–Participant 7

Participant 7’s perception of the referendum on the cemetery project is equal parts unequivocal and damning. It articulates an active and ongoing experience of discrimination enduring not only until but after one’s very last breath on this earth. While I interviewed a wide array of key actors in this project, it is important to underscore that they came from different backgrounds and faiths and occupied both official and unofficial positions of interest. Yet they were, in great majority, aligned in their approval of the cemetery project. One exception was Participant 5, who, upon visiting St-Apollinaire, found the cemetery parcel “catastrophic.” This participant took issue with the way in which the community was going about securing a plot of land, namely, as a sequestered lot (instead of a confessional parcel within a greater cemetery). Participant 5 supported Muslim communities having their own place to lay their dead to rest but thought resolutely that it should be within a larger cemetery. This point of view favoured by the participant stemmed from their own personal experiences with cemeteries in their home country. Thus, we can consider this a difference in the choice of instruments, both democratic and

⁷³ Chua and Engel, “Legal Consciousness Reconsidered,” 3.

legal, used to achieve the ultimate goal. As Chua and Engel explain, “[f]or individuals who perceive an event as unexceptional, law may seem immaterial; for those who perceive the same event as violative of interests or rights, law may seem significant.”⁷⁴ This is noteworthy, given the two passages shared: whereas Participant 7 is unambiguous in their diagnosis of Islamophobia and thus rights violation, Participant 5 is much more circumspect about a breach of rights. Another interpretation of the project is put forth by Participant 8, when relating an exchange with a local resident after the public consultation had taken place to follow up on a question about the impact of the cemetery project on the groundwater tables.

Well actually, I spoke to the man—he wasn’t asking questions about religion. He was living there when was a drought fifty years ago. He recounted that his children were young and that there wasn’t any water in the region—in an agricultural zone—and then I understood in fact what was at stake. [...] Seriously, I thought it was the most legitimate question that was asked in the whole thing. It really ran through my mind. I even spoke to him about this again afterwards, and what really irritated me is that, once the zoning is established, we will no longer be able to change it.

–Participant 8

While Participant 8 maintained the right to a place to bury the Muslim community’s dead, the encounter with the man at the public consultation legitimized other legal rights—like water rights—that were at play within this multifaceted discourse on death and burials. This last encounter reinforces Chua and Engel’s understanding of perception and the balancing of rights. Participant 8’s perceptions shared here offer a far more textured understanding of legal consciousness, as they situate their interpretation of a particular event through social interactions. Participant 8 was perhaps most eloquent in this regard, as their perception of the project, and its ultimate effect, shifted after the exchange with the local resident. By contrast, Participant 7’s concern regarding Islamophobia, from life to burial, indicates instead that the cemetery project’s detractors fall within a broader lifeline of discrimination. Perceptions thus extend legal consciousness beyond the initial decision, inviting a more contextualized and historic understanding of the municipality of St-Apollinaire.

Decision

And now, I wait for an answer. And if the answer isn’t satisfactory, well I may apply to a court, which will interpret all of this. But I haven’t done extensive research; I will go in reverse. I will force the system to give me an answer.

–Participant 1

The tragedy of January 29 engender[ed] a wave of sympathy but the referendum taints this. I think that we need to follow the process to its end. But at a certain point, it’s unacceptable—we have the right to have our rights respected.

–Participant 4

⁷⁴ Ibid.

While both participants emphasize a rights discourse, they do so on different grounds. Whereas Participant 1 seeks to secure a correct interpretation of the zoning requirements for the purposes of a cemetery, Participant 4 invokes a broader recourse to rights and recognition. To my knowledge, and in the aftermath of the cemetery project in St-Apollinaire, neither participant (nor any of the groups involved in this project) went before the courts to enforce their rights. Indeed, my various discussions with participants revealed that the legal route, for those who had considered it, was truly seen as a path of last resort. The fact that an appropriate plot of land was subsequently found made the legal route even less appealing. As Chua and Engel highlight, “[d]ecisions refer[] to individuals’ responses to events and typically reflects both their worldview and perception.”⁷⁵ What distinguishes one participant from another, however, resides in the collective legal consciousness that is put forward by Participant 4, an element missing from Participant 1’s challenge to legal interpretation. While participants in this study remain anonymous, it is worth noting that one-third of participants had legal training, an element that was not sought out by design. As a result, however, the language of law, rights, and legality flowed perhaps more fluidly than in other studies. Decisions act as the linchpin between the other components to a legal consciousness approach. Again, much like “worldviews” and “perceptions,” “decisions” are made here in relation to other communities or community members, as exemplified by Participant 4’s response. There is an inherently reactive nature to decision-making, which requires a firm position statement. Yet much like the referendum process undertaken here, the decisions taken are rarely neat and tidy. Instead, they reveal the messiness of choices and how law filters in, out of, and through, the decision-making framework.

