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Negotiating Religious Pluralism
International Approaches

La problématique du pluralisme religieux
Perspectives internationales

Guest Editor / Rédacteur invité
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INTRODUCTION

Religion has become a hot issue on the global political agenda. The world-wide rise of Christian and Islamic fundamentalism since the 1970s, the emergence of religious nationalisms in South and South-East Asia, and the intensification of ethno-religious conflicts after the collapse of the Soviet Union have seriously called into question conventional accounts of secularization. While the latter generally assumed that modernity would result in the functional differentiation and privatization of religion, if not in its entire decline, we today are witnessing a return of public religion or even, as German philosopher Jürgen Habermas put it, the coming of a "post-secular society"[1].

It is thus not astonishing that religion is currently receiving substantial attention in debates on immigration and integration policies. For a long time, and following mainstream secularization theories, policy-makers and researchers assumed that traditional and religious attitudes of immigrants would successively dissolve in the process of acculturation to industrial societies. Even within the policy framework of multiculturalism, where migrants' claims for recognition were taken more seriously than in the assimilationist model, the specifically religious dimensions of identity politics often tended to be ignored. Since the 1990s, however, scholars and politicians have become aware that religious practices and beliefs play quite a crucial role in the formation of migrant identities (notably among the second and third generation), of diaspora communities, and of transnational migrant networks.

Unfortunately, in the wake of the events of 9/11, terrorist bombings in Madrid, Istanbul, London, and Bali, and the slaughtering of film-maker Theo van Gogh, this new awareness of religious diversity in the migration field has become increasingly dominated by security issues and concerns over the containment of a perceived Islamic threat. This development moreover coincides with, and to some extent contributes to, a more general crisis of multiculturalism and a return to assimilation policies in many countries.[2] However, while religious violence clearly does constitute a new challenge to policies of immigration and integration, it would be highly misleading to subsume the governance of religious diversity under the fight against terrorism. As the various contributions in this magazine show, religious diversity poses substantial political challenges in their own right.

To better understand these challenges, it may be useful to step back from immediate policy concerns and adopt a broader historical perspective. In fact, the contemporary conflicts over the public role of religion have to be situated in the context of far-reaching transformations of the modern nation-state. The emergence of the modern nation-state in Europe had been premised on a breakdown of traditional bases of legitimacy and an increasing autonomy of political power vis-à-vis the Church. The charisma which in medieval Roman Christianity was invested in God and in the "spiritual" authority of the Church shifted almost entirely to "secular" authorities, notably to the sovereign territorial state as centre of active re-constructions of society. The state was now also seen as a focus for symbolic imaginations of collective identity, most notably under the impact of the English, the American and the French Revolutions in which political power became accountable to the "People" or the "Nation". Political organization and collective identity were thus sacralized and structurally coupled in the classical nation-state, a polity model which rose to world-wide prevalence in the 19th and 20th century. The sacralization and structural coupling of political and cultural collectivity strongly affected the public role of religions. On the one hand, the state gained control over practices and institutions which formerly were placed under ecclesiastical authorities, such as private and civil law, education, and science, and defined the limits within which religious organizations could exercise public functions. On the other hand, religious symbols and traditions were often drawn upon to construct national identities, while in turn religious confessions were semantically and institutionally nationalized. The separation of ecclesiastical and temporal authorities thus resulted in institutional arrangements of political organization, collective identity and religion which were far more complex than the self-perception of "secular" nation-states may suggest.

By the end of the 20th century, under the impact of various forces of economic, political, and cultural globalization, the nation-state has become subject to considerable transformations. The institutional coupling of political and cultural collectivity is particularly challenged by international migration, although cultural diversity is to no lesser degree accentuated by ethnic movements, indigenous peoples, and national minorities. Viewed in a long-term perspective, however, it is not only increased *de facto* diversity but also the normative appraisal of cultural pluralism that has transformed the classical nation-state. Thus, the transnational diffusion of ideas of human rights in

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the post-war period and their institutionalization in international organizations, both governmental and non-governmental, has firmly established a charismatic status of "universal personhood" to which rights are, at least in principle, attached independently from formal state membership or nationality. Furthermore, within transnational human rights discourse there has been a proliferation of new rights that clearly go beyond the classical European political tradition. The individual rights to equality and non-discrimination moved to the centre of human rights and were successively extended to collective and communal rights; to name just a few documents, the UN Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities (1992), the UN Human Rights Committee's General Comment on Article 27 of the International Covenant on Civil and Political Rights (1994), UNESCO's Declaration on Cultural Diversity (2001), or the Convention on the Rights of Migrant Workers and Their Families (1990, entry into force 2003) oblige the signatory states to adopt a pro-active approach to promote the identity of ethnic or national, linguistic, and religious minorities – and of migrants – on their territory. As state membership, individual rights, and national identity are normatively decoupled, new categories of identity are legitimated and sanctioned in presumably secular public spheres, including religion. In this perspective, the contemporary politics of religious recognition are intimately linked with the transformation of the legitimacy basis of modern statehood.

Of course, the new politics of religious recognition are far from following a uniform pattern, but continue to be impregnated by country-specific social conditions. Typical immigration countries such as Australia, Canada, New Zealand, or the USA, which were among the early adopters of multiculturalism (on Canada see *Karen Mock's* contribution), provide rather different contexts for migrants' claims for religious recognition than most Western European countries. Nationality laws and naturalization rules also affect the impact of immigrants' claims-making in the religious field; that in European comparison, for instance, British Muslims enjoy relatively far-reaching liberties is not least due to the strong bargaining position of Pakistani and Bangladeshi immigrants who as former Commonwealth subjects were granted early access to full civil and political rights. However, apart from such well-known variations in immigration policies, citizenship regimes, and philosophies of integration, policy responses to religious diversity are equally affected by the institutional arrangements of political organization, collective identity and religion resulting from different historical paths of state-formation and nation-building. Church-state relations provide criteria for drawing the boundaries between the religious and the secular, and they store institutional templates of state interaction with religious minorities – in which majority religions, such as the Orthodox Church in Greece (see *Lina Molokotos-Liederman*) or the Lutheran Church in Denmark (see *Tim Jensen*) often play the role of a mediating broker, for better or worse.[3]

As the contributions to this magazine show, migrants' claims to religious recognition highlight that, in retrospect, political institutions and collective identities are considerably less "secular" and certainly less "neutral" than often assumed in the self-images of modern nation-states. Apart from post-colonial India (see *Jaishankar Narayanan*), most countries covered in this issue are historically mono-confessional or have settled their religious cleavages in a highly structured bi-confessional system, such as Dutch pillarization. In terms of conventional types of church-state-relations – separation, state co-operation with recognized religions, and state or national church – one therefore hardly finds a strict regime of separation; even under French *laïcité* does the Catholic Church enjoy certain privileges (e.g. subsidies for church buildings) that are called into question by immigrant religions.

Now, it would be false to conclude that accommodating for religious diversity requires a stricter separation of church and state. In fact, institutional arrangements in most countries today seem rather to converge around the three principles of individual freedom of religion, evenhandedness vis-à-vis religious communities, and a selective co-operation with formally or informally recognized religious organizations. Muslim immigrants in countries such as Great Britain or Norway have sometimes even argued that a modified state church system was preferable to secularist multiculturalism, since it principally acknowledges the public role of religion (see *Oddbjørn Leirvik*).[4] With respect to the Indonesian case, *Philip Buckley* similarly argues that long-standing traditions of plurality *within* Islam may lay the foundation for a non-secularist public sphere accessible to both the Muslim majority and religious minorities. Instead of simply turning to strict secularism, religious diversity rather requires highly context-sensitive policies within a human rights framework that simultaneously promote respect for religious differences and sustain a common public sphere open to both secular and religious world-views.

To systemize the policy challenges raised by the politics of religious recognition, I wish to distinguish four different types of claims-making.[5] Religious minorities can, first, contest the legitimacy of prevalent symbols of national identity and request liberties for the articulation of different religious identities. Claims for the toleration of religious dress-codes in the public sphere, of ritual slaughter, and of the muezzin call are examples of this type. These claims may give rise to substantive controversy in highly centralized states with an expansively defined public sphere, where religion as such is perceived as transgressing the symbolic boundary between the public and the private, or as polluting the sacred core of the nation. Recent French legislative prohibition of religious signs on public school premises is clearly a case in point. However, as such claims can easily be framed in the language of individual rights to freedom of religion they often go uncontested.

More demanding are, secondly, claims for tolerance or equal respect. Such claims call for a re-combination of the central symbols of national identity, e.g. by introducing holidays from different religious traditions in the national calendar. Pluralizing religious education may be another

example for such re-constructions of national identity. While some countries such as the United Kingdom, Denmark or Norway have tried to accommodate for religious diversity *within* the curriculum of Christian education, other countries have opted for separate religious instruction for immigrants; Finland, for instance, seems to have found a feasible solution for the teaching of minority religions (see *Pauliina Raento*). Though slightly different in focus, the German headscarf affair can also be interpreted in this context. At issue was the question whether a female school teacher, employed as a civil servant, may display her identification with Islam or not. While the Federal Constitutional Court framed the conflict in terms of conflicting constitutional principles (individual rights vs. state neutrality) and eventually upheld the claimant's right to religious freedom on formalistic grounds, public and parliamentary debate quickly moved to more substantial questions of German national identity. As *Robert Gould* shows, Germany's "Christian-occidental heritage" was mobilized to counter both secularism and multiculturalism. However, demands for religious tolerance have a rather strong legitimacy basis as they can be justified by fundamental human rights principles of equality and non-discrimination.

While such contestations of dominant symbols of national identity are well-known from multicultural identity politics, the particularly challenging character of religion for policies of immigration and integration lies in the contestation of secular authority. Thus, thirdly, faith-based communities may call for their own *autonomy* in organizational spheres of society, for instance by asking for religiously motivated exemptions from obligations within the state's educational system (e.g. co-education in sports), for the establishment of state-subsidized independent religious schools (see *David Seljak*), or, most notably, for the partial recognition of their own legal systems. Indeed, demands for multi-religious jurisdiction are perhaps the strongest challenge to the classical model of the sovereign nation-state. While legal pluralism has been quite common to post-colonial countries such as India or Indonesia, it seems hardly acceptable in most Western countries except for some limited areas in international private law and optional civil law. As *Matthias Rohe* stresses in his detailed legal review, the incorporation of shari'ah rules in British family law is rather exceptional within Europe and is strongly related to colonial history. Most Muslim representatives in Belgium, France, Germany, and Switzerland today wouldn't make demands for legal autonomy in the first place and clearly articulate their allegiance to the common legal system. The intricate problems inherent to any sort of multicultural jurisdiction are displayed in sharp profile by the Canadian controversies culminating in Ontario's recent rejection of faith-based family law arbitration, as analyzed by various contributors to this issue (*Marion Boyd*, *Beverly Diamond*, *Audrey Macklin)*. Apart from the specific problems of privatized, alternative dispute resolutions in family law and the potential conflicts between freedom of religion and women's rights, the controversies accentuate the difficulty of balancing the recognition of religious differences and the maintenance of a common public sphere in which universal laws apply.

The fourth and last type of claims articulated by religious minorities is aimed at gaining autonomous access to the organizational centre of society. Such demands for *full participation* in the public sphere may in some cases require reforms in the electoral system. New Zealand's introduction of Mixed Member Proportional (MPP), for instance, seems to have significantly contributed to a stronger representation of ethnic and religious minorities in Parliament (see *Peter Lineham / Paul Spoonley*). Yet, the major question raised by claims for participation concerns the communicative structure of public spheres in itself. To what extent do religious groups have to translate their beliefs into arguments of (secular) public reason? To what extent should adherents of secular public reason themselves engage in hermeneutically understanding religious beliefs? Is it true that "secularity is not neutral, but is another ideological viewpoint", as *Gary D. Bouma* claims in his contribution? Such are the questions which motivated Jürgen Habermas to argue that in "post-secular societies" co-operative modes of mutual understanding have to be found between the religious and the secular side. If churches, mosque associations, and temple communities contribute to a vital civil society, provide social welfare, sustain human solidarity, and promote the integration of ethnic groups (see *Paul Bramada*'s analysis of the United Church of Canada's Ethnic Ministries Council), their voice may legitimately claim to be heard, though not necessarily followed, in the public sphere.

Responding to religious diversity thus involves a complex set of policy decisions that bring to the fore a number of paradoxes and tensions. Finding a suitable balance between individual and collective rights, between strict secularism and non-interventional multiculturalism is certainly the most prominent one. While individual rights to freedom of religion are unproblematic in most of the countries covered in this magazine, their reaction to demands for collective rights and special treatment varies rather strongly, even if few countries seem to share the Norwegian emphasis on communal rights and rather follow the Dutch pattern of individual rights and equal treatment (see *Jan Rath*). Another, less obvious tension arises from the organizational models available for collective religious recognition, which, as *John Biles et al.* rightly stress in their contribution, tend to presume church-like hierarchies that run counter to contemporary religious individualization. The problems of founding representative Muslim organizations in Western countries are highly indicative for this tension. In Belgium, for instance, where Islam had been officially recognized as early as in 1974, the formation of the Exécutif des musulmans de Belgique proved to be rather difficult, due to repeatedly changing conditions imposed by the government, but also due to internal conflicts over the legitimacy of religious authorities (see *Corinne Torrekens*).

In sum, then, we may conclude that religious diversity in the field of immigration and integration poses challenges that are linked to structural transformations of the nation-state and require highly context-sensitive and

complex policy responses. That restrictive policies against religious communities, including non-violent fundamentalists, are counter-productive is evident.[6] As supported by evidence from Australia (*Andrew Jakubowicz*) and Canada (*Hussein Hamdani*), subsuming the governance of religious diversity under the fight against terrorism and aligning multiculturalism with Muslim fundamentalism, not only restricts freedom of religion but threatens the entire system of civil liberties. Within a framework of human rights, there ultimately seems to be no alternative to accommodating for religious diversity.

What remains an open question is how the human rights based governance of religious diversity can be reconciled with our understanding of democracy. Modern patterns of democracy from the Great Revolutions onwards were premised on precisely the structural coupling of statehood and national identity that is currently called into question. We still have not found viable models of associative or consociative democracy which, by contrast, allow the peaceful coexistence of a diversity of autonomous collectivities, including those based on religion, in a shared public sphere. It may thus be safe to say that the controversy over religious diversity will in the foreseeable future be with us to stay.

Notes

[1] Jürgen Habermas, *Glauben und Wissen*, Frankfurt a.M.: Suhrkamp (2001).

[2] See Christian Joppke, "The Retreat of Multiculturalism in the Liberal State: Theory and Policy", *British Journal of Sociology* 55/2 (2004): 237-257. It should be noted, however, that rising opposition to multiculturalism, as observable in Canada and elsewhere, is not consistently correlated with a growth in Muslim population (see *Jack Jedwab*, in this issue).

[3] On the Anglican Church see James A. Beckford, "The Management of Religious Diversity in England and Wales with Special Reference to Prison Chaplaincy", *International Journal on Multicultural Societies* 1/2 (1999), 55-66 (www.unesco.org/shs/ijms/vol1/issue2/art2).

[4] Tariq Modood, "Anti-Essentialism, Multiculturalism, and the 'Recognition' of Religious Groups", in: Will Kymlicka and Wayne Norman (eds.), *Citizenship in Diverse Societies*. Oxford: Oxford University Press (2000), 175-195.

[5] See also Matthias Koenig, "Incorporating Muslim Migrants in Western Nation-States – A Comparison of the United Kingdom, France, and Germany", *Journal of International Migration and Integration*, 6/2 (2005), 219-234.

[6] See UNDP, *Human Development Report 2004: Cultural Liberty in Today's World*, New York: UNDP (2004).

CHRISTIANITY AND ISLAM IN NORWAY: POLITICS OF RELIGION AND INTERFAITH DIALOGUE

ABSTRACT

In this article, the author analyses the development of Christian-Muslim relations in the political framework of a state church system. After describing the religious scene in Norway, Oddbjørn Leirvik identifies three different types of political responses to the new pluralism: revitalized national religion, multiculturalist politics of recognition, and responses focused on individual rather than group rights. After a discussion of the role of interfaith networking in building a more inclusive society, the author concludes by suggesting that the alternative to the present state church system should not be relegating religion to the private sphere but rather treating religion in general as a matter of public concern.

During the last few decades, the state church system in Norway has been in a process of adjustment to a pluralist, multireligious reality. It has been modified by institutional reforms aimed at church autonomy, and by compensatory measures meant to balance those aspects of the system that would otherwise be discriminating against other faiths. With regard to finances, compensatory measures were introduced in 1969. Since then, every faith community (including Muslim) which registers itself has been entitled to exactly the same amount of money per member as the Church of Norway receives per capita in financial support from municipal and national budgets.

During the 1990s, various forms of *interfaith dialogue* evolved, and were also to some extent institutionalised. In 1996, an interfaith Council for Religious and Life Stance Communities in Norway was formed as an NGO-initiative. In 1998, the Council established the Oslo Coalition on Freedom of Religion or Belief, in which representatives of the faith communities engage each other and international partners on issues pertaining to religious freedom and interfaith cooperation. In such multilateral forums, Muslims participate on par with representatives of the other faiths. In addition, since 1993, there is a bilateral Contact Group for the Church of Norway and the Islamic Council in Norway.

While the faith communities have engaged each other in dialogue and cooperation, popular political discourses often point in a different direction. Revealing an increasing tendency to reaffirm the so-called Christian cultural heritage as the uniting bond of the Norwegian nation, 'Christian and humanist values' have been invoked as the foundation of its public institutions.

Parallel to these *communitarian* tendencies on the part of the national religion, the Norwegian state has also pinpointed some *universal* concerns and challenged both the national church and the faith communities in such matters as freedom of expression, interreligious tolerance, women's rights and the rights of children.

The Religious Scene in Norway

In spite of a steady reform process that has made the dominant Church of Norway more autonomous, Norway remains a state with a religion. More than 90 per cent of the population, which amounts to a total of 4.5 million, is formally Christian. Eighty-six per cent belong to the Lutheran state church, which in financial terms remains fully integrated into municipal and state budgets. The Catholic and Pentecostal churches each constitute one per cent of the population, the other free churches some 2 per cent altogether. Given the fact that only about 10 per cent of state church members are regular church-goers, on the level of activities there is more of a balance between the Church of Norway, the Catholic church and the free churches.

Apart from the high percentage of state church members, two salient features of organised religiosity in Norway can be cited. One feature is non-religious: Norway has got an exceptionally strong secular Humanist Association which offers a non-religious framework for morality and ceremonies. Only 1.5 per cent of the population are members, but their influence is disproportionate to their number.

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Secondly: a high percentage of resident Muslims in Norway have signed up for membership in Muslim associations. According to estimates from 2004, Norway had about 115, 000 (permanent or temporary) inhabitants of a Muslim background, which means that Muslims make up about 2.5 per cent of the population. The major countries of origin are Pakistan, the Balkans, Iraq, Iran, Somalia, Turkey and Morocco. The total number of those with a Muslim background is smaller than in either Sweden or Denmark, but their level of organisation is higher. In 2004, 70 per cent of people of Muslim origin in Norway, including children, were members of a mosque or Muslim association. It should thus be noted that the relatively high degree of organisation reflects the decision of the parents, and not necessarily salient trends among Muslim youth.

Political Responses to Organised Plurality

Government responses to the multireligious situation, which is still felt as a new challenge in Norway, have been varied. In what follows, I shall distinguish between (a) what I term state-supported, Christian communitarianism; (b) a politics of recognition affirming the rights of communities; and (c) universalist oriented policies focused on individual rights.

(a) State-supported, Christian communitarianism

When a political alliance of the Social Democrats and the Christian Democrats introduced a new and mandatory subject of religious education in 1996-97, this replaced a previous system of multiple choices between (1) Christian education, (2) a Life Stances-alternative (which was introduced in 1974 after secular humanist lobbying) or (3) no religious education at all. The new subject was given the cumbersome and revealing name 'Knowledge of Christianity with Information about Religion and Life Stances'. In 2002, the name was modified to the slightly less hiearchical 'Knowledge of Christianity, Religions and Life Stances'.

Not surprisingly, many minority representatives felt that the initial title of the subject was discriminating and overly self-affirmative on the part of Christianity. In order to understand minority resistance to the new subject, it should also be noted that primary schools in Norway have a Christian objects clause. The Education Act still states that 'primary school is supposed to help in giving the pupils a Christian and moral upbringing…' This, of course, sheds additional (and indeed traditional) Christian-communitarian light on the new subject of Christian and religious education.

Since the new subject is nevertheless meant to be inclusive, only partial exemption is granted. Although a major aim of the new subject has been to create a space for interreligious learning and *interfaith dialogue* in school, many Muslims and secular humanists have seen the new subject as a kind of state-supported Christian communitarianism. The Islamic Council and the Humanist Federation have both sued the state for having eliminated the right to full exemption, and hence the right to establish alternatives. In 2004, the United Nations' Human Rights Commission criticised the Norwegian government for having taken away the right to general exemption from a subject that was seen by the Commission as privileging the Christian tradition.

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What kind of project is this? Is it Christian communitarianism – an attempt to counter post-modern individualist pluralism with some solid knowledge of Christian heritage and values? Or should it be taken as a potentially universalist project which treats all religions on an equal basis as 'sources of belief, morality and views of life', with the overall aim of training new generations in dialogue? In both political discussions and pedagogical practice, the new subject has proved to be liable to both interpretations.

(b) Politics of recognition, focused on communities

The universalist potentials of the new subject could alternatively be taken as a generous kind of communitarianism – in the form of multiculturalism. Four religions (Judaism, Islam, Buddhism, Hinduism) and one particular 'life stance' (Secular Humanism) have been selected as major topics along with Christianity and the more universalist theme of 'philosophy and ethics'. In the initial phases of the planning process, in which the general prin-ciples of the new subject were established, neither the faith communities nor individuals representing other religions than Christianity took part. But as a result of protests, more or less representative bodies of the named faiths were eventually invited to suggest how their faiths should be represented in the curriculum. They were also invited to give their comments on proposed textbooks.

The eventual inclusion of the faith communities in the formative process could be taken as a hesitant 'politics of recognition', which addresses the communal dimension of moral and religious identity. In general, the Christian Democrats have been advocating a politics of recognition more clearly than the Social Democrats.

The way in which Norway has chosen to deal with financial issues in the field of religion goes well with a politics of recognition oriented towards communal rather than individual rights. Instead of refunding individual tax-payers, compensation for state church financing goes to organised faith communities, Muslims and secular humanists included. The system chosen must be seen against the background of a strong state church legacy, by which religion continues to be regarded as a matter of communal concern in its pluralist expression too.

The same is true of how the Law about equality between the sexes, which was introduced in 1978, is applied. Although state feminism has been a salient feature of Norwegian politics during the last decades, faith communities have been fully exempted from the equality laws' claims and regulations. In this case too, the religious rights of faith communities have been given priority over the religious rights of individuals (*in casu*, women). In principle, the Church of Norway is also exempted for the equality law. But since clergy have traditionally been appointed by the state (which still appoints the bishops), state feminism has supplied the national church with female ministers since 1961. Since 1993, two female bishops have also been appointed. But in the case of other faith communities, the state has recognised their right to autonomy in gender politics and renounced any kind of state intervention.

(c) Supporting the universal rights of individual believers

The lines between communal and individual rights are not easily drawn. Even those who generally advocate a community-oriented politics of recognition would strongly affirm that certain individual rights must never be allowed to be violated by the faith communities. Establishing prohibitions against violence and forced loyalties are sufficient as general examples. In 1995-96, new legislation was enacted against forced marriages and female genital mutilation. None of the faith communities objected to this. Publicly confronting the cultural practices of some of their members, many Islamic organisations and Muslim women's groups have signalled their readiness to cooperate with the authorities in order to abolish practices that involve force or violence.

Opinions may differ about the most efficient way of protecting individual rights. The question may be asked whether individual safeguard should evolve immanently from within cultural or religious groups or whether it should be brought about through extraneous pressure. In the past years, feminist activists have defended the rights of young Muslim girls who have become estranged and have broken with their families. They have also accused the Islamic community of not being serious enough on issues such as forced marriage and female circumcision. Controversial methods like the use of hidden cameras have been employed to "reveal" the real agenda of selected Muslim leaders. Yet others have appreciated that most Muslim leaders have taken a principled stand against forced marriages and female circumcision. However,some from within the ranks of secular humanists have criticised the Muslim leadership for merely idealistically declaring such practices as "un-Islamic" without challenging the cultural face of Islam as practiced by immigrant Muslims. Their argument is that religion and tradition are inextricably linked to each other and that a principled stand against practices such as forced marriages and female circumcision should not simply be viewed as "un-Islamic" but rather constituting an Islamic reality from the viewpoint of and reinforced by the traditions of certain immigrant communities.

Many members of faith communities have individual opinions that run counter to views expressed by their leaders. In some cases, they may be more liberal than their leaders – as independent believers with plural identities. In other cases, they may hold more conservative views – for instance on behalf of their cultural heritage.

Many Muslims insist that as far as the women's issue is concerned, individuals should be given priority over group interests. However, on the question of religious education in school, they may maintain a delicate balance between individual and group approaches. As mentioned above, both the Humanist Federation and the Islamic Council sued the state because of the new and compulsory system of Christian/religious education in primary schools. The courts were reluctant, however, to deal with faith communities as bearers of rights. In the question of exemption from religious education, the state institutions (schools, courts) have insisted on dealing with individuals rather than faith communities. The right of exemption applies to parents, not to religious or ideological organisations. The Humanist Federation and the Islamic Council were allowed, however, to represent the protests of named parents.

The legal controversy indicates a high degree of conflict surrounding religion in school. Local reports, however, testify to the fact that many minority parents (including Muslims and secular humanists) are relatively happy with the way in which the new subject works in practice. In monitoring minority responses to majority projects, one should therefore never be content with listening to the attitudes of organised communities and their spokesmen. Many members of faith communities have individual opinions that run counter to views expressed by their leaders. In some cases, they may be more liberal than their leaders – as independent believers with plural identities. In other cases, they may hold more conservative views – for instance on behalf of their cultural heritage.

Interfaith Dialogue and Networking

Slowly, Norway is getting accustomed to being a multi-religious society. There are several challenges to be faced, both by the religious majority and by the minorities. From the perspective of the faith communities, a major challenge is the tendency on the part of the majority population to equate 'Norwegian' with 'Christian' (alternatively 'Christian-humanist') values. Although it is not always clear what this would imply (considering the wide array of value positions within the Christian majority population), minorities are apprehensive of a public discourse that is sometimes heavily marked by a distinction between 'us' and 'them'.

Most of the cited interfaith initiatives have taken place on the leadership level. At that level, strong personal bonds have been forged. The first president of the interfaith council was a Pentecostal Christian, the second a Norwegian-born Buddhist, the third a Jew. Their first secretary was a secular humanist. Since 1999, the coordinator of one of the interfaith council's offshoots, the Oslo Coalition on Freedom of Religion or Belief, has been a Muslim convert – a woman of Norwegian origin who was also elected as the president of the Islamic Council at the end of 2000. As indicated by the cited examples, many of those who have been in the forefront of interfaith enterprises in Norway are Norwegians by birth. A number of immigrant Muslims, Buddhists and Hindus have also taken actively part in national dialogues, and become part of personal networking on the leadership level. The dominance of ethnic Norwegians in *interfaith dialogue* might imply, however, that such dialogues have not yet been sufficiently rooted in the immigrant communities, who often have a cultural-specific rather than religious (in the normative sense of the term) agenda.

Among the general public, inclusive attitudes compete with mounting anxiety towards Islam and Muslims. Among the leaders, the picture might seem to be more harmonious, reflecting a decade of trust-building networking. In cultural and political debates centred on Christianity and Islam, church leaders have in general defended Muslim minority rights and protected their integrity against populist assaults. In both 1997 and 2004, Christian leaders of different confessions and theological tendencies joined hands with the Muslim community and warned publicly against the enemy images of Islam produced by the influential right wing/populist party *Fremskrittspartiet* (which has recently tried to strike alliances with some charismatic Christian groups).

Conclusion

With only 25 years of experience of making accommodations for multireligious pluralism, Norway enters the future with a mixed heritage of state religion *and* a strong subscription to religious liberty rights. In this process, the interests of the state and those of the national church increasingly stand out as different. Whereas the state authorities seem always to focus on 'integration' – sometimes on Christian, communitarian premises – church leaders increasingly focus on the autonomy of faith communities and the rights of religious minorities in civil society. There are in fact many indications that the churches will be in the forefront of a process towards more inclusive expressions of national unity – acting not only as representatives of the 'Christian cultural heritage', but just as much as defenders of minority rights. In this respect, the regular dialogue between the churches and the Muslim communities in Norway has been an important learning process.

But as many Muslims in Norway have pointed out, it is not at all sure that a state *without* a religion will give better opportunities for faith communities than what is offered by the present, modified state church system. The alternative to a state church system is not necessarily a society in which religion is regarded as an entirely private matter. It could just as well be a society committed to a policy of multiculturalism in which religion continues to be regarded as a public matter. Religious and life stance communities would then be valued in their pluralist expressions, and could even continue (to some extent) to supported financially by the state.

RELIGIOUS PLURALISM IN DENMARK

ABSTRACT

Denmark has been and still is a predominantly mono-religious nation-state with an Evangelical-Lutheran local variety of Christianity as the constitutionally established religion. Tim Jensen says some religious pluralism took place only very recently, from the 1960s and onwards, due to immigration. Even so, religious pluralism in terms of institutionalised religions, is limited. Consequently, the minority-religions of Denmark truly are in minority, and this fact, together with the long mono-religious tradition, partly explains why even this modest religious pluralism has become a matter of central public concern and fierce discussion.

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History

The Christianization of Denmark began with Ansgar (801-865), missionary and archbishop. It was, however, a king, Harald Blåtand (d. 986) who, according to the text written by himself on a runic stone, "made the Danes Christians".

Though the proud statement of King Bluetooth must be read more as a demonstrative than a descriptive statement, Christianity, enforced by the church, a series of kings and later by the state, has influenced Denmark for some 1,000 years.

With the Reformation (1536), the old type of Christianity, now the Roman-Catholic Church, was forbidden, and the Lutheran-Evangelical type became the one and only.

During the 17th and 18th centuries, the Roman-Catholic Church, the Reformed Church (with a French, Dutch as well as a German congregation), and a Jewish community, were given, by Royal Decree, certain rights equal to the Lutheran-Evangelical church: The right to perform their rituals, not least marriage with legal validity, to have buildings and burial places of their own, and to register births and deaths.

It was not until 1849, though, with the Constitution of that year, that freedom of religion became a legal right. The same Constitution, however, in § 3 (today § 4) states: "The Evangelical-Lutheran Church is the Danish Folk Church (or: 'The Church of The People'='Folkekirken') and as such to be supported by the state".

But more Christian churches or denominations have entered into the Kingdom of Denmark since then. Today, besides the churches mentioned above, there are Russian, Greek, Romanian, Macedonian, and Serbian Christian Orthodox religious communities. There is a Swedish, Norwegian, and an Anglican church, as well as a great number of so-called Protestant Free (or 'Independent') Churches (Baptist, Adventist, Methodist, Pentecostal, Apostolic et al). Also Jehovah's Witnesses and the Mormons have congregations in Denmark.

Most of the above mentioned religious communities are the results of immigration, and today members are descendants of former and more recent immigrants and refugees. Though there is quite a few different Christian denominations, the number of members is little compared to the total population to the number of members of The Folk Church.

The same goes for the non-Christian religious communities. All the so-called world religions can be found in today's Denmark, most of them establishing themselves from the early 70s onwards. So-called new religious movements as well as new age practices and ideas have, of course, also have arrived during the last 30 years.

Denmark, then, has been extraordinarily homogenous in terms of institutionalised religion and its relation to a territory, an ethnos, and later on a nation state. Equally characteristic is the widespread opinion, (almost a dogma, and most certainly in line with some Lutheran as well as liberal ideas) that Denmark is a very secular and secularized country. In Denmark, so the traditional story goes, in spite of the constitution, 'we' have separated religion and politics, and the majority of the Lutherans are 'irreligious Lutherans'.

Numbers

By January 1, 2005 the percentage of registered, paying members of The Folk Church was 83.1 per cent (4,498,703) of the total population (roughly 5,300,000) and about 87 per cent of the total number of Danish citizens.

The total number of people (Danish citizens as well as non-citizens)'adhering' to a non-Christian religion may be estimated to 4.5 per cent of the total population.

3.8 per cent (some 200.000) of these may be classified as persons with a Muslim background. The remaining 0.7 per cent are comprised of 7,000 Hindus (mainly Tamils from Sri Lanka, but also some from Northern India and an insignificant number of members of ISKCON), 8,000 to 12,000 Buddhists (from Vietnam, Thailand, Tibet, Denmark, and other Western countries), around 3.500 members of the two Jewish communities (mainly very well-integrated or assimilated descendants of migrants from a variety of countries), and some few hundred Sikhs (organized in two main groups). Besides the adherents to these so-called world religions, there are some few and extremely small, new religious movements.

As for the Christian churches, the Roman-Catholic Church has roughly 30,000 members (mainly ethnic Danes but also a number of immigrants and refugees from a wide variety of countries of origin) and is the largest. Baptist, Methodist, Pentecostal, and other so-called Free (or 'Independent') Churches, together with Jehovah's Witnesses, Mormons and others amount to about 60,000, the Jehovah's Witnesses being one of the largest groups with some 15,000 members.

The total number of people (Danish citizens as well as non-citizens)'adhering' to a non-Christian religion may be estimated to 4.5 per cent of the total population.

Out of the 100 formally and legally acknowledged and recognised religious communities, 66 are Christian. There is one Bahai, four Buddhist, six Hindu, two Jewish, 17 Muslim, one Sikh religious community, and a couple of religious communities which cannot be classified in relation to the traditional world religions.

The constitutional framework

The Constitution of 1849 (revised 1953) introduced freedom of religion (though this term is not used, not even in 1953). § 81 states: "The citizens shall be entitled to form congregations for the worship of God in a manner consistent with their convictions, provided that nothing in variance with good morals or public order shall be taught or practiced." And, § 84 adds: "No person shall for reasons of belief [or: 'creed'] be deprived of access to full enjoyment of his civic and political rights, nor shall he for such reasons evade compliance with any common civic duty." Besides, § 82 states that "No one shall be liable to make personal contributions to any denomination other than the one to which he adheres [...]."

Why the terminology, impregnated by Christian theistic and mono-theistic notions, was not brought more in line with the Universal Declaration of Human Rights in 1953 remains to be explained.

Freedom of religion, in 1849, was mainly understood as a freedom from the clerical authorities, a freedom to form other Christian faith-communities. The freedom to be non-religious, however, was implied, even if it was not until 1857 that baptism was no longer compulsory; freedom to have a non-religious civic marriage also played a role.

Since 1849 (or 1857) it has been up to the individual (or the parents) whether he or she wanted to be a member of the The Folk Church. Only the King/Queen (as the formal Head of State) must, as stated in the Constitution, be a member of The Folk Church (§6).

In Denmark, f*reedom* of religion is not equal to *equality* of religions. This shows not only in the Constitution: Apart from a special "church tax" paid only by the members of The Folk Church, a portion of the general income tax also goes to various expenses connected with the administration, and maintenance of the church, as well as to the financing of part of the salaries of the vicars who are all employees of the Ministry of Ecclesiastical Affairs, i.e. the state.

Besides, education of the ministers/vicars of The Folk Church takes place at the free, public, state universities, and students can obtain extra financial subsidies from the state. It may be argued that this too is a violation of § 82, and most certainly it demonstrates that there is no equality of religions, since the possibility of having ministers or imams or the like educated and trained for free is not an option for all religious communities.

Discussing violation of § 82 it is often argued that the state church administers certain affairs (especially the registration of births) which, otherwise, the state (and taxpayers) would have to finance anyway. It is also argued that the tax money going to the maintenance of the church buildings, go to 'cultural heritage', and the acknowledged or recognised religious communities are also finaced by everybody since they have certain kinds of tax-deduction and exemption from various taxes.

A toughening of laws with special regard to the Muslim minorities can also be seen in the otherwise very liberal laws and rules regarding the establishment of p*rivate schools*.

Today, there are more than 430 such schools with more than 75,000 pupils. Many are Christian schools, and then there are some 18 Muslim/Arabic ones with (2001) a total number of pupils between 3,000 to 4,000, i.e. some 10-12 per cent of all the pupils in Denmark have some kind of Muslim background.

The curriculum and teaching has to meet the standards of the public school, and each school must have a supervisor to guarantee this. But, in 1998 and again in 2002 and 2003 the law on these schools has been toughened: The language used in teaching must be Danish, the headmaster must master the Danish native tongue in writing and speech, and the schools are

obliged to prepare the children for a life with freedom and democracy. Though there has been, most recently, some criticism of certain Christian schools, the debate mostly has focued on the Muslim ones.

Looking at Danish legislation besides this, it should be mentioned that it does not have any general principle of equality or a general prohibition against racial or religious discrimination covering all fields of law. Nor is there a general provision of equal opportunities in Danish legislation. So far no comprehensive anti-discrimination legislation has been initiated.

Looking at the Danish *Penal Code*, the most interesting features in regard to religious pluralism are the following:

§ 140 prohibits *blasphemy*, and runs as follows:

> Any person who publicly ridicules or insults the religious teaching or worship of any religious community legitimately existing in this country, shall be liable to a fine or imprisonment for a term not exceeding 4 months.

This paragraph has not been in use since 1938, but following the murder of Theo Van Gogh in November 2004, there has been a political debate on whether the section should be repealed. On March 18, 2005 the Danish People's Party (Dansk Folkeparti) presented a bill to repeal § 140. The bill has not been considered yet.

§ 266b prohibits the dissemination of expressions of racial prejudice, and has the following wording:

> (1) Any person who publicly or with the intention of dissemination to a wide circle of people makes a statement or imparts other information threatening, insulting or degrading to a group of persons on account of their race, colour, national or ethnic origin, belief or sexual orientation, shall be liable to a fine or imprisonment for a term not exceeding two years.
>
> (2) When handing down punishment, it is to be considered as an aggravating circumstance that the statement is in the nature of propaganda.

§ 266b criminalises statements that are disseminated publicly or to a wide circle of people. To the knowledge of The Danish Center for Documentation and Consultancy on Racediscrimination (DRC), the paragraph has rarely been used against statements offensive to religion, but it has been used against statements offensive to race. These cases have, however, often concerned Muslim victims, and the fact that they were Muslims has often been part of the aggravation.

Public schools

The Danish elementary school (covering 9 years, from age 6 to 15) is a comprehensive school. The general aim is to educate children to become tolerant, open-minded, creative, independent citizens in an open democracy with respect for human rights.

The executive orders for the school in general also state that a major aim is to "make the children familiar [intimate] with Danish culture and acquainted with other cultures". Since Danish culture is defined by reference to the majority religion of the country, this amounts (in principle) to some sort of religious instruction or religio-cultural indoctrination on all all levels of elementary school. In this context, 'we' and 'Danish culture' does not include the minorities and 'the other', for example the Muslims. The elementary school, then, is still used as an ethnic and national key instrument in acculturating newcomers as well as ethnic Danes to a kind of Danishness which is not particularly pluralistic in terms of religion.

The elementary school, then, is still used as an ethnic and national key instrument in acculturating newcomers as well as ethnic Danes to a kind of Danishness which is not particularly pluralistic in terms of religion. Religious education (RE) in elementary school has the name of 'Christian Knowledge', and though teachers and others have for many years tried to make the politicians change the name to 'Religion' (the name it has in upper-secondary schools), so far this has been in vain.

Religious education (RE) in elementary school has the name of 'Christian Knowledge', and though teachers and others have for many years tried to make the politicians change the name to 'Religion' (the name it has in upper-secondary schools), so far this has been in vain. The politics of identities penetrates deep down into questions about words, of course. Here in Denmark we are Christians, and the RE of the public school is not a relativistic, 'neutral' school subject, but a means to transmit knowledge about and values of the religio-cultural heritage of Denmark.

This may come as a surprise, nevertheless, since this school subject was (finally) freed of its close connection to The Folk Church in 1975. At this time only, it became, in principle at least, non-confessional, and *instruction* in the core teachings of the Lutheran-Protestant Church was (in the executive orders) replaced by words saying that the central *subject matter* shall be the teachings of The Folk Church.

The subject still had and has a special position since it is mentioned in a separate paragraph in the overall executive orders for the elementary school, and a possiblity of opting out still exists. In 1975 a compulsory

subject matter was introduced, "foreign religions and philosophies of life", to be taught either in Christian Studies, in History or in another subject. In 1993 this was integrated into Christian Studies, where "other" or "foreign religions" shall be taught, but only on the upper-levels, not the first five years of school.

That non-Christian religions are taught only at the upper-level is problematic for several reasons, but mainly because in many schools there are pupils whose parents belong to another religion, especially Islam. Criticisms raised against this is frequently met by four arguments: Denmark is a Christian country; the name of the subject is (and must stay) 'Christian Studies' and not 'Religion'; children at this age cannot handle the fact that there is more than one religion, and they must first have a 'safe foundation' in their own religion before they are 'confronted' with other religions.

Finally: In a public discussion on freedom and equality of religion in Denmark, the Minister of Ecclesiastical Affairs (also the Minister of Education) refused to discuss what he termed 'formalities'. His point of departure, he said, was a cultural one, and culturally viewed Denmark as a Christian country. In a discussion on RE in elementary school, he repeated the above mentioned point of view that the name must be as it is and that the main purpose is to familiarise all pupils, not least the Muslim ones, with the backbone of Danish culture, Lutheran-Protestant Christianity. When asked to discuss the possi-bility of opting out and the fact some (very few actually) Muslims parents with-draw their children from RE, he pondered the means to make sure that those parents who do so, in accordance with the same law, really do provide their children with knowledge of Christianity.

Pondering the possibility of simply doing away with the opting-out possibility, the Minister stated that he was afraid of doing so, because that would be equal to saying that the school was secular. He did not want that. He wanted the school to stay, as he said, multi-religious.

The interesting thing is not that he called it multi-religious (which it can hardly be said to be). No, the interesting thing is that he said that it was not, and must not be, secular. His statements, consequently, may be interpreted as a rather rare interpretation of article 4 in the Constitution, making it a must for all state insti-tutions, not least the public school, by way of religious education and other school subjects and extra-curricula activities, to support the state church.

An interesting interpretation, also if one considers that all members of parliament have to swear to uphold the Constitution. Interesting, also to those who considered the school a secular school, separated, in principle at least, from the church by the Constitution of 1849.

Concluding remarks

Looking at numbers of adherents as well as the constitution, I find it fit to stress that Denmark is *not* a multi-religious country, but a pre-dominantly mono-religious country with recent tendencies towards more plurality. It must, however, be added that in specific localities (certain bigger cities and neighbourhoods, certain schools, and the beliefs and practices of indi-viduals) the religious pluralism is much more of a fact.

The economic, intellectual and symbolic power of the institutionalised, state supported Folk Church and the kind(s) of Christianity and Lutheran-Protestants notions of religion in regard to politics, science and business, cannot and must not be underestimated. Less than six percent of the 83 per cent Folk-Church Danes are regular churchgoers. Many belong to the church, but don't believe in it and those that are believers often believe in various "new age" ways. Despite this, the impact of hundreds of years of indoctri-nation cannot be and must not be underestimated. Not least if one wants to look at the minorities having to navigate in this field, and if one considers the problems they as well as the majority face in view of the current situation and tendencies towards a change in the religious landscape.

Denmark is not a multi-religious country, but a pre-dominantly mono-religious country with recent tendencies towards more plurality.

In regard to freedom of religion, though, the situation in Denmark is not too bad, especially in comparison to other countries.

This is also true in regard to the new religious movements. Denmark has an anti-cult move-ment, but their influence has weak-ened during the last 10 years, and historians of religions actually have managed to compete with them as favorite experts in the media. Besides, there is no longer the same focus on these NRMs as 10-15 years ago. Islam and the Muslims have taken over as the significant other.