Conclusion

...zoning, what does that imply, what do we have the right to do, how can we get there?

That’s how I saw it when I was talking about it...do we have the right to have one or not [Muslim cemetery], it did not cross my mind. Because I know my rights. You know, I tell myself, why waste my time discussing that, when I know that I have the right, like everyone, to be human.

–Participant 8

Whereas the epigraph to this article spoke about playing the game, democratic accountability and ultimately, awareness of elected officials’ actions and responsibilities, the concluding quotation takes a different stance. Participant 8 shifts the focus to their own rights and understanding of the process. Both the introductory and concluding quotations, however, highlight a shared awareness of both law and the entanglements of relationships.

This article has sought to examine how lived law occurs in the context of the St-Apollinaire Muslim cemetery project by putting forward a legal consciousness–informed reading. I examined both the process of the referendum and the experience of local communities in that process, through a legal consciousness

⁷⁵ Chua and Engel, “Legal Consciousness Reconsidered,” 3.

framework. Participants graciously shared their understandings of the cemetery project and their varied relationships to law.

While this cemetery project was a “lightning rod” of sorts, to draw on Valverde’s vocabulary, it enabled us to tease out the “democratic” from the “legitimate,” the “acceptable” from the “permissible,” and the “local” from the “context,”⁷⁶ within the frame of local governance. Yet the experience in St-Apollinaire also highlights Asad’s previously referenced “complex emotional inheritances,” where relationships between citizens are built on a past that cannot be ignored, even in the case of modern states devoted to the promotion of tolerance.⁷⁷ A legal consciousness approach offers a unique lens through which to explore the narratives of local governance of diversity in death. This specific instance of land use decision-making serves as a site of regulation of religious experience.⁷⁸ The St-Apollinaire project also contributes to our understanding and articulation of our relationships to law and each other in the context of democratic processes.

Through the technicity that fuelled the decision-making processes, the state remained ever-present⁷⁹ in the St-Apollinaire cemetery project. Despite this presence, legal consciousness encourages us to keep human interaction at the centre of our analysis and reflection. Moreover, legal consciousness, as it relates to religious rights, is currently extremely limited in the literature,⁸⁰ and thus my article sought to contribute to how actors in the St-Apollinaire cemetery project encountered, translated, and performed in relation to law.⁸¹

By way of closing, it seems only fitting to return to the same participant cited at the outset of this article:

It [death] also gives concrete expression to a moment of meeting. It reminds you with certainty that you are with other communities, that you are part and parcel of a global society. It makes it real, it immortalizes. It immortalizes the act of meeting.

–Participant 10

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⁷⁶ Müller stresses the importance of untangling the local from the context, particularly in the face of an unsuccessful project. See Müller, “Reconsidering the Spatiality of Religion,” 488.

⁷⁷ Asad, “Trying to Understand French Secularism,” 513.

⁷⁸ Dabby and Beaman, “Diversity in Death,” 436.

⁷⁹ We may well think here about James Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, Yale University Press: 1998).

⁸⁰ To my knowledge, Mark Fathi Massoud and Kathleen M. Moore’s recent study on the legal consciousness of Sharia law amongst Muslims in California stands alone as an example of religious legal consciousness. Again, their study looked at one legal tradition (Sharia) to illuminate their broader legal consciousness, a distinguishing element between my study and the aforementioned. See “Shari’a Consciousness: Law and Lived Religion among California Muslims” *Law & Social Inquiry* 45, no. 3 (2020): 787–817.

⁸¹ Cf. note 11.