Nonetheless, things can always be improved. First of all, it may be argued that the constitutional privileging of The Folk Church should be changed, i.e. the state ought to become secular, because a secular (not secularistic) state is the best guarantee for freedom of religion, and the most pragmatic framework for a democracy housing a plurality of religions.

This step would not only give the very same Folk Church more freedom, it would also serve the purpose of creating, on the constitutional level, an equality of religions, which – in my opinion – is a prerequisite for more freedom of religion.

Due to the politics and rhetorics on religion, culture and identity, and to the present political climate and par-liamentary situation, a change of the Constitution, not least the articles pertaining to the privileging of The Folk Church, seems unlikely to take place in the near future.

I still think that the most important duty for the state, be it secular or as it is now, is to do better when it comes to educating its citizens about religion. Even if the (nation) state thinks that it is in its interest to build and rebuild the identity of the nation by building and rebuilding the identity of the citizens (as defined in regard

to the traditional majority-religion), it should provide knowledge of other religions and do so in a neutral, informative and pluralistic way.

Looking at the situation for e.g. Muslims in Denmark, there can be no doubt that the public discourses on religion, the Muslims, the 'us' and the 'other' in the media is a major player. The relationship between majority and minorities is to a large degree dependent on the representations of religion, in general, and in regard to our religion and the religions of the 'other', in the media. Journalists and editors, well educated in the results of the comparative study of religions, would be better equipped to meet the needs of a society and a world with more religions, more gods, and more truths.

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RELIGION AND DIVERSITY IN FINLAND

ABSTRACT

Predominantly Evangelical Lutheran, but secular Finland is facing important demographic and legal changes. Author Pauliina Raento says religion and cultural diversity are subsequently hot topics in the media, shaking the myth of a culturally uniform nation. The subsequent diversification, supported by new attention to the country's 'old minorities', has challenged the Lutheran majority's worldviews and directed attention to regional and local variety. Legal and practical adjustments are being introduced, but these reforms have not yet become natural parts of everyday life in Finland.

Religion is currently a hot topic in Finland. The predominantly Evangelical Lutheran, but secular country is facing a series of important changes that have brought religion to the fore in the media. One change is a new law about freedom of religion, another is the general ethno-cultural diversification of Finnish society due to increased immigration. Secularization and religious non-affiliation are rising, and the country's 'old' religious, linguistic, and other minorities are receiving new attention as well. The Finnish-speaking, white, heterosexual and increasingly middle-class majority culture, this majority's values, and the role of religion in Finnish society are now under critical scrutiny.

The scale and manner of examination affect a country's religious and demographic profile. In European statistical comparisons, Finland is a strongly Lutheran country with a relatively low proportion of foreigners (2.1 per cent of the population of 5.2 million in the beginning of 2005). A closer look at the country reveals significant regional variation in religious affiliation (or non-affiliation) and a gap between statistics and everyday life. Nor are the groups homogeneous. This applies well to the Lutheran National Church, even if 83.7 percent of the Finns are registered members of this institution.[1] The cherished national narrative about a culturally uniform nation thus appears to be an exaggeration.

How has Finland's religious profile evolved and what is it today? In this article history is followed chronologically from the Middle Ages to the present. Major geopolitical and legislative turning points as well as quotidian landscapes, outlooks, and practical adjustments are taken into account in the examination.

A Meeting Point of Influences

Finland's historical position as a borderland between East and West explains much of its religious makeup and identity. Christian influences reached Finland about a thousand years ago along the trade route between Novgorod and Sweden. Some key concepts of Christianity were adopted from the east, whereas Western Christianity changed burial habits. While the first crusade from Sweden arrived in Southwestern Finland in the twelfth century, eastern Christianity took root in eastern Finland and Karelia. Under Sweden's rule, Finland's religious and sociopolitical life came to include the union between church and state, which resulted from the sixteenth-century Lutheran Reformation in Sweden. Foreigners residing in Finnish territory were allowed to practice their own religion in 1781. Additional diversity emerged in the form of charismatic Christian revivalism on the west coast and in the north.

Finland's Lutheranism and administrative institutions were respected when Russia took over the territory in 1809, after yet another war against Sweden. Finland was granted autonomy and thus had a considerable say in its internal matters until the policy of Russification in the 1890s. In this western outpost of the Russian Empire, trade flourished in cities like Helsinki/Helsingfors, Turku/Åbo, and Viipuri/Vyborg, adding to their religious and ethno-linguistic diversity. Orthodox merchants, administrators, and soldiers from Russia represented the Empire's official religion, small minority congregations were one proof of Western contacts. Finland's Baptists, Methodists, and other Protestant minorities were allowed to organize in 1889, Jehovah's Witnesses, Mormons, and Pentecostals did so in the early twentieth century. By this time, Finland's first Jewish and Islamic congregations were well established. That this is the oldest Islamic community in the Nordic Countries underscores Finland's position as a borderland.

PAULIINA RAENTO

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Lutheranism and Liberalism Highlighted

Finland at the time of its independence in 1917 thus had international urban centers and regional strongholds of minority congregations (Figure 1). Freedom of religion was guaranteed by law in 1923. The state chose formal non-affiliation, but both the Lutheran National Church and the Orthodox Church kept a special status within the state and the right to tax their members.

The young state's ruling elite eagerly portrayed Finland as being uniform in faith but liberal (and modern) in its legislation. Certainly, the legislation was in place, the Lutheran National Church had a strong grip on the national schooling system and the general-conscription military, and 98 per cent of the population of 2.7 million had been Lutheran in 1900 – and 95 per cent still were in 1950. The approach had strong roots in the ruling elite's values, ideology, and political preferences. On the one hand, the established nation-states of the West had to be convinced that Finland was a Western civilized nation and part of the cultural hearth of Europe, for the Soviet Union was feared and disliked. On the other hand, Lutheranism was a 'shared value' in the bitter aftermath of the Civil War, fought in 1918 between White and Red troops. Church membership suggested that Lutheranism crossed ideological and class boundaries and could potentially aid in unifying the divided nation.

However, the image was incomplete, because legal equality of institutions or individual freedom did not mean practical or symbolic equality in daily life. The religious minorities were mostly 'forgotten' as long as the Lutheran National Church's symbolic hegemony went uncontested – as it did in a country where religious beliefs are generally considered to be private matters. However, action was taken in the 1920s and 1930s to erase the visible legacy of the Russian Empire – the Orthodox churches – off the landscape in prominent, symbolically important locations (Figure 2). Geographer Petri Raivo[2] explains this hostility towards the Orthodox infrastructure with the church's dramatically changed position in Finland and the Lutheran majority's need to consolidate a 'Finnish national identity' in a freshly

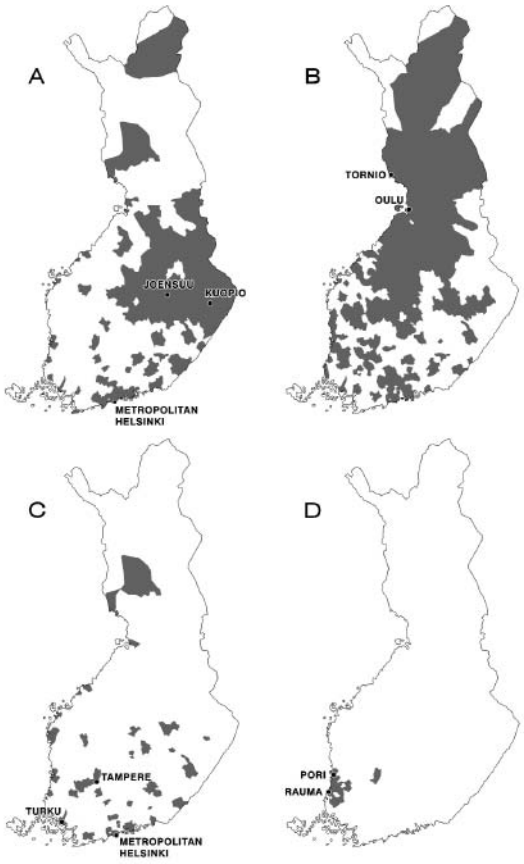

Figure 1 – The predominance of the Lutheran National Church hides considerable regional and local differences on Finland's religious map, some of which exist within the majority church.[1] The historical core areas of the Finnish Orthodox Church (**A**) are in eastern Finland and among the indigenous Skolt Sami in the north. About one quarter of the church's 57,500 registered members now live in Metropolitan Helsinki. The church membership is growing, partly because of immigration from Russia. Conservative Laestadianism (Peace Societies) (**B**) continues to be most influential in its historical core areas in the west, northwest, and north. Some nationally small churches or religious communities may have notable local influence. The Church of Jesus Christ of Latter-Day Saints (Mormons) in Finland is predominantly urban (**C**). An extreme example of local influence is the concentration of Supplicationism (**D**) in southwestern Finland.

Figure 2 – Selected Orthodox churches lost their cupolas and were sometimes converted into Lutheran churches in the search for national identity after Finland's independence in 1917. One prominent example is the landmark church of the historical Viapori (Suomenlinna) sea fortress outside of Helsinki. The fortress was home to Russian soldiers before Finland's independence in 1917 and is now among UNESCO's World Cultural Heritage Sites (Author's photo, 2005).

Figure 3 – The first, indirect acknowledgement of the Orthodox Church in Finland's postage stamp imagery was a 1973 view to the Southern Harbor and Market Square in Helsinki/Helsingfors. The prominent Uspenki Cathedral seen in the background is among the city's most popular tourist sights. The restoration of its cupolas in the summer of 2005 attracted considerable media attention.

sovereign country. The official religion of the former oppressor (as Russia was seen in Finland especially since the 1890s) represented an undesired 'Other' in independent Finland. Several prominent Orthodox landmarks were left intact, but remained excluded from the state's propaganda photographs.[3] Finland's postage stamps (which are official state documents) acknowledged Lutheran buildings and individuals, but ignored the Orthodox Church until the 1970s (Figure 3), when the institution celebrated its 800th anniversary in Finland.[4] The ruling (Lutheran) elite's approach for a long time qualified as what students of visual communication call "symbolic annihilation"[5] – the establishment of hierarchies by controlling (in)visibility.

World War II as a Turning Point

Lutheranism supported the Finnish effort in World War II, in good and bad. It helped bring the ideologically and socio-economically divided nation together against a common enemy in the Winter War (against the Soviet Union, in 1939–1940) and provided commonly understood symbols and rituals to cope with the devastation and grief. But Lutheranism also fed the nationalist fervor and dreams of Greater Finland during the more controversial Continuation War (also against the Soviets, in 1941–1944).

One outcome of these military defeats in Finland's religious landscape was that "the establishment of new religious territorial system."[6] Many of the over 420,000 evacuees from the territories ceded to the Soviet Union were Orthodox by faith. Their resettlement across Finland spread this religion beyond its historical core areas, parts of which were now destroyed. The visibility gained through the construction of churches for the new parishes fueled some suspicion and hostility, complicating the evacuees' cultural integration in their new home regions. On the other hand, reconstruction in the east increased interest in visiting these heritage sites, also among the majority population.

World War II diversified Finland's religious landscape also in other, more indirect ways. Industrialization and urbanization, advancement of communication technologies, and a gradual rise and spread of wealth and individualism in Finnish society followed the war. The geopolitically sensitive situation next to the former enemy, now a Cold War superpower, contributed to ideological and spiritual disillusionment, a political-ideological shift towards the Left in Finnish politics, and novel cultural exchanges in multiple spheres. These changes paved the way for an increasingly complex map of religious affiliation and non-affiliation from the 1960s onwards. The leading religions of Asia and charismatic Christian and other spiritual movements from North America found followers especially among the new urbanites who were learning, and searching for, novel lifestyles and ideas.

The Majority's Responses and Challenges

The Lutheran National Church reacted to the changing outlook and experiences of its members in the 1960s. By accepting diversification of views and increasing individualism it defended itself against alienation and competition. Many members have, however, resigned because of internal disagreements over doctrine and values. One such disagreement flared up in the 1980s over the acceptability of female ministers, who finally began their work in 1988 after decades of struggle. They now number about 900, representing one-third of all the Lutheran National Church's ministers.[7]

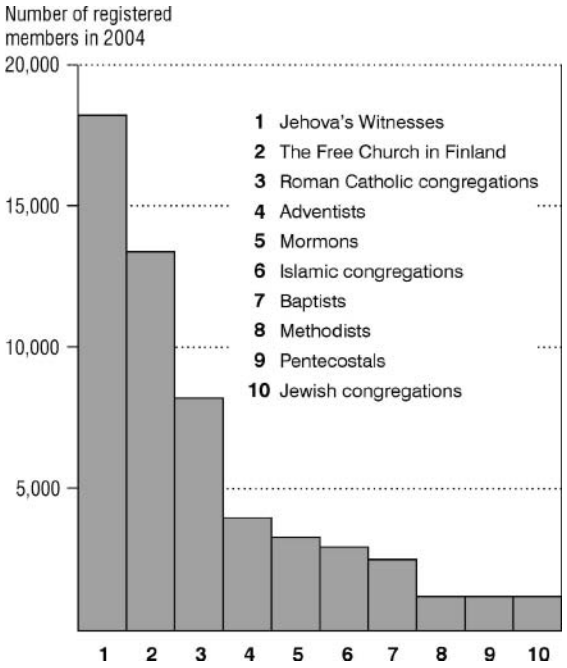

Figure 4 – That non-affiliation does not necessarily mean lack of faith or non-participation in religious practices is clear in the gap between national statistics of registered members of congregations and observations in daily life in Finland. Many new immigrants find formal membership in a religious congregation unnecessary or alien to their spiritual life. By way of example, the number of Islamic congregations in Finland has grown considerably over recent years (15 groups were registered in 2004), but their total membership of roughly 3,000 individuals is estimated to represent about one-tenth of all Muslims residing in Finland. The number of registered Islamic cultural and other associations far exceeds the number of congregations. Similarly, Finland's active Pentecostals may number 50,000, but are invisible in the membership statistics, for some have maintained their membership in the Lutheran National Church, whereas others have resigned but preferred non-affiliation over registration with Finland's Pentecostal Church.[11]

Strongly divisive and alienating issues currently include the majority church's negative views about homosexuality and 'gay marriage' (civil registration of same-sex partners was begun in Finland in 2001) and about extending fertility treatments beyond heterosexual marriage. The steady decline of the Lutheran National Church's membership since World War II has accelerated in the 2000s. From 2000 to 2004, the institution lost over 23,000 members, while the number of those without any affiliation rose by almost 73,000.

The Lutheran National Church's own recent study[8] concludes that the institution is losing its credibility. Only 14 per cent of the survey's respondents go to church monthly, whereas almost one third of their fellow Europeans do so. On the other hand, the study found that the Finns are among Europe's most religious people, at least if measured by the frequency of praying by the survey respondents. Roughly four-fifths said they had prayed over the recent years, whereas two-thirds of Europeans do so "rarely." The key teachings of Lutheranism are still valued and believed, which challenges the institution to find new ways to reach its members.

That these people are a heterogeneous group adds to the challenge. Finland's west coast continues to be known for its fundamentalism (Figure 1), whereas southern urbanites tend to be more liberal, secular, and private in their views

Figure 5A – The landscape of the oldest Islamic cemetery in Helsinki/Helsingfors (**A**) shows a mixture of cultural influences, reflected in the linguistic and ornamental details of the gravestones, their material, style and arrangement, and the individual's names. Many of the city's new Islamic congregations and cultural centers (**B**) have modest "store-front-style"[iii] facilities. (Author's photos, 2003)

and practices (in Helsinki/Helsingfors, one quarter of the residents are not affiliated with any religious community). The most important reasons for the Finns to maintain their membership in the Lutheran National Church are (and have been) normative and symbolic. Lutheran rituals of the life course are thus deemed important, but not everyone considers them irreplaceable. It is also known that economic reasons motivate non-affiliation. It is thus clear that resignation or non-affiliation does not necessarily mean lack of faith or non-participation in religious practices (Figure 4). Three associations in Finland openly oppose the special status of the Lutheran National and Orthodox Churches within the state, promoting non-affiliated, 'religion-free' worldviews.

The Finnish-speaking, white, heterosexual and increasingly middle-class majority culture, this majority's values, and the role of religion in Finnish society are now under critical scrutiny.

Legal Reforms, Individual Experiences

The current diversification of Finland's religious, linguistic, visual, and culinary landscapes (Figure 5) owes much to yet another series of geopolitical changes, including the fall of the Soviet Union, Finland's membership in the European Union (1995), and the global increase in inter-nationally mobile workforce and refugees. The number of foreigners in Finland began to rise in the late 1980s, climbing from 26,000 in 1990 to 108,000 by 2005. The newcomers center in the south, in the cities, and in the border regions so that their local and regional impact is considerable.[9] Almost one-third of these foreign nationals are from the European Union, that is, from predominantly Christian countries. The four largest immigrant groups are the Russians (24,600 in 2004), Estonians (14,000), Swedes (8,200), and Somalians (4,700). In absolute numbers, Helsinki/Helsingfors is the capital city of all these groups and most of the country's 'old' minorities as well.

The change demanded more precise and receptive immigration and integration policies than the previous, ad-hoc-based approaches had been. Finland thus reformed and amended its legislation, including the constitution, in the 1990s. The 2003 replacement of the 1923 law about freedom of religion was designed to make an individual's life easier by offering more options and reducing bureaucracy, while the status of religious communities as independent entities was strengthened. For example, an individual can now simultaneously belong to more than one congregation, but each congregation may decide whether to accept this or not.

In the national schooling system the emphasis was put on each pupil's "own religion" and conscience in the law's spirit of individualism and freedom of choice. Non-affiliated education about religious worldviews, offered in Finnish schools since 1985, gained relative strength. The school (or the municipality) must now arrange the teaching of a minority religion, if the parents of three pupils so request and the congre-gation in question is a registered entity. A pupil can refuse to participate in lessons and rituals that violate his or her personal views. According to the Finnish National Broadcasting Company's television news in August, about 20 different religions are currently being taught in Finnish schools. Islamic, Roman Catholic, Orthodox, and Buddhist classes are among the most popular minority religion classes taught in Helsinki/Helsingfors.

The law challenged the resources in many schools, but sought to offer a fairly simple practical solution for the need to accommodate different beliefs, values, and customs. From the perspective of an individual pupil's rights the law's idea is an improvement, but practices and values change slowly. In a relatively monocultural community those three minority students are still likely to stand out like a sore thumb in the eyes of teachers and peers. Legal protection still does not guarantee spiritual and symbolic equality at the level of individual experiences. To make macro-level, legal-administrative improvements experiential reality in daily life remains a major challenge in Finland.

A Long Road Ahead

Many Finns are only beginning to question their belief in a monocultural Finnish nation and scrutinize their regular practices and ways of thinking, even if religious, linguistic, and other cultural differences have been present for a long time. Regional and generational gaps are evident in the understanding of what constitutes Finnishness – what is multicultural routine to urban youngsters in the biggest cities may be alien to their parents and grandparents, or their peers in a predominantly Lutheran Finnish-speaking town somewhere in rural Finland. It also seems that immigration history, national background, and linguistic skills steer integration and interaction in Finnish society more powerfully than religion, as the congregational atomization of some religions suggests. Doctrinary and territorial competition complicates the situation further. For example, the Finnish Orthodox Church has not celebrated the recent interest of its Russian counterpart in the souls of Finland's Russian immigrants.

Top-down regulation is only one necessary dimension in the adjustment to cultural and demographic change in Finnish society. Better understanding and quotidian accommodation of the diversity's regional, local, and group-specific nuances and history are much needed. Success may point out that the 'odd habits' of one's neighbor are a relative characteristic that everyone shares.

Notes

[1] Official population statistics can be consulted at <www.stat.fi> (Statistics Finland) and <www.vaestorekisterikeskus.fi> (Population Registration Centre).

[2] P. J. Raivo (1997). The limits of tolerance: the Orthodox milieu as an element in the Finnish landscape, 1917–1939. *Journal of Historical Geography* 23, 327–339.

[3] P. Lähteenkorva & J. Pekkarinen (2005). Ikuisen poudan maa. WSOY, Helsinki.

[4] Raento, P. & S. D. Brunn (2005). Visualizing Finland: Postage stamps as political messengers. *Geografiska Annaler Series* B 87, 145–163.

[5] George Gerbner first coined the term in 1972 in his article "Violence in television drama: trends and symbolic functions," published in *Television and Social Behavior* (eds. G. Comstock & E. Rubinstein).

[6] P. J. Raivo (2002). The peculiar touch of the East: reading the post-war landscapes of the Finnish Orthodox Church. *Social & Cultural Geography* 3, 11–24.

[7] Statistics are available at the Lutheran National Church's website at <www.evl.fi>

[8] K. Kääriäinen, K. Niemelä & K. Ketola (2005). Religion in Finland. *Church Research Institute Publication* 54. Tampere.

[9] Raento, P. & K. Husso (2002). Cultural diversity in Finland. *In* "Finland – Nature, Society, and Regions" (eds. P. Raento & J. Westerholm). *Fennia* 180, 151–164.

Figures notes

[i] The maps are adapted from Fig. 2 and CD-Fig. 2 in the 2002 article "Cultural diversity in Finland" by P. Raento & K. Husso, published in "Finland – Nature, Society, and Regions" (Special Issue of *Fennia*, vol. 180, eds. P. Raento & J. Westerholm).

[ii] Estimates by Tuomas Martikainen (Åbo Academy) and Kimmo Ketola (Church Research Institute) in the newspaper *Helsingin Sanomat* August 7, 2005.

[iii] The term has been used by the geographer Wilbur Zelinsky. See, for example, "The uniqueness of the American religious landscape" in *The Geographical Review* 91, 565–585 (2001).

RELIGIOUS PLURALISM IN GREECE

ABSTRACT

The law on proselytism, the financial dependence of the Church on the Greek state, the homogeneous character of the Greek nation and society and the resulting linkage between citizenship, national identity and religion are important considerations when examining Greece's experience with religious pluralism. Lina Molokotos-Liederman provides a brief review of how Greece is managing religious diversity by addressing the legal framework pertaining to religious pluralism and religious demographics. The recent example of the construction of a mosque in Athens is used as a case study.

The modern Greek state, since its birth in the early 19th century, has incorporated many elements that have formed Greek identity: the antique / Hellenic and Byzantine / Orthodox heritage and popular tradition (including the Greek language and music) inserted in the context of western European civilisation. However, in this process, there is the challenge of reaching a balanced synthesis between some of the inherent contradictions or incompatibilities between the Hellenic and Byzantine/Orthodox heritage. The binary and dualist opposition between Hellenism (linked with modernity) and Byzantine Orthodoxy (associated with a somewhat anti-western tradition) is frequently used as a general framework with which to explain Greece's particularities to the outside world.

Due to its religious, cultural and historical profile, Greece has a dual outlook both to the west and east. It is at the origins of the classical tradition but also sceptical towards the Western world. In that sense, Greece may seem like the daughter of a mixed marriage. Greece's particular socio-religious profile compared to the Western European religious model of secularisation and religious modernity/ post-modernity is not without implications on its ability to manage and deal with pluralism and acting as a host country, integrating immigrant communities from diverse ethnic and religious backgrounds.

Legislative framework

The Greek Constitution is declared in the name of the Holy Trinity and Article 3 stipulates that the "dominant" or "prevailing" religion of the Greek population is Eastern Orthodoxy under the authority of the autocephalous Church of Greece, which is united spiritually with the Ecumenical Patriarchate. Therefore, in Greece we see the existence of an official religion and no separation between Church and State, as they tend to mutually support each other. Greek Church and State relations are close and the State is responsible for the direct financing of the Church. The Church expects State protection through the Constitution and other legal and financial means, just as the State often depends on the Church, as a homogenizing and unifying force in public life, particularly in moments of national crises. The influence of the Orthodox Church, both as an institution and as a cultural, spiritual and political factor, is highly acknowledged by Greek political milieus, as an essential parameter in Greece's socio-political system (Makrides-Molokotos 2004). This situation tends to encourage a strong degree of clientellistic relations between certain political milieus and members of the clergy.

The Greek model in the treatment of religious minorities is more particular compared to other European countries insofar as Orthodoxy continues to enjoy unique privileges in public life (in education, rites of passage, government etc.). Greek Orthodoxy can be considered as the only truly free religion in Greece, while many other faiths are simply tolerated. The differentiation between "known" and not-known religions, and between "legal person of public law" and "legal persons of private law" creates conditions that preserve a monopolistic and preferential status for the Greek Orthodox Church with unfavourable implications for all other faiths.

The Church of Greece is a "legal person of public law" with exclusive territorial holdings to which the Greek state grants exclusive legal and financial privileges (including tax and military service exemptions for Orthodox clergy, teaching of the Orthodox religion in public schools, etc.) not applicable to non-Orthodox faiths. Judaism, Islam (Turkish minority in Thrace, under the Lausanne Treaty) and the Orthodox Church are also recognized as "legal persons of public law", but other religious groups, including the Roman Catholic Church, Old Calendarists, Jehovah's Witnesses and Protestant Churches

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are considered to be "legal persons of private law". This distinction contributes to additional legal burdens on some minority religions. Freedom of religion is secured through Article 13 of the Greek Constitution, which legally guarantees freedom of conscience and religious worship only for "known" religions (Judaism, Islam, Old Calendarists, Catholic and Protestant Churches, Jehovah's Witnesses). However, there is no formal mechanism for a religious group to become recognised as a "known" religion, which is usually achieved only through the approval of a permit to operate a place of worship granted to a "known" religion.

If Article 13 also prohibits proselytism against or in favour of any religion, including Orthodoxy, in practice it has almost exclusively been used against religious minorities. The definition of proselytism can often be problematic, since the simple distribution of literature by non-Orthodox religious groups can be interpreted and prosecuted as an act of proselytism. As an example, in the Greek case against Jehovah's Witness followers, some members, who had distributed literature, were arrested or imprisoned in 1987, 1993 and 1996 after being accused of proselytism. Greece was subsequently condemned by the European Human Rights Court for violating their right to freedom of conscience and religious expression (see www.cesnur.org).

Demographics of religious affiliation

Greece is a relatively homogeneous country in religious and ethnic terms, especially compared to the more diverse ethnic and religious composition of some other European countries: according to official statistics approximately 95 per cent of the Greek population are Christian Orthodox (according to latest census the total population is 11 million). However, the degree of religious and ethnic homogeneity is changing gradually, as Greece is becoming a host country to an increasing number of immigrant populations from diverse religious and ethnic backgrounds. According to a study conducted by the Research Institute of Urban Environment and Human Resources at Panteion University it is estimated that there are 1,150,000 immigrants, thus approximately 10.3 per cent of the total population. Among the immigrant population there is a very strong concentration of Albanians (mostly male), representing 56 per cent of the total number of foreign nationals, followed by Bulgarians, Romanians and Ukrainians. On average, immigrants are 15-64 years, who tend to obtain work permits for at least 8 years and live in Athens; 17 per cent of the greater Athens population is composed of immigrant residents (Research Institute of Urban Environment and Human Resources 2002). Even if there are no official statistics on the religious demography of Greece's immigrant population, it is very likely that the recent influx of immigrants, some of whom are becoming Greek citizens, is challenging not only the demographic homogeneous composition of Greek population, but also the historic tendency to view Greek Orthodoxy as an indicator and marker of Greek citizenship.

Greece is a relatively homogeneous country in religious and ethnic terms, especially compared to the more diverse ethnic and religious composition of some other European countries.

Given the increasing waves of immigration into Greece and the ongoing pluralisation of Greek society, particularly in urban centers, ethnic minority groups and immigration, often viewed in religious terms (Albanians, Pakistanis, etc. as Muslim immigrants), have become a common topic of public debate in the Greek media and in official government agendas. Given the high concen-tration of Albanians among Greece's immigrant population the Albanian minority is often at the focus of media attention; it is often referred to (or even stigmatized) as a problem that is discussed in terms of employment / unemployment and social welfare issues and security (crime) concerns.

The largest religious minorities in Greece include Muslims, Catholics and Protestants. As there is no definitive official data on the sizes of these minorities, we have to rely on a variety of combined sources, which include but are not limited to the *Greek Helsinki Monitor* and *Minority Rights Group*, statements of representatives of the religious minorities themselves, and various studies on Greek minority groups (for example, Clogg 2002).

For the Muslim minority in Greece, the *Greek Helsinki Monitor* and *Minority Rights Group* estimate that there are approximately 200,000 to 300,000 Muslims from Albanian, African, and Arab origins in Greece living mostly in large cities and the working class districts of Athens. According to the same source there are also approximately 90,000 Muslims (50,000 Turkish, 30,000 Pomaks and 10,000 Roma) in Thrace (Northern Greece). However, according to Ilhan Ahmet, Member of Parliament for Rodopi (Thrace), these estimates are higher with approximately 700,000 Muslims living officially in Greece (excluding illegal immigrants). Of those, approximately 150,000 live in Northern Greece (Thrace) and another 15,000-20,000 can be found in other parts of Greece; they are Greek citizens of Turkish origin (as a result of the 1923 Treaty of Lausanne, which required the exchange of Muslims of Greece with Orthodox Christians of Turkey).

As far as Christian minorities, the number of Old Calendarists, who belong to an administratively non-recognized Orthodox Church is estimated at approximately 1 million, including 2,000-2,500 Old Calendarist monks and nuns and an additional 300 to 400 in Mt. Athos (Clogg 2002, p. 18; *Greek Helsinki Monitor* and *Minority Rights Group*). The number of Greek Catholics living in Greece is estimated at approximately 53,000 (Clogg 2002, p. 39; representative of the Catholic Church in Greece, 2004; *Greek Helsinki Monitor* and *Minority Rights Group*). However, adding the large foreign Catholic population (primarily from Poland and the Philippines) currently living in Greece the total figure is estimated at 200,000-300,000 Catholics. The Greek Protestant denomination in Greece includes roughly 20,000-30,000 Protestants in Greece belonging equally to three denominational groups: The Greek Evangelical

Church, the Free Evangelical Church and the more recent Pentecostal Church (Iatrides 2002, p. 56; Panayiotis Kantartzis, Pastor of the First Evangelical Church of Greece, 2004; *Greek Helsinki Monitor* and *Minority Rights Group*). According to the Witnesses' own figure there are approximately 30,000 members of Jehovah's Witnesses in Greece (Clogg 2002, p. 56; representative of the Office of Jehovah's Witnesses in Greece).

Finally, after the eradication of most of the Greek Jewish population during WWII, estimates account for approximately 6,000 Greek Jews remaining in Greece with only three regularly active synagogues (Moisis Konstantinis, President of the Central Board of Jewish Communities in Greece; Clogg 2002, p. 64; *Greek Helsinki Monitor* and *Minority Rights Group*).

Case study: constructing a mosque in Athens

The Muslim case in Greece, and more particularly the issue of administration and construction of mosques is a lens through which to examine how Greece has been dealing with issues of religious pluralism. While Muslim communities are growing due to the increasing flow of Muslim immigrants, particularly in Athens, mosques are found only in regions with traditional Muslim communities, such as Western Thrace. Although such places of worship operate freely in Western Thrace, the Greek Government retains and exercises the right to appoint muftis, who acting as a religious leaders and Islamic judges, they have official functions in civil matters (e.g. marriage and divorce, etc.). One other factor behind the Greek State's insistence to appoint one official mufti is the concern that a popular elected mufti would be susceptible to mobilising the local population with the risk of political uprisings and territorial claims by Turkey. For this reason, there are two muftis in Greece; the Greek government officially appoints one; the other (commonly called "pseudo-mufti" by the Greek government but considered the real mufti by the local population) is elected by the local community but has no real administrative duties. This has been a sore issue among the Turkish minority in Thrace, which has contested appointment by the State and demanded that the local community be responsible for his election. Therefore, there is an insistence by the Turkish minority to be able to elect its own mufti to represent the community in order to have a say and contribute to the selection of their religious leader.

In contrast to the 300 mosques operating in Western Thrace and despite the fact that there are approximately 100,000 people of Arab or Muslim background living in Athens, the city lacks an official mosque.

In contrast to the 300 mosques operating in Western Thrace and despite the fact that there are approximately 100,000 people of Arab or Muslim background living in Athens, the city lacks an official mosque. The construction of a mosque in Athens has been pending since the late 1930s, when the construction of mosques was authorised by law upon approval by the local metropolitan and the Ministry for Education and Religious Affairs. In the various attempts since then, efforts to proceed to the construction of the mosque have been delayed due to supposed bureaucratic hurdles. In 2000, with the prospect of the Athens Olympic Games, the socialist government decided to finally proceed to the construction of an Islamic cultural centre and mosque in Peania (20 kms north-east of the capital and near the Athens airport). The issue received national and inter-national press coverage due to the gained momentum as a result of the Athens Olympic Games.

Although the mosque would be financed by Saudi Arabia with an imam from Cairo's Al Azhar University, Greek officials would oversee it. The Church of Greece, through its Archbishop (Christodoulos), had given its blessing for the construction of a mosque, as a place of worship, but objected to the creation of a cultural center. The construction was delayed because of a variety of factors, including the fact that the conservative mayor of the town, supported by the local bishop of Peania, argued that since the designated area belonged not to state jurisdiction but to that of the municipality, the construction plans had not received proper building permits. They also felt that having a minaret alter the traditional skyline of the town, in close proximity to the airport, would give a misleading impression to first-time visitors in Athens. To voice their protest, the local residents erected a three-meter cross at the highest point of the proposed location. The Muslim population in Athens is therefore still obliged to worship in informal mosques (warehouses converted into places of worship) operated informally on Fridays by various imams. According to some views, the lack of an official place of worship may pose security risks due to the possibility of underground mosques becoming a breeding ground for terrorist cells.

Concluding Remarks

The existence of an official state church in Greece and its close relationship with the State does not in itself imply or result in a lack of religious tolerance or religious liberty. If Greece has not had a history of religious violence, the law on proselytism, the financial dependence of the Church on the Greek state and the clientellistic relations between political milieus and members of the clergy, have negative implications on the treatment of religious minorities. Furthermore, the homogeneous character of the Greek nation and society and the resulting linkage between citizenship, national identity and religion are important factors that collectively contribute to Greece's negative, or at best mixed, record, on managing religious pluralism in a variety of areas, including the free exercise of religion, equality before the law, education, etc.

Mentalities towards immigration and religious/ethnic minorities can evolve towards a progressive openness of Greek society. However, ongoing economic concerns and anxieties (including unemployment) can transform the

course towards openness into a lengthy process with as many steps forwards as backwards. As we cannot foresee any fundamental changes in the above mentioned situation in the near future, it seems that the European Courts of Human Rights may be one (the only?) way for religious minorities to use as recourse in the resolution of specific conflicts or acts of discrimination within the overall and ongoing process of managing religious pluralism in Greece.

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INDIAN EXPERIENCE OF PLURALISM

ABSTRACT

This article explores the reasons for India's numerous ethnic, religious, and cultural groups living together peacefully. Jaishankar Narayanan traces it back to the vision of Vedas thousands of years ago, which permeates the culture and way of life of most Indians. Narayanan also argues that India's constitution supports pluralism.

JAISHANKAR NARAYANAN

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Pluralism is defined, as a condition in which numerous distinct ethnic, religious, or cultural groups are present and tolerated within a society and the belief that such a condition is desirable or socially beneficial. This pluralism has been manifest in India for many thousands of years. India is one of the most diverse nations in the world geographically, linguistically and ethnically. How did Indians of the past and the present live together with peace and respect for each other? The answer for this question lies in the vision of the Vedas, which permeates the culture and way of life of the majority of the Indians.

The Vedas proclaim that all that is here is a manifestation of the one reality, which we can call God. This God, who is manifest as this entire world of names and forms, can be called by different names and worshipped in different forms. Like a person can be called by different names by different people and he responds to all of them, similarly God accepts all forms of worship and prayer and responds. So all forms of worship are acceptable and valid. This vision of accepting and validating all forms of worship has been the main reason for Indians to be pluralistic. Thus India is the only country where the Jews were never persecuted and were allowed to live peacefully. It also has one of the largest populations of Parsee Zoroastrians who fled Iran hundreds of years ago.

Rajiv Malhotra while comparing India and Pakistan in his article in Sulekha.com says that India is a garland maker. I quote the following from that article.

"Be like a garland maker, O king; not like a charcoal burner."

—Mahabharata, XII.72.20

This famous statement from the Mahabharata contrasts two worldviews. It asks the king to preserve and protect diversity, in a coherent way. The metaphor used is that of a garland, in which flowers of many colors and forms are strung together for a pleasing effect. The contrast is given against charcoal, which is the result of burning all kinds of wood and reducing diversity to homogeneous dead matter. The charcoal burner is reductionist and destroys diversity, whereas the garland maker celebrates diversity.

Garland making and charcoal burning represent two divergent worldviews in terms of socio-political ideology. The former leads to pluralism and diversity of thought, whereas the latter strives for a homogenized and fossilized society in which dogma runs supreme.

India represents a long and continuous history of experimentation with garland making. A central tenet of dharma is that one's social duty is individualistic and dependent upon the *context*:

- To illustrate the context-sensitive nature of *dharma*, a text by Baudhayana lists practices that would be normal in one region of India but not appropriate in another, and advises that learned men of the traditions should follow the customs of their respective districts.
- Furthermore, the ethical views applicable also depend upon one's stage in life (*asramadharma*).
- One's particular position in society determines one's personal dharma (*svadharma*).
- The dharma has to be based upon one's personal inner nature (*svabhava*).
- There is even special dharma that is appropriate in times of distress or emergency (*apaddharma*).

Hence, anything resembling a universal or absolute social law (*sadharana*) is characterized as a last resort and not as a first resort - a fallback if no context can be found applicable.

Combine this with the fact that social theories (called *Smritis*) were *not* divine revelations as was the case in the Abrahamic religions, but were constructed by human lawmakers who were analogous to today's public officials. Hence, *all Smritis are amendable*, and indeed are inten-ded to be modified for each era and by each society. This is a very progressive social mandate, and to freeze Indian social norms is, in fact, a travesty based on ignorance.

This pluralistic social theory is deeply rooted in indigenous religions. In the Bhagavadagita (IX. 23-25), Krishna proclaims that the devotees who worship other deities are in fact worshipping Him; and that those who offer worship to various other deities or natural powers also reach the goals they desire.

Dr. P. V. Kane has researched ancient India's pluralism, and concluded emphatically that there was no state sponsored religious exclusivism. In particular, Kashmir's history of garland making spans several millennia. Its identity was not based on any religion. Kashmiris of all religions lived in harmony, and Kashmir was the incubator of Kashmir Shaivism, much of Indo-Tibetan Buddhism, and Sufism. Kashmir's survival *as a garland making culture* is a crucial challenge to the future of pluralism in the world."

The Indian Constitution also recognizes pluralism as is evident from the Preamble to its Constitution:

> "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;"

The other characteristic of Indian society, which makes it diverse and plural, is the much-maligned Jati system. Jatis are endogamous groups, which are often characterized by the occupation of the members of the group such as barber or potter. There are thousands of Jatis in India and each Jati has its own customs, traditions, cuisine, arts, apparel etc. When people of different races invaded or migrated to India they were just assimilated as a different Jati. So there was no genocide in India, as in the case of the encounter of Europeans with Native Americans.

So India has always been a beacon of pluralism and it will remain so even in the future in spite of the recent prophesies of a clash of civilizations.

RELIGIOUS PLURALISM IN INDONESIA

ABSTRACT

This article gives an overview of the historical conditions which have combined to produce an "Indonesian Islam" which is characterized by its openness to pluralist thought and religious diversity. It outlines some of the debates surrounding the role of Islam in the constitution of the Republic of Indonesia, and the delicate balancing act between a constitutionalized space for "religion" and the maintenance of religious pluralism.

During the past summer, the "Council of Indonesian Ulama" issued a series of *fatawa*, one of which declared "pluralism of religion" to be *haram* (forbidden) for the Islamic community.[1] This occurrence, combined with recent events such as the Bali bombing in 2002 (and sadly again in October 2005) and reports about the activities of extremist Islamic organizations, may suggest to many outside observers that the country with the world's largest Islamic population[2] has taken a turn for an exclusive and insular view of religion. Such a development could only bode ill both for open-minded Indonesian Muslims and for minority religious groupings in Indonesia. But as demonstrated by a subsequent storm of public discussion following these *fatawa*, the view of the Council was hardly held or accepted by a majority of Islamic intellectuals or the public at large. Leading Islamic figures took to the airwaves and print media to condemn the *fatwa* regarding pluralism in no uncertain terms (some commentators going so far as to suggest that it was the Council itself which was deviating from Islam). Indeed, for many, the *fatwa* against pluralism was seen as running counter to a long experience of religious multiplicity in the archipelago and certainly to the richness and diversity both of Islam itself and of religion in general within the present day Republic of Indonesia. For most observers of Indonesian Islam, its most remarkable features are nothing less than its creative and progressive outlook and its support of the pluralistic social reality that makes up present-day Indonesia. In order to properly understand this openness to plurality, but also the forces presently at play which threaten it, one must begin with a great deal of historical contextualization. It is crucial to be aware of the many waves of religions which have touched the shores of the various islands, the unique manner in which Islam has developed, and certainly the dramatic social and political changes which have occurred since the Republic of Indonesia declared its independence from the Dutch on August 17, 1945.

(I) A small history of a large and ancient society

As the great Buddhist temple at Borubudor (late 7th/early 8th century A.D.), or the majestic Hindu complex at Prambanan (10th century A.D.)) suggest, there is a long and varied religious history to Java and other islands in the Indonesian archipelago. With European mercantile and colonial expansion, largely by the Dutch, but also by the Portuguese, both Protestant and Catholic Christianity worked their way into the historical religious mosaic of this region from the 16th century onwards. Predating, and to some extent, continuing alongside these "new" religions were various ancient and indigenous forms of what might be termed animistic practice. It would be remiss not to mention here also the very early contact with traders from China (perhaps as early as the 4th century A.D.) and their Confucian-Buddhist orientation, and there is to this day a sizable indigenous Chinese community in Indonesia (about 3 per cent). But without doubt, the most significant religious arrival in the area has been Islam, brought by punctuated waves of Indian, Persian and Arabic traders since perhaps as early as the 9th century. In a slow, and largely peaceful spread throughout the region (though not entirely lacking in violence),[3] Islam became by far the dominant religious characteristic (in numbers, if not in political power) of the region by the early 17th century. This continues to be the case today, with Islam being the religion of close to 90 per cent of the population.

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Much attention has been paid to the way this transplanted Islam developed. A most seminal and controversial text in this regard is *The Religion of Java*[4] by Clifford Geertz which catalogues his field work in eastern Java in the 1950's. The fundamental claim of Geertz is that Indonesian Islam is "syncretic", consisting of various interwoven strands of differing practices, emphases and traditions within an overall religious unity. Geertz gives a typology of three distinct religious "variants" *within* Javanese Islam: *Abangan* (characterized by an acceptance of the Javanese animistic under layer of Indonesian Islam); *Santri* (marked by an emphasis on the clearly identifiable "Islamic" elements) and *Prijaji* (distinguished by its focus on certain Hindu elements mixed into Javanese Islam). While Geertz has been criticized for everything from bad methodology to an impoverished or narrow understanding of Islam, it is hard to deny that something "unique" occurred within the Islamization of Java and other Indonesian islands, and that a good deal of this uniqueness has to do with the contextualization or "enculturation" of Islam in this radically pluralistic environment. Far from the traditional centres of Mecca and Medina, and of theological orthodoxy such as Cairo, it is not surprising that unique forms of practice, learning, and transmission of the faith did occur throughout the archipelago.

This development of what might be termed a genuinely specific "Indonesian" Islam has spurred debate within the Indonesian Islamic community itself about its very Islamic identity. The foundation of the two largest mass-organizations of Muslims in Indonesia, Muhammidayah and the Nahdlatul Ulama (NU), capture the subtlety of this debate. Founded in 1912, Muhammidiyah is often referred to as "modernist", though rather like Protestantism in Christianity this group might best be seen as "conservative revolutionaries": they embraced new scientific and secular knowledge, but at the same time wanted to go back to the basic sources of Islam, the Koran and the Hadith (Prophetic traditions). Hence Muhammadiyah (with about 30 million members at present) promoted a real openness to the "modern" world, but that very openness was to be rooted in the fundamental principles of the Koran; hence, this organization also maintains a literalist or puritan streak – a streak which can be in tension both with the acceptance of "modernity" and of "non-Islamic" indigenous elements.

The NU (formally established in 1925 and which presently claims approximately 40 million adherents), on the other hand, is often termed "traditionalist". However this too must be understand somewhat paradoxically: as representatives of some of the very specific features of Islam which had developed in Indonesia, and especially of the pesantren (boarding school) style of education in which there was emphasis on traditional learning (e.g. medieval and local interpretations of the Koran), the NU does defend a "tradition," and hence might be seen as conservative.[5] But the very tradition it defends is a "pluralist" one - rooted in the incorporation of a variety of diverse historical and local experiences and interpretations of Islam. Given the multi-faceted and in some ways overlapping aspects of these organizations, it is not surprising that the distinction between the two has become less obvious over the past decades, with all sort of accommodation being made by one or the other. From different points of departure, both organizations represent to some extent a blend of local tradition or custom (*adat*) with a concern for an authentic and genuine understanding of Islam. In short, these two organizations, both in their internal debates between members representing one particular emphasis within their own general 'orientations', and in their debates between each other, form an overall picture of an Indonesian Islam that is dynamic, open to question, debate, and new articulations. In different ways, both organizations emphasize the specific context of religion: in the case of Muhammidiyah, the context of the modern world; in the case of NU, the historical context of development of Islam in Indonesia.

Indeed, for many, the *fatwa* against pluralism was seen as running counter to a long experience of religious multiplicity in the archipelago and certainly to the richness and diversity both of Islam itself and of religion in general within the present day Republic of Indonesia.

(II) Islam and politics in post-colonial Indonesia

Despite the heterogeneous nature delineated above, the now "encultured" or "indigenized" Islam came to play a substantial role in the collective, common identity of the peoples of this multi-ethnic society. In places such as Aceh, this Islamic identity assumed a significant political aspect too – forming a core around which resistance to Dutch colonialism could be wrapped. In fact, throughout the archipelago, the influence of Islam as a unifying, anti-colonial force leading up to the declaration of independence in 1945 cannot be overestimated. In the 1945 debates around the constitution for the soon to be proclaimed Republic of Indonesia, "Islamic" nationalists who had played such a significant role in the anti-colonial movement were full of hope that a new constitution would in some way recognize Islam as the basis of the newly established state. Needless to say, this was strongly opposed by "secular" nationalists (most of who were not very "secular", but were in fact Muslims who simply disapproved of embedding Islam in the constitution). Constant discussion in the spring and summer of 1945 led to an agreement referred to as the "Jakarta Charter." This compromise aimed to satisfy the secular nationalists in that it named "five principles" (*Pancasila*) as the foundation of the state, but was acceptable to the Islamic nationalists because one of these principles was

formulated as "Belief in God with the obligation to practice shari'a for its adherents." This "Islamic" clause and its delineation of a foundational constitutional role for Islam was viewed as a threat by some non-Muslim "Indonesians", while Muslim supporters claimed that it simply expressed the Islamic nature of 90 per cent of the population. Moreover, it exempted other types of believers and hence was claimed by its supporters not to be damaging to religious tolerance.

To the chagrin of the Islamic nationalists, and the relief of many secular nationalists, this "Islamic clause" was dropped in the constitution finally adopted in 1945, and in subsequent variations of the constitution.[6] The five-principled *Pancasila* which was actually adopted and which in some form or another has laid at the basis of the self-understanding of the Indonesian state did include "Belief in the One and Only God", as well as formulating four other principles which can be summarized as "humanity," "national unity," "democracy" and "social justice." Even with the fall of the regime of Soeharto in 1998 and subsequent discussions of the constitution, there has been no foundational inclusion of Islamic law in the constitution and there has been the retention of the idea that among the founding principles of the state is the "belief in the One and Only God." Herein lays one of the most striking features of the contemporary Indonesian religious mosaic: a "constitutionalized" monotheism.

Of course, in some ways this feature may not appear so unique; in the Canadian context, for example, the preamble to the Charter enacted in the Canadian constitution of 1982 makes an explicit statement about the "supremacy of God."[7] And as in the Canadian case, the Indonesian constitution has always had a "qualifying" clause guaranteeing freedom of religion. What is different in the Indonesian case is that (in contrast to the Canadian tendency to avoid filling in this phrase with much content) the constitutional provision of "freedom of religion" has always been understood in the context of the principle expressing "belief in the One and Only God." As a result, there have been some limits on the public expression of religion: religious beliefs that promote polytheism for example, have essentially been unconstitutional. The public promotion of atheism too is clearly circumscribed by this constitutional monotheism. In some ways, the massacres of "atheistic" communists in 1965/66, while largely a politically rather than a religiously motivated occurrence, can be contextualized within the cultural realities which have lead to this constitutionally enshrined monotheism.[8] Simply put, the vast majority of Indonesians take religion seriously, viewing it as an essential component of both private and public life. The constitutional framework in Indonesia can be seen as expressing the worldview of a religiously oriented culture, rather than as some sort of "mandating" of a religious stance on the part of a citizenry. Nevertheless, this constitutional and legal expression of an already existing world view does condition and shape the development of public sphere, and the ongoing debate in Indonesia can largely be seen as one about the degree of specificity to which the majority religion should be expressed in this public space.[9]

(III) Religious pluralism "on the ground"

The monotheism expressed in the constitutional principle of "Belief in the One and True God" can be taken to express at least two significant facts about the role of religion in present-day Indonesia. First, the vast majority of Indonesian citizens, including members of non-Muslim religious communities, adhere to some form of monotheism. Second, there is a general consensus that religion has a public function, though this does not necessarily mean that it should drive the political process. This point is perhaps well summarized in the slogan popularized by the recently deceased Muslim intellectual Nurcholish Madjid: "Islam - yes; Islamic political parties - no". In an interesting way, it could be claimed that in its own unique context, the majority view in Indonesia is an expression of a desire not dissimilar from some of the original motives behind the so-called "separation of Church and state" in the United States; namely, the *protection* of religious life from undue influence by the state.[10] This religious life which is "protected" in *both* its private and public forms is itself "plural" – that is encompassing variously contextualized forms of Islam and other religions as well.

This is not to make the naïve claim that all of Indonesian Islam is benign and supportive of a pluralistic social reality, or that there has been no inter-faith conflict in Indonesia. The most recent bombings in Bali on October 1, 2005 form just one counter-example to the relatively peaceful existence of pluralized forms of both Islam and religion in general in Indonesia. But as in many places in the world, much religious conflict must be seen against larger political and economic factors. A good example of this is the recent Christian-Muslim conflict in the Moluccas. While this may appear on the surface to be a conflict between religious communities, the obvious question to raise here as in other cases is the following: Why do communities which have lived together peacefully for centuries suddenly erupt into violence? While there is never an easy answer to this question, in the case of the Moluccas Suharto's policies of "Javanization" (the exporting of people from the most populous island of Java to other islands with a different ethnic make-up) is at least partially to blame. This internal movement of largely Muslim Javanese affected the delicate demographic and economic equilibrium between the Muslim and Christian communities in the Moluccas; and there were only too many groupings with a purely political agenda which were willing to stoke this new state of affairs into open conflict. It was religious leaders of the two communities, acting in unison, who spoke out most strongly against the violence largely instigated by outside forces and stressed the traditional tolerance that had allowed these faith communities to live side by side for centuries.

(IV) Whither religious pluralism in Indonesia?

The official motto of the Republic of Indonesia is "Unity in Diversity." Given the vast geographic, ethnic, linguistic and religious variations within the archipelago, this motto is not only a national ideology but also a fair description of the diverse reality of Indonesia. The thrust of this brief exposition of this complex reality has been to

suggest that there is a lengthy and rich story of religious pluralism in Indonesia. Given the overwhelming presence of Islam in the archipelago, this religious pluralism is arguably rooted within a pluralistic sense inside Indonesian Islam itself. As is often experienced, both by individuals and communities, a pluralized identity can be an uncomfortable characteristic to bear, and both individuals and communities can be overtaken by the desire to solidify such an identity into a fixed, homogeneous and ultimately, exclusive unity. Such desires are at work within Indonesia today. For some Islamic nationalists, Islam remains a possible, and perhaps the only possible, dominant characteristic of a unified Indonesia. Within Islam itself, there are calls by some for a sweeping away of what some have called the foreign, "liberal" virus within the Islamic community, and which they view as affront to its very nature of Islam. Despite these tendencies, the vast majority of Indonesian Muslims remain explicitly or implicitly dedicated to the unique, historically determined nature of Indonesian Islam as accommodating a certain flexibility of practice and a variety of local customs and norms.

This openness to a plurality within itself is certainly one of the reasons that the majority Islamic religion has been so resistant to calls by some of its own members to enshrine "Islam" in an overt way in the constitution. At the same time, the seriousness of the religious outlook of the people of Indonesia means that some sort of purely "secular" public society and the relegation of religion to the private sphere is not an option. Hence, a complicated balancing act is undertaken in which both the majority religion of Islam and the minority religious communities of Christians, Hindus and Buddhists occupy a genuinely shared collective space, in which the specific varying practices are collectively fostered. The importance of the continued survival of such a uniquely constructed and collectively nurtured public space for a *plurality* of religious experiences matters greatly – for the communities themselves, for Indonesia, for Islam beyond the archipelago, and given the uses and abuses of religion throughout the world, for all of us.

Notes

[1] In issuing 11 *fatawa* on July 28, 2005, the Council ("Majelis Ulama Indonesia" or MUI) also took the opportunity to condemn "liberalism" and "secularism", as well as looking askance at many forms of inter-faith prayers and certainly roundly forbidding all interfaith marriage [this was in some ways the most peculiar of all the *fatawa*, since it seems to run against the Koran itself [5:5] which does allow the marrying of Muslims males to non-Muslim females "of the Book" (that is, Jews or Christians)]. At the same time, the MUI declared the 200,000 or so followers of Ahmadiyah (an Islamic "sect") to be "apostates".

[2] Of the just over 240 million inhabitants of Indonesia, approximately 213 million are Muslims; 14 million Protestant Christians, 7.5 million Catholic Christians; 3-4 million Hindus centered in Bali; 1-2 million Buddhists, and according to census figures from 2004, there were 411,629 members of "other" religions.

[3] M.C. Ricklefs, *A History of Modern Indonesia* (London: Macmillan, 1981), p. 13.

[4] Clifford Geertz, *The Religion of Java* (Chicago: University of Chicago Press, 1976).

[5] Geertz picks up on the Indonesian self-description of "kolot" to delineate this conservatism.

[6] The 1945 formulation of *Pancasila* was slightly altered in the preamble to the constitution of the "Republic of United States of Indonesia" which was in effect briefly from 1949 to 1950, and in a new "provisional" constitution in effect from 1950 to 1959, when the 1945 formulation was reaffirmed. The important point is that monotheistic religion is given a foundational, constitutional role, but the formulation of the principle "Belief in the One and Only God" makes no explicit reference to any particular religion.

[7] The reference to 'God' is in the preamble of the Canadian Charter of Rights and Freedoms and reads as follows: "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law." Being Part I of the "Constitution Act, 1982", being Schedule B of the "Canada Act, 1982" (U.K.) 1982, c.11

[8] An excellent summary of the complicated religious and political intrigues, both behind Suharto's role and rise to power in 1965/66 and subsequent "Islamic" politics is found in Robert Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton: Princeton University Press, 2000).

[9] One of the pleasant features of the "public space" occupied by religion is the preponderance of official religious holidays marking all the major feasts in the Islamic, Christian, Hindu and Buddhist calendar

[10] As is well known, the general understanding of this separation has largely reversed itself in the subsequent two centuries, to where it is now thought that it is the state which needs protection from religion.

AGAINST THE CURRENT: THE ESTABLISHMENT OF ISLAM IN THE NETHERLANDS

ABSTRACT

With the arrival of immigrants from Turkey, Morocco, Surinam and other countries, the number of Muslims in the Netherlands has also increased. During the last decades, they have set up numerous organizations and institutions. Jan Rath says the way in which Muslims have attempted to create a place for themselves in society is the result of the interaction of many factors. While the initiatives of Muslims themselves are important driving forces behind the process of institutionalization, Dutch society intervenes in various ways by stipulating conditions and building in limitations. The recent 'neo-realism' turn in the Netherlands interferes in this. It nourishes the distrust of Muslims and further governmental interference in the lives of Muslims.

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The Netherlands has long been noted for its progressive, humanistic stance. Although it remains to be seen whether this image is accurate, many people inside and outside the Netherlands have regarded its relatively lenient multicultural minorities policy as a hallmark of tolerance. Yet the Dutch approach to immigrant ethnic minorities has come under increasing attack since the late 1980s, especially in recent years. Slowly but surely, many ethnic Dutch natives have grown uncomfortable with the prevailing approach and are showing a marked impatience with the pace of 'integration'. The smouldering discontent with the last social democratic and liberal government coalition (1994-2002) was fuelled by populist politicians, notably Pim Fortuyn, when they revolted against the unspoken agreement to refrain from mobilising the anti-immigrant vote to gain political support at the expense of ethnic minorities. Since the 2002 parliamentary elections, the Dutch government has shifted gears to embark on a tougher 'integration policy', placing increasing emphasis on native norms, values and behaviour and on disciplining the Other. The 'neo-realism' that has informed this shift has been accompanied by fierce criticism of Islam and, what many people believe to be, the Muslim way of life. The terrorist actions in various places in the world, the war against terror, the slaying of the maverick moviemaker Theo van Gogh and so forth have nourished the distrust of Muslims on the one hand and further governmental interference in the lives of Muslims.

Similar developments can be observed in many other countries in Europe. The fact that Muslims in the Netherlands are taking the heat has nonetheless surprised many observers, because it concerns a country which has been familiar for centuries with religious diversity. Before the Second World War and in the 1950s the forces of 'pillarization' produced a society in which religion and ideology were among the central social determinants, and in which citizens organized themselves accordingly. The social groupings based on religion or a philosophy of life formed 'pillars'; these were more or less closed communities, within which all social life took place from the cradle to the grave. Each pillar had its own institutions, including hospitals, daily and weekly newspapers, broadcasting networks, schools, universities, housing associations, trade unions, small business associations, political parties, and even sports clubs and choirs. There was virtually no interaction between the pillars, except right at the top, where accommodation between them was arranged and where the political leaders were in close consultation with each other, settled imminent conflicts and protected their own interests. In the developing welfare state, pillarized organizations were closely involved in the formulation and implementation of government policy, not least in the allocation of social goods and services to the citizens, which justified their existence. This state of affairs was firmly anchored not only in social and political practice, but also in legislation. Although counter-forces of 'depillarization' were present during the development of this pillarized system, they had limited influence. Not until the mid 1960s, simultaneously with the churches' loss of influence and the growth of secularization, did the pillarized organizations lose their dominant position and did their 'natural' involvement with policy recede. Things no longer revolved mainly around religious or ideological collectives, but more around the individual.

Although the advancement of Islam and the decline of pillarization were more or less coincidental in time, in a certain sense they pulled in opposite directions. To be sure, there is a suggestion that Muslims have been unlucky in their timing: that they settled in the Netherlands 'too late'—at least too late to take advantage of the pillarized structure. On the other hand there is the fact that the pillarized system is far from completely dismantled. Many of the social, political, and legal practices and structures are still wholly or partly intact. In this particular arena, to what extent have Muslims demanded and obtained opportunities to give form to their identity and institutions according to their own agenda?

The Making of an Established Religion

The settlement of immigrants from North Africa, Asia and elsewhere has brought with it a massive influx of Islam into the Netherlands. Very rough estimates suggest that there are today approximately a million Muslims living in the country (out of a total of 16 million inhabitants). At first Muslims led a rather 'concealed' existence, but they have gradually pressed for the establishment of institutions that—among other things — would enable them to practice their religion.

Muslims have so far mainly been active in the sphere of religion. Almost immediately after their arrival in the Netherlands they sought opportunities for the observance of collective prayer, and established places of worship. At first these were unofficial (in residential or business premises) but gradually dedicated foundations or associations were set up to develop 'real' mosques. By now there are almost 400 places of worship or mosques in the Netherlands, to which must be added that many organizations are still struggling with problems of accommodation.

In the political sphere little happened at first: contacts between Muslim organizations and the government were limited to practical problems, such as ritual slaughter, or the establishment or financing of places of worship. This began to change in the course of the 1980s when contacts became less occasional and informal. Separate Muslim political parties or trade unions did not appear to be viable. In some places, and also nationally, federal leagues of Muslim associations and foundations were set up to represent their constituents in discussions with the government on specific policy matters.

Instruction in the Qur'an has been provided for many years in almost all local Muslim organizations, but there was no real breakthrough in the sphere of education until the 1980s. That is when the Muslim broadcasting network began transmitting, when training courses were arranged for imams, and the first Muslim primary schools were opened. Today, there are already more than thirty such schools (fully funded by the government, but required to comply with the official curriculum—only a few per cent of Muslim kids are sent to these schools) as well as a Muslim school board organization. Initiatives have been taken in various municipalities for Muslim religious instruction to be offered in state primary schools; this, however, has actually been achieved only on a very limited scale. A (highly contested) imam training programme is now being offered by a Dutch educational institute.

In the sphere of law, the socio-economic and socio-cultural spheres, and in that of social welfare, very little has in fact happened. To a limited extent there has been recognition of Muslim law in international private law, particularly in family law. Dutch society only recognizes some parts of Muslim family law, in so far as they are part of the national law of the country of origin and are not in conflict with Dutch law. There are also Muslim butchers, mosques run teahouses and shops, and there is a Muslim architectural office, all on a limited scale.

> The terrorist actions in various places in the world, the war against terror, the slaying of the maverick moviemaker Theo van Gogh and so forth have nourished the distrust of Muslims on the one hand and further governmental interference in the lives of Muslims.

In summary, generally the formation of Muslim institutions has been a rather selective process. A great deal has happened, but at the same time a great deal has not. Being aware of the ideal-typical model of Dutch pillarization, one would have expected a Muslim daily and weekly press, maternity clinics, hospitals, care homes, swimming clubs, trade unions, pressure groups, housing associations, political parties, and so on and so forth, but in practice there are none of these. We can conclude from all this simply that in the Netherlands, in terms of institutional arrangements, there is no question of a Muslim pillar, or at least of one in any way comparable with the Roman Catholic or Protestant pillars in the past.

Interestingly, few claims have been categorically rejected. Typical exceptions are polygamy and female circumcision, in so far as Muslims have advanced such claims (which is rarely the case). Having said that, only in exceptional cases has the surrounding society chosen to recognize Muslim institutions as a matter of course and unconditionally. Usually obstacles have been put forward from one quarter or other, and in most cases recognition has only been achieved after long pleading. All this, however, means that Muslims in the long run have achieved most of what they wanted.

In by far the majority of cases the key to the process of recognition lies with the national and local government or with particular sections of it. However, this role is by no means played out unequivocally or consistently. At certain times government can actively encourage the formation of Muslim institutions, while at others they can adopt a neutral, legalistic point of view, delay the opening of some institutions, or put a direct block on things. Often, it is a question of differences between individuals; some officials interpret the rules to the letter, while others are more amenable. There is one category of officials in the government very emphatically involved with Muslims; it consists

of those whose directorates, departments or services are responsible for developing and implementing the integration policy. Leaving aside exceptional cases, such as Utrecht, where Muslim organizations were excluded in principle from the consultation arrangements for ethnic minorities, the integration policy appears to have acted as a catalyst for the recognition of Islam. However, the institutionalization is being steered in a specific direction, because it has to serve the purposes of this integration policy.

The government and the political world want Muslims to organize themselves in a manner considered acceptable and efficient in the Netherlands, that is to say with representative organizations or in coordinating bodies with approachable spokesmen, as if the Muslims in the Netherlands form a coherent community. In this way the administrators hope to avoid becoming ensnared in mutual bickering, or having to deal with an amorphous mass with constantly changing leaders. At the same time they want to increase the legitimacy of their political actions. In the knowledge that Muslims have no proper representation, or can only achieve it with great difficulty; this principle is sometimes applied elastically. That was the case in the regulation of ritual slaughter, training for those carrying out circumcisions, and providing access for imams to prisons. But at other times it was regarded as a non-negotiable condition, as in regulations on the access of imams to the armed forces and the allocation of transmission time to the Muslim broadcasting network. In these cases the requirement for representativeness acquired the nature of a blocking activity, and sometimes that was the intention.

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It may appear that reactions to the development of Muslim institutions are first and foremost determined within a 'religious' political or administrative context, and that they are directly concerned with religion, in this instance Islam. That is not, however, the case. All kinds of more general policy considerations, which have nothing to do with the advent of Muslims, sometimes seem to play a crucial role. The revision of the Constitution (in 1983), to quote a major example, had in itself little to do with Islam or its followers, though its consequences for them were certainly important. The faci-lities which churches had enjoyed up till then (including free postage and exemption from taxes), were removed with the stroke of a pen. Paradoxically the revision also offered new opportunities to Muslims. The government had to revise their arrangements with the churches about, for example, spiritual guidance in the armed forces, or the ringing of church bells, and they recognized Muslims as one of the dialogue partners in such matters. This finally turned to the advantage of Muslims in the sense that they acquired certain facilities without too many problems. Other general policy considerations which played a role were the decentralization of welfare policy, urban redevelopment in inner-city areas, economies of scale in education and—last but not least—the integration policy.

Muslims and the Modern Social Imaginary

It is clear that *individual* Muslims (like all other residents in the state of the Netherlands, and like the adherents of other religions or ideologies) can make claims on the government for all kinds of rights and provisions. However, opinions differ widely about the practical applications of those provisions. In particular, the *collective* pronouncements of Islam provoke a great deal of deliberation.

Muslims, according to the prevailing opinion, have an excessive tendency to cling together; they resist joining modern Dutch society and will not or cannot integrate into it; they have an irrational preference for traditional, that is to say non-democratic, forms of political leadership; they do not treat women on an equal basis with men; they hold old-fashioned views on the education of children; they are extremely susceptible to influence by international powers, particularly arch-conservative ones; and in the Netherlands they undermine the separation of church and state. In these views Islam is an extraordinary conglomeration of pre-modern and culturally alien elements. Whether or not there is any truth in this is irrelevant for us. These are ideological opinions about Islam and its believers which can condition actions.

Take, for example, the separation of church and state. In a country which observes Sunday as a day of rest, in which the speech from the throne has always ended with a prayer, where in parliament and in courts of law oaths can be sworn on the Bible, and the words *God met ons* (God with us) are inscribed on the rim of coins, opinions about the separation of church and state have oddly enough acquired the status of canon law. The idea exists that non-Muslims strictly respect this separation without exception, yet that Muslims take absolutely no notice of it, and indeed think that it is fundamentally incompatible with their religion. In practice, things are obviously more complicated. Rotterdam is a case in point: today, the city council intended to withhold planning permission to mosques that confine themselves to religious matters and would not engage in social and political activities. In other words, the council was planning to rebuke Muslims for complying with the separation of state from church. In so doing, the city violated the separation of state from church.

In summary we can conclude that from an ideological point of view Islam has had to develop under a rather unfavorable star in the Netherlands. That in spite

of this it has been possible for a range of Muslim institutions to emerge and gain recognition appears, when seen in this light, to be a miracle. Nonetheless the explanation for it must be sought in sublunary circles. The fact that the current legislation and regulation, political conventions and ethics do not permit unequal treatment of comparable cases is a major factor in this. (In the heyday of pillarization that would have been the equi-valent of swearing in church, a major assault on the truce reigning between the various religious denominations). For that reason claims for equal treatment in political practice have given rise to fewer objections than have claims for special treatment.

In practice equal treatment often implies being absorbed into an existing routine. It is partly for this reason that male circumcision could be recognized relatively easily; doctors and insurance companies regarded it as an everyday medical operation. Moreover, this institution had been practiced for years by another religious minority group: Jews. Various rights and facilities were granted to Muslims because the principle of equality did not permit them to be treated differently from members of the Jewish community.

Conclusions

Although the development of Muslim institutions in the Netherlands is relatively far advanced in comparison with other countries, it is far from being a 'European Mecca' for Muslims. Indeed, we should not close our eyes to the fact that in the Netherlands the predominant emotions among the settled population are fear and unfamiliarity. The fear that existing traditions, arrangements and power positions, or newly acquired liberties, will be brought into jeopardy, works against the recognition of Muslim institutions. It is particularly the nature of the institutionalization and the positive recognition of religious pluriformity established in legislation and regulation that matters here: Dutch society is steering a course—in part with the help of the instruments of the integration policy—strongly towards an Islam oriented towards Dutch society, regardless of whether that course is one supported by the Muslims themselves.

In recent years fierce debates have flared up about the place of Islam in Dutch society. But if we review the process of institutionalization, we must soberly conclude that in fact such debates have come rather late in the day. The national public debates only took place after many institutions were already established and recognized. In many cases, too, they are only indirectly relevant to what is in fact happening, not least because they are dominated by abstract and ideological views, but also because they take little account of the limitations on the power of society to oppose the establishment of Muslim institutions, assuming that it wanted to. The fact is that Muslims only make use of common, hence universally valid, constitutional rights—including freedom of religion and the principle of equality—which rightly are held to be of the highest importance in the Netherlands. Anyone questioning these rights encroaches on the foundations of their own society. Worrisome, however, is that the number of supporters of such an extreme position seem to be growing rapidly?

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RELIGIOUS PLURALISM IN NEW ZEALAND

ABSTRACT

New Zealand's religious history has been dominated by cultural and economic connections with the UK/Ireland, Maori religious movements and a concern by the state to limit religious involvement in major societal institutions. Peter Lineham and Paul Spoonley suggest immigrant-derived cultural diversity in the last few decades has also resulted in greater religious diversity. They argue the state, for historical and contemporary political reasons, has been slow to adjust to this diversity.

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Religious Considerations in New Zealand's Policy Framework

The colonisation of New Zealand by the British was reflected in immigration and settlement patterns. From the signing of the Treaty of Waitangi between some local Maori chiefs and representatives of the British government in 1840 until major changes to immigration policy in 1987, the majority of immigrants to New Zealand were British or Irish, with the exception of Chinese gold miners invited to the colony in the 1870s. Religious affiliation and the establishment of churches reflected the nature of immigration, with the Irish settlement of the West Coast of the South Island providing the base for Catholicism, the Scottish migration to Otago producing a strong Presbyterianism and the English arrival in places such as Taranaki and Nelson contributing to strong Anglican centres. In short, the central values and institutions, including religion, reflected the dominance of British and Irish immigrants and the economic and cultural connections with Britain as the colonising power. Yet New Zealand was founded in the aftermath of the Enlightenment and the state had recently given full political and social rights to Catholics, and consequently, no form of Christianity was accorded establishment status. Religion was excluded from the schools in 1874 in order to prevent religious sectarianism. While the Church of England retained both the strongest support and a certain social superiority based on its English establishment status, it became an independent denomination in New Zealand.

Perhaps the most significant alternative to these developments came in the form of Maori religious movements (Hill, 1994). Judaeo-Christian traditions were combined with traditional Maori spiritual beliefs and their political ambitions to provide a range of new religious traditions. Not only did variations on Christian belief systems emerge, but in the 1930s, the Ratana movement established an important political alliance with the Labour Party. This was less powerful in determining Maori members of Parliament by the end of the twentieth century, but it is part of a long tradition of Maori-specific religious movements and a political expression of Maori concerns. Maori continue to have a very distinctive range of religious affiliations compared to Pakeha (majority group members of European descent). Of a total population of 495,219 people in the 2001 census, 50.3 per cent belong to the mainstream European denominations (particularly Anglican and Catholic), while 45,174 adhere to Ratana, and another 14,000 to other independent Maori Christian groups (11.7 per cent in all), 9,279 (1.9 per cent) to other religions and 38.8 per cent describe themselves as having no religion or declined to answer the census question on religion.

Religion has played a role in New Zealand history, but the country has experimented from an early stage with political and welfare institutions conceived on a secular basis. A Liberal Government in the 1890s saw the political enfranchisement of women, national systems for mediation between workers and employers and a nascent welfare state. The union movement brought about the formation of the Labour Party in 1916, one of the two dominant political parties of the twentieth century. While many of those involved in these politics and the key institutions have been affiliated to a church, the state and key institutions have tended to be secular and there has been a clear demarcation (with some exceptions – there continue to be schools which are associated with a particular church but these provide education to a minority of New Zealanders) between religion and the state. For example, under the Education Act, religious education in the state education sector can only take place in school hours when the school is

technically closed. However, since 1975 the Integration Act has funded church-based and other schools, so long as 95 per cent of their role is drawn from their distinctive constituency. This Act, originally intended to rescue the Catholic educational system from bankruptcy, has provided a basis for the funding of an ever-increasing variety of religious schools. By the 2001 census, 60.7 per cent of the Pakeha/European population adhered to a Christian denomination (the largest affiliations were Anglican, then Catholic and Presbyterian), while only 1.61 per cent to a non-Christian religion, but 31.8 per cent declared that they had no religion and another 7.1 per cent declined to answer the question. It is the growth of the non-religious which has been the most marked feature of European religious change over the last fifty years. Immigration from South Africa has strengthened Anglican and Presbyterian affiliations, but many other new Europeans have either been secular or Catholic in outlook.

Immigration

British and Irish immigrants dominated immigrant flows to New Zealand until a major review of immigration policy took place in 1986. There were a growing number of migrants from the Pacific Islands from the late 1950s, and they constituted a significant proportion of all migrants. The fact that they were culturally different, and were seen to be a 'threat', developed into a major political response in the 1970s. Ironically, the levels of religious affiliation amongst these Pacific migrants were very high and Christian churches and their ministers are a core part of the life of these communities (see Macpherson, Spoonley and Anae, 2001). By 2001, of the 218,472 Pacific peoples (other than Maori) answering the Census, 83.1 per cent described themselves as Christian (the largest groups were Presbyterian, then Catholic, Methodist and Mormon), 1.4 per cent described themselves as belonging to another religion, while 11.7 per cent declared that they had no religion and 5.1 per cent declined to answer the question. This is a much more traditionally Christian population.

After 1986, immigrants from traditional source countries were replaced by non-traditional sources, notably Asian. Many of these new migrants from Hong Kong, Taiwan and Korea were also Christian although more recent migrant flows have been dominated by migrants from China and India who are much less likely to be Christian. In addition, New Zealand has an important although relatively small flow of refugees who, in recent years, have tended to come from North Africa (Somalia) or West Asia (Iraq, Iran). There are small but growing Muslim communities. In the 2001 Census, Asian people accounted for 223,359 (six per cent) of people out of the total population. Of these Asian people, 29.72 per cent were Christian (with the Catholic Church the largest affiliation), 15.82 per cent Hindu, 13.36 per cent Buddhist, 5.06 per cent Muslim, while 29.95 per cent declared that they had no religion and another 4.1 per cent declined to respond to the question. However, it should be noted that there has been a signi-ficant proportion of Christian recruiting, especially by the Catholic Church from the non-religious, especially those drawn from the People's Republic of China.

New Zealand, in one of its regular waves of reform, developed a more extensive biculturalism in the 1980s which focussed on relations and policies affecting the dominant Pakeha and Maori. But with a foreign-born population which exceeds (proportionately) that of Canada and is not far behind Àthat of Australia's, New Zealand has yet to develop a multicultural framework. It has developed an extensive set of policies associated with human rights, both in terms of national legal requirements and in terms of the practice of particular institutions (hospitals, schools). But under this legislation, there is no provision for adequately dealing with religious discrimination.

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Religious Politics

The declining numbers of those associated with the major Christian churches has been replaced with a new religious diversity of two key types. The first is the growth of fundamentalist Christian groups as part of a moral right. Since the 1970s, governments of both centre-left and centre-right have introduced a series of liberal measures relating to issues such as women's and gay rights, abortion and education. Yet at the same time, the numbers affiliated to fundamentalist religious groups have grown significantly, particularly Pentecostal, who now number 66,855 (just under two per cent of the population) and they have been prepared to express their views in the political arena. The overall potential conservative Christian community has been estimated as comprising five to seven per cent of the population. When homosexual law reform occurred in 1985, a coalition of the religious right mounted an extensive political campaign in opposition, and eventually two Christian political parties emerged following this campaign. More recently, the Destiny Church, which draws most of its supporters from Maori and Pacific communities, has taken part in public demonstrations and established its own party to contest

the 2005 general election in defence of a particular and conservative Christianity. The expression of their views in the political arena, and that of other morally and religiously conservative groups, has been encouraged not only by what is perceived to be the unnecessarily liberal policies of major political parties, but the arrival of Mixed Member Proportional political representation. This has provided an opportunity for ethnic and religious groups to be represented politically. The number of Members of Parliament from a variety of ethnic groups since MMP was introduced in 1987 almost exactly mirrors the proportion of these groups in the general population. There have also been explicitly religious political parties represented in Parliament, including United Futures, which has adopted a less extreme form of religious conservatism (a focus on the family) and which has been a coalition partner with the centre-left Labour Party in government.

The other aspect of diversity is the growing presence of non-Christian religions, typically associated with much more diverse immigration flows. Orthodox and liberal Jewish communities have grown with the arrival of migrants from South Africa and Russia, but the larger growths have been experienced by Hindu, Buddhist and Muslim groups. There are now 23,000 Muslims along with 41,000 Buddhists and 39,000 Hindus. The Islamic community continues to rise rapidly and may soon reach 40,000. As the communities have begun to mature and with this maturation and their size, they have established a variety of religious buildings, their own religious workforce and associated institutions such as educational activities (or schools). They are a much more visible presence, especially in Auckland. This immigrant-associated religious diversity has also impacted on Christian communities. A number of traditional church buildings (Anglican, Presbyterian, Methodist etc) have been bought by Asian Christian communities and they now host new variants on Christianity. Christian sects, including the Latter Day Saints and Jehovah's Witnesses, are also potential beneficiaries from the changed circumstances, although it is the Catholic Church which has benefited most, particularly because immigrants prefer to keep their children out of state schools.

The effect is to see declining numbers of those associated with traditional Christian churches and the growth of sects, cults and non-Christian communities. There is a growth in numbers and of diversity. Moreover, some of these communities, especially fundamentalist Christian communities have been prepared to become politically active. Ironically, they largely tend to be politically opposed to religious (and to some extent ethnic) diversity, arguing instead for narrow moral and religious code to be implemented and to be authoritarian on a range of moral and social issues.

New Zealand can be generally described as a liberal democracy with relatively high levels of inter-group tolerance in terms of religious issues and affiliation. But the policy framework has yet to maintain pace with the rapidly changing ethnic and religious diversity that characterises New Zealand in the twenty-first century.

Policy Responses

The score card in terms of how well New Zealand institutions have responded to growing ethnic and religious diversity is mixed. In some respects, the major institutions have adapted. The New Zealand Parliament does reflect contemporary ethnic diversity in terms of who is elected, although some political parties (the anti-immigrant New Zealand First and the conservative opposition of the National and ACT parties to ethnic recognition) have expressed major concerns about the impact of ethnic diversity and opposition to the limited policy responses which have emerged. Religious diversity is also reflected in political representation with some of the more conservative religious communities either seeking to enter Parliament (and some have) or to influence election campaigns and government decision making. The major shift in terms of ethnic recognition has occurred with regard to Maori and biculturalism is now a major part of the policy landscape. Multiculturalism has not been developed as a significant policy. Nor is there adequate recognition of religious discrimination in the human rights legal framework. Here, the policy response is lagging behind the reality of the new cultural and religious diversity of New Zealand.

Two examples of the extent to which religious pluralism has entered the consciousness of New Zealand in the recent past are linked to Islam, which is often portrayed in the popular mind as the most intolerant of religions. Yet New Zealand's only Islamic Member of Parliament voted in favour of civil unions and abstained from voting on the bill which legalized prostitution. Meanwhile, New Zealand's most prominent refugee, an Algerian who had been a member of the democratic government in Algeria, carefully espoused a tolerant form of Islam. The mainstream Christian churches have also carefully embraced tolerance of alternative lifestyles, but the growing and more active forms of churches have tended to be much less tolerant.

New Zealand went through a major period of reform in the 1980s, driven by neo-liberal politics. One aspect of these changes was to recruit immigrants who could contribute to the economic performance of the country. In line with neo-liberalism, it was assumed that having carefully selected skilled and well-educated migrants, that they would then require little or no

post-arrival support. This was also reflected in a general unwillingness to develop policy that more adequately acknowledged the new ethnic and religious diversity of New Zealand. This is not true of the indigenous Maori and their relations with the state, and the policy of biculturalism which has developed (although this has also attracted political opposition). New Zealand can be generally described as a liberal democracy with relatively high levels of inter-group tolerance in terms of religious issues and affiliation. But the policy framework has yet to maintain pace with the rapidly changing ethnic and religious diversity that characterises New Zealand in the twenty-first century.

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THE APPLICATION OF ISLAMIC NORMS IN EUROPE: REASONS, SCOPE AND LIMITS

ABSTRACT

Immigration states have to face the challenges of remarkably different modes of behaviour, self-understanding, beliefs and values among some groups of immigrants. Mathias Rohe looks at whether institutionalised forms of non-judicial dispute resolution on the basis of Islamic law are desirable to meet the special needs of immigrant groups, or if that could lead to forms of legal segregation to the detriment of the weaker parties and to social coherence. He suggests that the European experience until now demonstrates that, except in the UK, the overwhelming majority of Muslims are coping well with the existing legal framework and the available means of judicial and extra-judicial dispute resolution.

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Migration is not restricted to issues concerning labour, education or political asylum. Immigration states have to face the challenges of remarkably different modes of behaviour, self-understanding, beliefs and values among some groups of immigrants. Certainly, social and cultural difference has been an integral part of European societies for a long time, and a large number of immigrants highly appreciate the legal and social framework of these societies in general. This is equally true for Muslim immigrants. The current perception of Muslims being a homogenous group of people with a strong religious affiliation is simply wrong. Nevertheless, an obviously increasing number of Muslims is eager to achieve more certainty in defining their position as European Muslims. The crucial question for them is to define Muslim identity – including the practical fulfillment of Islamic rules – within the framework of European legal orders and societal needs.[1] With regard to that question, we have to differentiate between religious and legal issues. The former are regulated by the European and national constitutional provisions. It is mainly in the sphere of religious rules – concerning the relations between God and human beings and the non-legal aspects of the relations between human beings – where a European fiqh (Islamic "law") is possibly developing.[2] As it comes to the application of *legal* rules, the conflict between possibly contradicting rules of the law of the land and the law of religious/cultural origin has to be solved.

In the field of law, most of the existing legal orders have a territorial basis: everyone within the territory of a specific state has to abide by the same laws. Only the state can decide whether and to what extent 'foreign' law can be applied and enforced on its territory. Thus the legal system is not 'multi-cultural' as far as it concerns the decisive exercise of legal power. Therefore, the application of foreign legal provisions – including Islamic ones – is an exceptional case. However, this does not mean that foreign legal principles and cultural influences are kept out. Nevertheless, the constitutional principles of the inviolability of human dignity, democracy, the rule of law with the binding force of all state power, separation of powers, majority rule and minority protection, as well as the essential elements of constitutional civil rights, such as the equality of the sexes, freedom of opinion, religious freedom and protection of marriage and family etc., are among the basic principles which cannot be dispensed with. Within this framework, foreign legal provisions can be formally applied on three different legal levels. Besides that, the state has no control on informal ways of application as long as its bodies are not called upon by one of the parties involved.

1. *Private International Law* (the rules regulating the conflict of laws in matters concerning civil[3] law) is a possible level of direct application of Islamic legal rules. In the area of civil law, the welfare of autonomously acting private persons is of prime importance. If someone has organized his/her life in accordance with a certain legal system, this deserves protection when the person crosses the border. However, it is also within the interest of the legal community that in certain matters the same law should be applicable to every resident in a particular country. This would be especially the case in matters touching the roots of legal and societal common sense, like the legal relations between the sexes or between adherents of different religions. The question as to whether foreign or national substantial law should be applied must therefore be determined, and this is done by Private International Law provisions (conflict of laws), which weigh up the relevant interests.

As it comes to the areas of family law and the law of succession, the application of legal norms in European countries is often determined on the basis of nationality of the persons involved rather than by their domicile.[4] Other than in Canada or in the U.S.[5], European courts are therefore often obliged to apply Islamic legal rules. In this respect it may generally be stated that Islamic law until today has a strong position especially within these areas. This can be explained by the fact that Islamic law in this area has a multiplicity of regulations derived from authoritative sources (*Qur'an* and *sunna*). Furthermore, a powerful lobby obviously tries to preserve this area as a stronghold due to religious convictions as well as for reasons of income and the exercise of power (which was very similar in Europe in former times). The Tunisian lawyer Ali Mezghani states that "[i]n Islamic countries, it is difficult to deny that family law is the site of conservation."[6] This is true despite the fact that in several Islamic countries reforms have taken place and still are in progress.[7]

However, the application of such provisions must comply with the rules of public policy. If the application of legislation influenced by Islamic law would lead to a result that is obviously incompatible with, for example, the main principles of German law, including constitutional civil rights, the provisions in question cannot be applied. The main conflicts between "Islamic" and European legal thinking in family law concern the constitutional (and human) rights such as equality of the sexes and of religious beliefs and the freedom of religion including the right not to believe. Conflicts mainly arise from provisions reflecting classical Islamic Law, which preserve a strict separation between the sexes with respect to their social roles and tasks as well as the far-reaching legal segregation of religions under the supremacy of Islam.

The German Supreme Court has clearly stated that there is no room for the presumption of Turkish wives living in a "typical Muslim marriage" to be deprived from autonomous decision-making in daily life.

2. A further area of – indirect – application opens up within the framework of the so-called *'optional' civil law*. Private autonomy is the core value of the liberal European Civil law orders. Thus, in matters exclusively concerning the private interests of the parties involved, these parties are entitled to create and to arrange their legal relations according to their preferences. Legal rules regulating such matters are "optional" within a certain framework.

As an example we may note the fact that various methods of investment are offered which do not violate the Islamic prohibition of usury ("riba", which according to traditional views means the general prohibition of accepting and paying interest[8]). Concerning project finance, Islamic legal institutions like the murabaha or the mudaraba can be used.[9] These are certain forms of partnerships intending to attract capital owners to participate instead of merely giving credit, the latter bearing the risk of contradicting the riba-rules. Commerce and trade have already responded to the economic/legal needs of traditional Muslims. German and Swiss banks, for instance, have issued 'Islamic' shares for investment purposes, that is to say share packages that avoid companies whose business involves gambling, alcohol, tobacco, interest-yielding credit, insurance or the sex industry, which are illegitimate in Islamic law.[10] In the UK a special concept of "Islamic mortgages" was developed, which allows Muslims willing to purchase chattel to avoid conflicts with provisions concerning riba (when paying interest on "normal" mortgages).[11] The "Islamic" mortgage consists of two separate transactions aiming at one single result. Until recently each transaction was subject to taxation. Now a reform took place of which the key issue was to abolish the double "stamp duty", because it prevented Muslims from economically successful engaging in real property due to the formal system of taxation without a sufficient substantial reason. Even the German state of Sachsen-Anhalt has recently placed an Islamic bond ("sukuk"[12], 100m Euro for the beginning), based on a Dutch foundation.[13] For traditionally orientated Muslims, the offer of such forms of investment in Europe is of considerable importance. According to my knowledge many of them have lost huge sums of money in the past to doubtful organisations from the Islamic world bearing a "religious" veil, or to similar organisations based in Europe[14].

In the field of Matrimonial law, tendencies of implementing Islamic norms into optional law can also be identified in Germany in connection with matrimonial contracts.[15] Thus, in Germany contractual conditions regulating the payment of the "Islamic" dower ("mahr" or "sadaq") are possible and generally accepted by the Courts.[16] Other contractual regulations, especially those discriminating against women, could be void according to para. 138 German Civil Code on the protection of good morals.[17] There are no court decisions on such issues so far published or known. However to my knowledge some German notaries refuse to assist in formulating wills[18] containing the classical Islamic regulation on half-shares for female heirs.

3. In addition to general rules of Private International law and optional civil law, a few European states *introduced Islamic legal provisions* concerning family and succession matters to be applied to the Muslim population. In Britain Muslim institutions may apply for being entitled to register marriages. Furthermore, according to the Divorce (Religious marriages) Act 2002, courts are enabled to require the dissolution of a religious marriage before granting a civil divorce.[19] The Adoption and Children

act 2002 amended the Children Act 1989 by provisions (sect. 14 A ss.) introducing a "special guardianship" as a legal means of parental responsibility besides adoption which is forbidden by Islamic law[20]. In Spain, since 1992 Islamic rules regulating the contracting of marriages can be applied to Muslims.[21] In order to ensure the necessary legal security there are compulsory provisions for the registration of these marriages.[22] This kind of legal segregation is very much limited, concerning mere formal regulations without any relevant material quality. Interestingly, also in Spain the legislator has amended art. 107 Código Civil regulating the right to divorce. The amendment enables women resident in Spain to get divorced even if the law of origin or of their matrimonial home prevents them from doing so. The legislator has stated expressly that this amendment was to solve problems to this respect especially regarding Muslim women.[23]

Within the European Union only in Greece the Muslims of Turkish origin are still living under traditional Shari'a rules for historical reasons[24], while the Turkish Republic has continuously reformed its civil laws and since 2002 introduced the legal equality of sexes in family law. This can hardly serve as a model for Europe. Despite widespread tendencies in the Islamic world aiming to improve women's rights, many legal orders in this region are still far from the legal standard of equality of sexes achieved in Europe. It would simply be unacceptable to implement such rules into the existing systems.

Nevertheless, in Britain the Union of Muslim Organisations of UK and Eire has formulated a resolution demanding the establishment of a separate Muslim family and inheritance law automatically applicable to all Muslims in Britain.[25] The underlying idea might to be found in the legal situation on the Indian subcontinent – being the prevailing region of origin of Muslims in Britain – which was and still is ruled by a system of religious separation in matters of family law.[26] The same is true for most of the Islamic states in past and present. But introducing a religiously or ethnically orientated multiple legal system into Europe does not represent a realistic or even desirable option:[27] Such systems may be helpful and historically even exemplary in the past, if they granted rights and freedoms for minorities, which would otherwise be lost. However, this will always result in problems in the form of an inter-religious conflict over laws as it can be seen outside Europe. Besides that, freedom of religion contains the freedom to change one's religion or not to belong to any religion. This freedom would be unduly constrained by forcing people into a legal regime defined by religion. Furthermore, there is no uniform Islamic legal system of substantial rules to be identified. The Turkish Republic, being the state of origin of the Muslim majority in Austria and Germany completely as well as in other parts of Europe abolished the Shari'a rules, and the vast majority among them would heavily reject the reintroduction of such rules in European countries. The same is true for France.

Freedom of religion contains the freedom to change one's religion or not to belong to any religion. This freedom would be unduly constrained by forcing people into a legal regime defined by religion.

Instead of that, Muslims are entitled to create legal relations according to their religious intentions within the framework of optional civil law.

4. Within the scope of private autonomy, the parties concerned are free to create legal relations within the limits of public policy and to agree on the ways and results of non-judicial dispute resolution. In matters of family law, relatives will often be consulted first. As it comes to Muslim immigrants, various research projects in Europe in recent years clearly demonstrate that considerable groups of them maintain the structures of family life current in their countries of origin.[28] Some of them are reluctant to use the legal remedies provided by the law of the state they are domiciled in because they believe that they are bound to legal orders different from the law of the land. Others are simply unaware of the fact that in certain matters including family law (e.g. with respect to contracting marriages and divorce) the formal legal rules of the state of domicile have to be observed; otherwise the intentions and acts of the parties involved are not legally enforceable. Thus, a marriage contracted solely according to traditional Islamic rules may be socially accepted within the community, but it deprives the spouses from legally enforceable rights in the state of domicile with respect to maintenance or inheritance usually connected to marriages. On the other hand, these women cannot obtain a divorce in states courts because they are not regarded as to be married according to the law of the land. Therefore they seek "internal" solutions within their community.[29] Besides that, some religious extremists and traditionalists openly argue that Muslims should not accept the legal norms and judgments of "infidels". They should instead of that establish their own bodies of dispute resolution and elect their own judges.[30] Would then extra-judicial dispute resolution create a viable solution for weighing up the relevant interests of the parties involved in a manner consistent with the community's standards as well as with the indispensable principles of the law of the land?

In general, there is a remarkable shift towards means and bodies of extra-judicial (alternative) dispute resolution (ADR) in many countries. The advantages of this kind of dispute resolution are obvious. The necessary confidence in persons resolving conflicts and in the quality of their decisions may increase when they are explicitly and unanimously chosen by the parties involved. In addition to that, ADR may provide a relatively quick and cheap dispute resolution. Specific reasons for ADR with respect to religious or other

minorities with an immigration background were already mentioned. Muslims adhering to the rules of traditional Muslim family law would possibly feel "respected" by society as a whole.

The key prerequisites for a successful and fair ADR are an agreement of the parties involved to prefer ADR voluntarily and for common reasons, and qualified arbitrators or mediators applying norms which equally consider the legitimate interests of each party. The question remains if the mere existence of such an agreement is sufficient. Certainly, within the scope of private autonomy agreements between adult and mentally healthy persons are supposed to be valid and fair unless there is any specific evidence for the contrary. However, in the context of migration and societal segregation, formal freedom to agree or not to agree can be factually restricted to only one option, if the relevant party has to expect substantial disadvantages in social life in case of choosing the "wrong" option. Thus, if such factual pressure on the weaker party is not a merely theoretical threat, the official recognition of communitarian bodies for ADR and their decisions could prevent the weaker party from the protection granted by the law of the land and enforced by official courts. Formal equality under conditions of material inequality usually leads to the preservation of inequality. As it was mentioned above, despite various reforms in several Islamic states Islamic Law of personal status does not grant equal rights for females and non-Muslims. We should certainly reject the simplifying picture of Muslim women being suppressed and powerless victims in general. The German Supreme Court[31] has clearly stated that there is no room for the presumption of Turkish wives living in a "typical Muslim marriage" to be deprived from autonomous decision-making in daily life. Nevertheless, remaining problems, often caused by cultural motivation, are obvious and openly discussed among Muslims themselves. The commissioner for women's affairs of the Central Council of Muslims in Germany has stated in an interview[32]: "Islam is not in need of a commissioner for women's affairs. It is not Islam who suppresses women, but men. And therefore Muslim women are indeed in need of a commissioner for women's affairs." In addition to that, it has to be noted that Shari'a and "Islamic family law" is far from being a clear and consistent body of rules. Different legal schools and opinions in the past and different legislations in the present Islamic world clearly demonstrate a wide range of substantially varying rules and solutions. For example, according to Tunisian Private International Law the application of Moroccan rules of Family law (before the reforms of 2003) contradicts the Tunisian public order, notwithstanding the fact that both countries claim to have founded their Codes of Personal Status on Shari'a rules. In a broader sense, Taj Hashmi, a member of the Muslim Canadian Congress, has expressed his concern that adopting Sharia law "may legitimize the excesses of Sharia committed elsewhere in the Muslim World", and that Shari'a in its present form is "neither Islamic nor Canadian in character and spirit". On the other hand, the suggested application of a "watered down version of Muslim personal law"[33] would lead to the question why not applying the law of the land and individually using its scope and means of private autonomy.

Thus, on one hand extra-judicial dispute resolution can serve as an instrument to achieve socially accepted solutions within a community living in far-reaching segregation from society as a whole. On the other hand, members of this community who refuse to use the community's special bodies for conflict resolution may easily face reproaches of undermining the community's position, to be a "bad" member.

As it comes to the present situation in Europe, an extraordinary example of law influenced by Islam is England, where an 'angrezi shariat' (English Shari'a) is obviously developing[34]. This seems to be due to the fact that many Muslims in Britain still have strong family relations to their respective native countries on the Indian subcontinent governed by religiously orientated laws in matters of personal status.[35] In some cases mainly concerning family relations, they seek socially acceptable solutions for legal problems within the Muslim community by the aid of accepted mediators. The Islamic Sharia Councils in England which were established since 1980/82 seem to be examples for such a kind of mediation.[36] The Councils do not have an official function, but they are occupied especially with mediation in the area of the law of personal status. There are frequently cases in which a Muslim wife has obtained an English divorce which she now wants confirmed according to 'Islamic Law' by the pronouncement of talaq (divorce) by the husband, which leads to the general acceptance of the decision in the social environment within or outside the country. Similarly, very often husbands refuse to divorce although the wife wishes to do so while being reluctant to start divorce proceedings in the civil courts.[37] Even if the matter does not go to the civil court, the Council's decision may become important; it is not legally enforceable in England, but it seems to be recognised in the state of origin as well as within the religious community.[38] Convincing the husband to pay the mahr (dower) constitutes a further possible task for the Council. The decisions of the Council appear to be based on a relatively reform-oriented approach to the legal

sources, but maintain the traditional framework of Islamic law including the unequal treatment of sexes and religions in general. Thus, the English legal system does not remain untouched by such proceedings: In some Islamic states there is a possibility for wives to obtain a divorce in court on the basis of the khul', which is a contractual or statutory right.[39] The wife, however, must then pay back the dower which will very often have been intended to serve as an old age pension. This somehow rewards the husband's persistence in refusing a divorce, which is not acceptable according to the standard of the law of the land. Certainly, the individual personal status is a solely "private matter". Nevertheless, the institutions of the law of personal status and especially the balance of rights and duties among the persons involved do not only affect society as a whole, but reflect basic common convictions of this society concerning probably the most important part of social life. Therefore it is upon the local legislator to establish an order of personal status which fulfils the most prominent task of legal orders by granting peace in society. Thus, on one hand extra-judicial dispute resolution can serve as an instrument to achieve socially accepted solutions within a community living in far-reaching segregation from society as a whole. On the other hand, members of this community who refuse to use the community's special bodies for conflict resolution may easily face reproaches of undermining the community's position, to be a "bad" member. Accepting such communitarian bodies would thus lead to an ongoing cultural segregation and to a "culturalization" of individuals seeking their individual ways within broader society.

It is remarkable in this context that the Central Council of Muslims in Germany declared in its charter on Muslim life in German society on February 20th, 2002 ("Islamic Charta"[40]) that Muslims are content with the harmonic system of secularity and religious freedom provided by the Constitution. According to article 13 of the charter, "The command of Islamic law to observe the local legal order includes the acceptance of the German statutes governing marriage and inheritance, and civil as well as criminal procedure." In the Swiss canton of Zurich, the Union of Islamic Organizations in Zürich[41] has expressly stated in its Basic declaration that the Union does not intend to create an Islamic state in Switzerland, nor does it place Islamic law above Swiss legislation (sec. 1). The union also expressly appreciates Swiss law of marriage and inheritance (sec. 5.). Similarly, the renowned French imam Larbi Kechat has stated that "Nous sommes en harmonie avec le cadre des lois, nous n'imposons pas une loi parallèle."[42] According to experiences in Belgium also, the vast majority of Muslim women living in between the rules of Muslim family law and women's rights claims the protection of Belgian substantial law.[43] One of the few voices publicly demanding the introduction of Islamic law and Muslim arbitration in Germany is the extremist founder of an Islamic centre in Berlin. In a book on "The Rules of Personal Status of Muslims in the West"[44], he constantly declares Non-Muslims to be infidels and rejects German legal rules and judgments as "rules of infidelity"[45]. Consequently, he urges Muslims in Germany to maintain the rules of traditional Islamic family law. He even argues that the traditional punishment for adultery – flogging or stoning to death – should be applied on Muslim women in Germany (!) who are married to a Non-Muslim, even if they are unaware of the "applicability" of these rules in their cases.[46] He denounces the German system of social security to be an evil, because it grants wives independence from their husband's maintenance payments and thus enables them to "disobey" their husbands.[47] The danger of empowering such persons by officially accepting them as arbitrators and opening ways for them to funds is obvious. In sum, except in the UK the European way of dispute resolution among Muslims is not communitarian, but the "common" way of judicial or informal dispute resolution.

Notes

1 Cf. Rohe (Guest Ed.), Shari'a in Europe, Die Welt des Islams - *International Journal for the Study of Modern Islam* vol. 44 no. 3 (2004), (Special issue)

2 Cf. Rohe, The Formation of a European Shari'a, in Malik (Ed.), Muslims in Europe, Münster 2004, pp. 161; excellent studies of present developments are presented by Shadid and van Koningsveld, Religious Authorities of Muslims in the West, in id. (Eds.), Intercultural Relations and Religious Authorities: Muslims in the European Union, Leuven, Paris, Dudley, 2003, 149, and by Waardenburg, Muslims and Others, Berlin, New York 2003, pp. 241, 308 and 336.

3 Of course, in the sphere of public law and especially of penal law, foreign law is not applicable. Public law regulates the activities of the sovereign himself; and penal law has to define rules which are necessary to grant a minimum consensus of common behaviour in the relevant society.

4 For further details cf. Rohe, Islamic Law in German Courts, Hawwa 1 (2003), pp. 46

5 Cf. Foblets/Overbeeke, Islam in Belgium, in: Potz/Wieshaider (Eds.), Islam and the European Union, Leuven/Paris/Dudley 2004, pp. 1, 25; Rude-Antoine, La coexistence des systèmes juridiques différents en France : l'exemple du droit familial, in: Kahn (ed.), *L'étranger et le droit de la famille*, Paris 2001, pp. 147, 161.

6 Mezghani, Le juge français et les institutions du droit musulman, J.D.I. 2003, pp. 721, 722.

7 Cf. Rohe, Der Islam – Alltagskonflikte und Lösungen, 2. ed. Freiburg/Br. 2001, pp. 53 and 112; for recent interesting developments in the Maghrib cf. Nelle, Neue familienrechtliche Entwicklungen im Maghreb, StAZ 2004, pp. 253.

8 Cf. Saeed, Islamic Banking and Interest. A Study of the Prohibition of Riba and its Contemporary Interpretation, Leiden/New York/Köln 1996; Iqbal, Islamic Banking and Finance, Leicester 2001.

9 Cf. Klarmann, Islamic Project Finance, Zurich/Bâle/Genève 2003; Bälz, A Murbaha Transaction in an English Court, ILAS 11(2004), pp. 117.

10 Cf. *Venardos*, Islamic Banking and Finance, New Jersey u.a. 2005, p. 70.

11 Cf. Iqbal Asaria, Islamic home finance arrives on UK's high streets, *Muslim News* 25 July 2003 (no. 171), p. 6.

12 It is based on a combination of leasing contracts concerning the state's real property; cf. "Finanzmarkt: Islam-Anleihe aus Magdeburg", *Die Bank* 01.01.2004.

13 Cf. "Sachsen-Anhalt bereitet erste islamische Anleihe vor", FAZ 06.11.2003, p. 31; "Anlegen mit Allahs Segen", *Handelsblatt* 14.07.2004, p. 29.

[14] Cf. the recent reports on doubtful investments in Turkey supported by certain organisations in "Neuer Markt auf Türkisch", SPIEGEL ONLINE 29.01.2004 (called on 29.01.2004 under http://www.spiegel.de/0,1518,283591,00.html).

[15] Cf. Rohe, n. 7, pp. 125 s., 130.

[16] Cf. BGH NJW 1999, p. 574; OLG Celle FamRZ 1998, pp. 374.

[17] § 138 sect. 1: "A legal transaction which offends good morals is void."; cf. Rohe, Islam und deutsches Zivilrecht, in: Ebert/Hanstein (Ed.), Beiträge zum Islamischen Recht II, 2003, pp. 35, 51.

[18] The validity of wills does not depend on such assistance according to German law of succession.

[19] Cf. Lord Nazir Ahmad, n. 26, p. 72; Khaliq, Islam and the European Union: Report on the United Kingdom, in : Potz/Wieshaider (Eds.), n. 5, pp. 219, 246 ss.

[20] Cf. Qur'an surah 33, 4. s ; art. „tabanni" in: wizarat al-awqaf, al-mawsa'at al-fiqhaya vol. 10, Kuwayt 1987; for present legal orders in the Islamic world cf. *D. Pearl/W. Menski*, Muslim Family Law, 3rd ed. London 1998, ch. 10-25 ss.

[21] Cf. Mantecón, L'Islam en Espagne, in: Potz/Wieshaider (eds.) (n. 5), pp. 109, 130 ss.

[22] Cf. Article 59 Código Civil in conjunction with the administrative provision of the general directorate of the Civil Registry and the Notary from 10 February 1993.

[23] BOE 30-09-2003, Ley Orgánica 11/2003, de 29 de septiembre, de medidas concretas en materia de seguridad ciudadana, violencia doméstica e integración social de los extranjeros, 4.

[24] Cf. Tsitselikis, The Legal Status of Islam in Greece, in Rohe (guest Ed.), n. 1, pp. 402..

[25] Cf. *Poulter*, The Claim to a Separate Islamic System of Personal Law for British Muslims, in: *Mallat/Connors* (Eds.), Islamic Family Law, London u.a., reprint 1993, 147 ss.

[26] Cf. *Levy*, The Multiculturalism of Fear, Oxford 2000, pp. 180; *Poulter*, n. 25, p. 148; Lord Nazir Ahmad, Notes on the Judicial Situation of Muslims in the United Kingdom, in: Schneiders/Kaddor (eds.), Muslime im Rechtsstaat, Münster 2005, pp. 71, 74 refering to the respective demands of the UMO and the Muslim Council of Britain.

[27] Cf. Rohe, n. 35, pp. 409.

[28] Cf. Badawi, n. 36; Simonet, L'étranger entre deux droits : les facteurs d'adhésion des populations étrangères aux systèmes judiciaire et juridique français, in : Kahn (Ed.), n. 5, pp. 118, 139 ss. ; Rude-Antoine, n. 5, pp. 161.

[29] Cf. Shah-Kazemi, n. 35, p. 47.

[30] Cf. *Ibn Baz/Uthaymeen*, Muslim Minorities – Fatawa Regarding Muslims Living as Minorities, Hounslow 1998, insbes. 71 ff.; *The Fiqh Council of the Muslim World League* on its 16. session in Mecca, reported in "A message from Muslim scholars to Muslim Minorities in the West", Daawah No. 4 1422 A.H./Feb. 2002, 8, 11. See also the comments of the Muslim lawyer *Khaled Abou El Fadl*, Speaking in God's Name. Islamic Law, Authority ad Women, Oxford 2001, 269 s.; pp. 170): „I confess that I find the virtual slavery imposed on women by the C.R.L.O. (the Saudi-Arabian Permanent Council For Scientific Research and Legal Opinions, d. Verf.) and like-minded special agents to be painfully offensive and unworthy of Shara'ah. To claim that woman visiting her husband's grave, a woman raising her voice in prayer, a woman driving a car, or a woman traveling unaccompanied by a male is bound to create intolerable seductions, strikes me as morally problematic. If men are morally so weak, why should women suffer?"

[31] BGH NJW 1999, 135.

[32] "Verschleiert, aber selbstbewußt", FAZ v. 27.02.2001, S. 14.

[33] An expression used by Syed Mumtaz Ali, the main promoter of the establishment of an Islamic arbitration board in Ontario/Canada in an Interview on February, 2, 2005 (cf. « Sharia for Canada », called on 15.09.2005 under http://www.abc.net.au/rn/talks/8.30/relrpt/stories/s1334120.htm).

[34] Cf. Pearl/Menski, n. 20,ch. 3-81.

[35] Cf. Shah-Kazemi, Untying the Knot. Muslim Women, Divorce and the Sharia, London 2001; Rohe, Religiös gespaltenes Zivilrecht in Deutschland und Europa ?, in: De Wall/Germann (Eds.) Festschrift Link, Tübingen 2003, pp. 409, 415 et seq.

[36] Pearl/Menski, n. 20,ch. 3-81 ss., particularly 3-96; Badawi, in: King (ed.), God's Law versus State Law, London 1995, pp. 75; Shah-Kazemi, n. 35.

[37] Cf. Ph. Lewis, Islamic Britain, London 1994, pp. 119 regarding the circumstances in Bradford.

[38] Cf. Pearl/Menski, n. 20, ch.. 3-100.

[39] Cf. Rohe, Die Reform des ägyptischen Familienrechts, StAZ 2001, pp. 193; Pearl/Menski, n.

THE GERMAN HEADSCARF DEBATE: CONSTITUTIONAL COURT VS. PUBLIC DISCOURSES

ABSTRACT

In September 2003 the Federal Constitutional Court of Germany decided that the individual states were free to pass legislation to regulate (which includes the power to permit) the wearing of a headscarf by teachers in state schools, providing certain conditions were met. The ensuing political discourse on this contentious issue is examined in documents and statements to state parliaments. Robert Gould concludes that politicians are using the opportunity to respond to and to reinforce the widespread us-and-them attitude towards Moslems in what the dissenting judgement of the court called "a social environment which strongly rejects the headscarf".

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The German headscarf debate occupied media, political, and public attention sporadically following the refusal of the *Oberschulamt Stuttgart* [approximately: Stuttgart Education Authority] on 10 July 1998 to grant a woman a permanent licence to teach in the schools of Baden-Wurtemberg because of her insistence on wearing a headscarf. After the decision of the Federal Constitutional Court on 24 September, 2003 which vacated the judgements of the lower courts, the debate recommenced with renewed vigour and then continued as some of the states (which have exclusive jurisdiction over education) began the process of amending their legislation in order to ban headscarves. Although the situation appears quiet at the moment, the debate will quite conceivably be revived, for reasons to be outlined below.

Unlike the debate and then clarification of the situation by legislation in France, where the issue was ostensibly whether girls in state schools could wear a headscarf on the school premises, in Germany the issue concerned teachers. That students, as anyone else in Germany, can wear any garment or object that indicates religious affiliation is constitutionally guaranteed and uncontested. But at the same time, there is a constitutional tradition that, in the exercise of their functions, members of the civil service must demonstrate neutrality in their actions and dress. And school-teachers at all levels are civil servants. Thus there is an area of tension between two constitutional principles.

The question needs to be asked why it took several decades for this issue to arise – given that the movement of Moslems into Germany began in the late 1950s, when Turkish "guest workers" began to be recruited in increasing numbers to fill gaps in the labour market created by a booming economy. The answers lie on two levels, social and political, but principally on the conviction – broadly shared by politicians and population – that despite the eventual movement of several million people into the country, Germany was not a country of immigration: that is, immigration in the English-language sense of the word, understood as the movement of people who will remain in the receiving country and make it their permanent home. Instead, parties and public clung to the notion of a "rotation principle", i.e. workers would come, stay for a limited period to make money, return to their homeland, and be replaced by others. This basic principle, even when clearly contrary to fact, determined thinking for decades. Most importantly, it meant that until the end of the twentieth century there was no widespread will to adapt the Citizenship Act, based strictly on *jus patris* and dating back to 1913, to the new reality. As mentioned, school-teachers are civil servants, and to become a civil servant German citizenship is required.

On another level, the policy and, later, myth of the rotation principle meant that there was an absence of serious and long-term efforts towards integration. This absence of will existed widely on the part of both the newcomers and the German population, and consequently also of parties. The perceptible outcome of this was the development of what are effectively parallel societies: that is, areas where social and linguistic interchanges function principally according to the norms of the homeland. The result is, as the sociologist Thomas Meyer points out, that persons living there are significantly disadvantaged as they cannot learn the language, social mores and practices of the receiving country sufficiently well to guarantee equality of opportunity. This would include obtaining school-leaving qualifications, possible entrance to university, and completion of a degree programme. Without the latter, plus citizenship, admissibility to the teaching branch of the civil service is not possible.

In a five-to-three decision, the Federal Constitutional Court concluded that the headscarf did not necessarily constitute a symbol opposing constitutional values, that it would not necessarily influence the religious orientation of the students, and that it would not inevitably disturb the smooth functioning of

the school [*der Schulfriede*]. Consequently there was no basis in Baden-Wurtemberg law for the Education Authority's and the lower courts' excluding the appellant from a permanent teaching position in state schools. Importantly, the court expressed its awareness of *die gewachsene* religiöse Vielfalt in der Gesellschaft [increased religious diversity in society], and concluded in light of the new situation that it was essential to review past practices. Such an important task as modifying the reconciliation of conflicting constitutional obligations (civil-service neutrality on the one hand and the free expression of religion on the other) could only be undertaken by state parliaments and not by executive decision. It further laid down guidelines for future legislation: a state could define neutrality more strictly than in the past, or it could "use the increased religious diversity in schools as a means of promoting reciprocal tolerance in order in this way to make a contribution to efforts leading to integration" (§65)[i]. But whichever path would be chosen, the court insisted that "equal treatment be provided for members of different religious communities" (§71) as that was the only way that any restriction on religious symbols as part of a civil servant's clothing could be considered constitutional.

By implication, the decision calls into question a number of established practices and principles: the majority population will be confronted with the necessity of altering certain attitudes, views and behaviour patterns. It means also that the preferential role in state and society ascribed to Christianity – as evidenced by its particular mention in at least some of the individual states' Constitutions and / or Education Acts – is, conceivably, challenged.

The ways in which the two fundamental principles of the decision - insistence on a political solution and insistence on equal treatment for different religious communities - are now interacting are worth examining.

But before proceeding further, it must be noted that this decision was accompanied by a long and vigorous dissenting opinion which stated that the current constitutional and legal arrangements need not be changed. This minority opinion rejected one by one the arguments of the majority and contradicted some of its statements of fact. In addition, its tone was noticeably different from that of the decision. Where the latter was strictly neutral, restricting itself to a constitutional discourse, the dissenting opinion is remarkable for employing on top of its constitutional discourse a basic conceptualisation founded on the unbridgeable opposition between German and Moslem, which then r epresents a danger for the continued existence of existing social and political norms. The headscarf is, according to the dissenting opinion, a religious, political, cultural, ideological, and fundamentalist [*islamistisch*] symbol which will inevitably lead to rejection and conflict because it is being worn in "a social environment which strongly rejects the headscarf" (§114). In other words, what is constructed and then repeatedly reinforced is the concept of two monolithic and fundamentally incompatible value systems, and the appellant is a representative of this hostile value system.

One might speculate that the dissenting opinion was written with the inevitable consequence of the majority decision in mind: a series of debates in state parliaments as parties or governments, particularly ones in which the Christian Democrats held a clear majority or were in coalition, introduced bills to regulate or ban the wearing of headscarves by teachers or by civil servants generally.

The argument that the smooth functioning of the school has to be preserved and that consequently headscarves cannot be tolerated on teachers is based on the premise of widespread hostility in the population (including parents and teachers) to the garment and on the assertion that wearing it will inevitably give rise to conflict. Although this feature is absent from the majority decision, the dissenting judges and politicians lay great emphasis on it.

This foreseeable consequence began immediately. What is clear is that in the developing discourse positions were taken, arguments developed, and terms employed which, sometimes openly, sometimes implicitly, stand in contradiction to the insistence of the court on equal treatment of members of different religions. Frequently they refer to the dissenting opinion and quote from it as if it represented the judgement of the court.

Why and how is this possible, and what are the consequences? The political and popular reactions to the decision must first be placed both against the background of the attacks on New York, Istanbul, and Madrid and also of the consequences of the decades-long denial of *de facto* immigration outlined earlier. The latter has meant that little or no preparation had been made for what is, arising from the Court's decision, the potential for an important shift towards the acknowledgement of religious pluralism within the German state apparatus and consequently a development in German collective identity. More specifically, and on the level of the political discourse, the opposition expressed itself in a number of ways. Briefly, the most important of these are the position of Christianity, an often deliberate blurring of the distinctions between Islam and Islamism, assertions of the inevitability of the disturbance of the smooth functioning of the school (*der Schulfriede*), and the use of the argument of two monolithic and mutually exclusive value systems. For all of these positions and arguments justification is frequently found and cited in the dissenting opinion.

In the speeches to state parliaments or in the documents accompanying the legislation, the major argument cited in order to justify the explicit permitting of Christian (and sometimes Jewish) symbols worn by teachers (for instance, in Baden-Wurtemberg, Bavaria, Hesse, the Saarland) is that the

State Constitution or the Education Act (sometimes both) define Christianity as providing certain fundamental values on which the state is based or, as the case may be, which are to be transmitted in the education system. This concords in some measure with a position taken in the dissenting opinion which had argued that, in addition to its religious significance, the cross is "a general cultural symbol for a culture, nourished by Jewish and Christian sources, which is value oriented but also open, and which has become tolerant as a result of rich and also painful historical experience" (§113). It echoes also the expression "christlich-abendländische Kulturwerte" [Christian and occidental cultural values] firmly established before the headscarf debate and very frequently employed by politicians of the CDU and CSU. But what is being suggested to their constituents by the state politicians advancing the Christian argument is that the provisions of state law and constitutions take precedence over the decisions of the Federal Constitutional Court. Rhetorically it is no doubt effective to the public who want to be reassured that the *status quo* is not being affected. But how such an argument will be received in any further case brought to the Constitutional Court is another matter.

A second method is to define the headscarf as a political, rather than a religious symbol, and above all as one which stands in total contradiction to constitutional values, including human dignity, the equality of the sexes, separation of powers, rule of law, etc. Undoubtedly, for some Moslems, the headscarf is a political symbol. But the resulting blurring of Islam and Islamism in public discourse to be found in such statements as "…the wearing of a headscarf [by teachers in school] is not permissible because at least some of those supporting it [the headscarf] link it to the subordinate position of women in society, state, and family, or a fundamentalist position in favour of a theocratic state in contradiction to the constitutional values prevailing in Bavaria" (Landtagsdrucksache 15/368 vom 18.02.2004) has the unfortunate consequence of, by implication, putting in a very negative light even a totally apolitical woman doing her grocery shopping in the streets of Munich or Nuremberg.

The argument that the smooth functioning of the school has to be preserved and that consequently headscarves cannot be tolerated on teachers is based on the premise of widespread hostility in the population (including parents and teachers) to the garment and on the assertion that wearing it will inevitably give rise to conflict. Although this feature is absent from the majority decision, the dissenting judges and politicians lay great emphasis on it. For example, in the debate in the State Parliament of Hesse when the bill to ban headscarves was introduced (18 February 2004), the proposer (Franz Josef Jung) made the statement that in a survey by Hessian Radio 80 per cent of respondents had stated that anyone wearing a headscarf was not suited to educating children according to constitutional values, and that in a further survey conducted by the Hessian Ministry of Education 97 per cent of 37,000 respondents had agreed that headscarves should not be allowed on teachers (Hessicher Landtag, Drucksache 16/1897 neu). What is important here is not only the powerful political force of such apparent numbers, but more generally the consequences of the clear and public support for such views by elected representatives.

Clearly perceptible in the public statements by politicians and in the documents throughout 2004 and into 2005 is the high degree of co-ordination of the political discourse. This has meant that the same arguments against the headscarf, the same phrases, terms, and comparisons condemning it could be repeated by the media and be available on websites as six of the sixteen states passed a bill to ban the wearing of headscarves by teachers (Baden-Wurtemberg, Bavaria, Berlin, Hesse, Lower Saxony, and the Saarland) and as at least four others (a CDU and SPD coalition in Bremen, and the CDU opposition in North Rhine-Westphalia, Rhineland-Palatinate, and Schleswig-Holstein) introduced bills or motions with the same intent. With the exception of Berlin, where the SPD and PDS coalition government has banned all religious symbols equally, it is in virtually all cases the CDU (in Bavaria the CSU) which has taken the initiative. The argumentation and documents explicitly allow Christian symbols and in at least two cases even monastic habits (Bayerische Landtagsdrucksache 15/368 vom 18.02.2004 and Landtag Nordrhein-Westfalen Drucksache 13/4564). But what is noteworthy is that even when opposing the legislation, and despite some eloquent and articulate voices, the SPD as a whole has been unwilling to propagate an effective counter-discourse; and neither the Greens nor the PDS has succeeded, either.

Within the constitutional requirements of German federalism and of competing rights in an open and democratic state, the judgement of the Federal Constitutional Court sought to indicate equitable paths for legislators to follow in an increasingly diverse society. On the political level, the judgement has met with significant resistance, and political pressures have given rise to repeated statements and even legislation which reiterate a predominant role and function for Christianity within both state and society. At the same time, the nature of the now hegemonic accompanying discourse, emphasising the threats to German values and even the German state, is such as to recall to the public mind above all the militant and hostile forms of Islam. Thus, the Federal Constitutional Court's insistence on legislation to regulate a complex constitutional / legal / social situation resulted on the public level in an intensification of an us-and-them opposition. It is unlikely that the debate is over. And while the constitutional issues will not have changed, the critical question which remains is the one concerning the terms in which the political and public debate will be conducted. As discourse both reflects realities and is constitutive of them, including social realities and their associated evaluations, political, public, and media debates will continue to have an impact on whether Moslems can be viewed as part of the democratic structure of Germany or as an alien force to be combated.

Reference

Thomas MEYER: *Identitätspolitik: Vom Missbrauch kultureller Unterschiede*, edition Suhrkamp 2271: Suhrkamp, Frankfurt/Main, 2002.

Note

[1] References to the numbered paragraphs of the decision are indicated by the symbol §.

RELIGIOUS DIFFERENTIATION AND RELIGIOUS REVITALISATION

CHANGE INTERRELIGIOUS AND INTERCULTURAL RELATIONS IN THE ASIA PACIFIC

ABSTRACT

Religion has returned to the social policy agenda following the events of September 11, 2001. Gary Bouma argues that religion has become much more diverse and is being revitalised in many parts of the world. Bouma says this has greatly increased the challenge of managing religious diversity, promoting healthy religious intergroup relations and dealing with religious competition and conflict. These processes and challenges take particular forms in the Asia-Pacific.

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Religion has come back on to the social policy agenda since September 11, 2001. Policy makers, educators, and law enforcement agents now seek out information about religions and have become worried about the potential of mismanaged religious diversity disrupting the day to day workings of their societies. Since the end of the Cold War two processes have been transforming the relationship between religion and society – religious diversification and religious revitalisation. These processes were occurring but below the threshold of public notice from the mid 1970s through the 1980s and early 1990s. Together they are changing the way religious groups relate to each other, with their social and cultural environments and thus must also affect the way we think about religion and the ways societies think about managing religious diversity.

The Diversification of Religion

Four forms of differentiation have radically transformed religious life. First, secularization has witnessed the decline of the power and membership of what were mainline religious groups, particularly in the West. But this decline has masked another more profound change. Religious and spiritual life has slipped out from the control of once hegemonic religious organizations. As a result they are now freely available in myriad forms requiring much less commitment and take often much less organized, or very differently organised forms.

Secondly, migration and conversion have brought unfamiliar religions to many places, placed religions that previously dealt with each other only in stereotypes into direct relationship, and with globalization have brought the widest diversity of religious teaching and practice to every corner of the world. Not only are there now more religious groups in Australia today than ever before, but also each group is much less homogeneous than it was before.

Third, there has been an increased differentiation between church and state, *i.e.* between religious groups and the state. Take the example of Osama bin Laden. In this case religious action has had global consequence without the offices or agency of a state. Religion has become a force outside the structures of statecraft, effective without the trappings of state. In Australia religious groups have moved further from direct association with government while at the same time religious welfare organisations have become largely dependent on state funding as the state has chosen to channel funds through state based organisations.

Fourth, there has been increased congregationalism, or conversely, the decline of national or regional organizational structures to pattern religious belief and practice. Separate congregational organizations with limited networks and no collective organ of responsibility are replacing once strong and vertically integrated Christian denominations. Of course, religious groups like Muslims, Jews, Buddhists and others have long lived without the kinds of organizational structures that characterised Christendom.

The diversification of religion has also being occurring within religious groups. During the late 20th Century this process has gone so far that religious diversity is often found to be at least as great within religious groups as between them. Some refer to this as the death of denominationalism. For example, the internal diversity of Anglicans is legendary, even if stretched to the breaking point by current debates. The Charismatic movement has cut across denominational lines as has liberalism, social concern, and evangelicalism. It is no longer possible to speak of the Anglican, or the Uniting, or the Catholic point of view. But within group religious diversity is also evident in the different ways Muslims

give expression to their faith in the one God, or the differences in the practices and theologies of Buddhists, Hindus or any other religious group.

The consequence of the diversification of religious groups has been to render them much more difficult to manage by those who would promote healthy inter-religious relations and reduce conflict. For example, Australia's religious organisations have become so diverse that religious diversity is much less able to be managed by this society than it once was. For example, in 1947 the Prime Minister of Australia would have had to make only two phone calls to speak with religious leaders who represented over half the population and one more would have enabled him to reach nearly 70 per cent. He would now have to make many more calls and none of those whom he called would be able to speak clearly about what their people believed or did. This story can be repeated among the nations of the Asia Pacific. Diversity within and between religious groups has greatly reduced the capacity of these older structures to deliver social cohesion.

Increased diversity by itself does not pose a threat to a society. I have been studying the management of religious diversity for over three decades. What has become clear to me is that religious diversity is not a disease to be overcome, but a cultural resource that can be used to enrich the capacity of a society to operate effectively in a global context. In addition religious diversity is not a problem needing to be transcended by finding something everyone will agree to, or by showing that there is great similarity among the beliefs of different groups. First, the differences between groups are real, not to be trivialised and can become sources of conflict. Secondly, those who think they have transcended religious differences in fact are proposing yet another religious perspective, belief system or group and are increasing diversity, not reducing it.

Finally, it has again become clear that not all expressions of religion are 'moderate', innocuous or, for that matter, even safe. Some forms of religious expression found as minority perspectives within some religious groups can be considered 'toxic' as they reduce the humanity of some of their members, erode human community and impair our ability to live together in peace and mutual respect. It is naïve to ignore the possible harm some expressions of religious life can have and since the notion that religion is withering away is no longer tenable the management of religious diversity becomes more critical.

The Revitalisation of Religion

Who last century would have predicted the level of interest in religion and spirituality today? Actually it was predicted but no one listened and everyone looked where they had long looked – to the 'mainstream' Christian churches and only saw decline and aging. But suddenly religion and spirituality are back. I speak of religion and spirituality because both are back. For a while it seemed that perhaps being spiritual might remain while more organised forms of spirituality - churches, mosques, temples, synagogues would decline. Any consideration of the present condition of religious and spiritual life in the Asia Pacific requires attention to both spirituality and participation in religious organisations.

Even formally organised religion has been gathering strength in a variety of ways. Since World War II, religion was assumed by most trained in the social sciences to be at most innocuous, usually irrelevant and likely to disappear by the end of the 20th Century. The events of September 11 put paid to those assumptions and expectations. Osama bin Laden is not seeking social justice. He and a small group of others like him want to establish what they consider a theologically pure form of Islam, first by imposing it on Muslims and then on the rest of the world. No one event has so clearly established the return of religion to significance in global human life as the attacks of September 11, 2001. But there had been significant signs before, probably starting with the overthrow of the Shah of Iran and the subsequent reign of the Ayatollah Khomeini, the rise of the Christian right in the United States, and the surge of Pentecostalism through Africa, Latin America and Asia.

> Migration and conversion have brought unfamiliar religions to many places, placed religions that previously dealt with each other only in stereotypes into direct relationship, and with globalization have brought the widest diversity of religious teaching and practice to every corner of the world.

But reference to religiously inspired terrorism draws attention away from a more basic religious process that has been re-shaping religion for several decades – religious revitalisation. Religious revitalisation has been sweeping the globe. Religious revitalisation occurs when some religious groups or sections of them increase the intensity of their practice and belief. From an Australian perspective this is most noticeably occurring in Islam in Indonesia, Iran, Iraq and elsewhere. Then there is also the Christian Right, much noticed in the USA, but also Latin America, Africa, and parts of the Asia Pacific.

Religious revitalisation is a well known process that is part of the processes involved in the ebb and flow of the strength and appeal of religion and spirituality. However, most policy makers have little experience of or training in religion. The reigning secularist hegemony in universities made the study of religion; particularly living religions seem obsolete and irrelevant. Religion was supposed to fade away according to Freud and Marx. But far from fading away it is back with renewed strength.

While many secularist analysts keep trying to do so, revitalisation cannot be reduced to other explanations – concern for social justice, poverty or ignorance. Those who flew the planes into the Twin Towers were not ignorant, poor or concerned for social justice. Similarly the Christian right are not ignorant, or poor, nor are they motivated by social justice. They are both technologically well advanced on

liberal Christians, using latest cell phone technology, the web, satellite television networks and advanced audio systems to proclaim a gospel of 21st century of success and acquisition.

Revitalised religion is a religion of the aspiring middle class, groups seeking to improve their status or conditions in a society. It always has been. It is a now clearly discredited Marxist inspired myth that religion is primarily for the poor. Religious revitalisation emerges as a mechanism to assist those making the transition from poverty to middle class, from traditional economies and cultures to industrial forms of society. Revitalised religions provide legitimations for new found wealth of the recently up-wardly mobile. They provide clear norms and rules for people who find themselves cut loose from their roots in traditional communities. Revitalised religions are often associated with the introduction and acceptance of free market economies. They are ready to compete in a world of conflicting religious ideas and practices.

Moreover, revitalised religions have moved back into the public sphere of politics seeking to re-shape not only their own religious groups, but also their entire societies. Revitalised religions tend to be more hard-edged; pursuing, offering and demanding moralities of purity and exclusivity. The Christian right is only one example. Targeting moral issues of abortion, family definitions, and sexual morality this group has also sought to shape U.S. foreign policy. Wahabbist theology has prompted the political action of some Muslim groups including Osama.

However, engagement is a two edged sword. While religious conservatives will have an impact on other sectors of the society, engagement leads to a loss of purity. Engagement requires compromise, listening and the formation of alliances which in time erode the purity positions of radical religious groups bringing them closer to more widely accepted positions and the acceptance of greater diversity.

Thus the larger context of interreligious relations in the Asia Pacific is now shaped by the revitalisation of several religious groups. This revitalisation challenges Western liberal secular notions of the place and action of religion in ways that make the work of promoting harmonious interreligious relations and understanding more difficult. The religious and spiritual life of Australia has become not only more vital, but also much more diverse through revitalisation, migration and conversion. Religion is no longer tied up in the neat packages that were characteristic of religions before.

As a consequence of these changes religion in the Asia Pacific is also more prone to conflict; both conflict within and between religious groups as well as increased tension between them and other groups. As a result of migration, mobility and globalisation religious groups which previously existed in isolation from each other are now more likely to contact others who are different. The likelihood of conflict is also increased by the presence of intensified ideologies of conflict stemming from residual and renewed Christian missionary zeal, new found Pentecostal zeal, Wahabbist theologies of Islamic purity and domination, as well as conflicting political interests. Theologies of purity are exclusivist, often denying the right to exist of those deemed to be in error.

Religious revitalisation and increased religious conflict make the Asia Pacific a very different context for promoting harmonious living together. Revitalised religions do not presuppose the liberal, laissez-faire values basic to much of Western education. They do not commence interactions with other on the basis of mutual respect, but they move with suspicion. They do not commence with aims of inclusivity, but preach exclusivity. They commence with a negative assessment of difference, resistance to multicultural policies and a readiness to condemn those with whom they disagree including most vociferously those of their own groups. This poses a huge challenge to those who do operate from values of inclusion, fairness, openness, tolerance, and who view diversity positively.

This situation poses particular challenges to those who argue that reference to and inculcation of universal values will overcome the differences behind the conflicts. The problem with saying that humans ' share certain universal values' is that while they may be similar, or seem to be from outside, these values do not hang in space but are grounded in difference, in different communities, histories, traditions, and religious belief and practice. What are the bases for shared values? Yes there are values that seem to be shared and universal. We must remember that shared values are not shared because they are similar, or universal; they are shared by social groups that survive, because such values are essential to survival, to sustainability. Any group that survives a few generations will promote sustainable values – mutual respect, regard for the environment, forgiveness, readiness to understand, willingness to seek the common good and others. The divisive values of puritanical groups are not sustainable, which is part of why they do not survive long, but radically moderate their extreme views and adopt more sustainable values in the longer run, or die out. However, the promotion of shared values may well be inimical to conservative, revitalising religions; because of necessity such an approach undermines the very differences they seek to emphasise. It relativises the absolute truth claims they make.

In this context governments need to take great care to manage religious diversity in ways that promote mutual respect and understanding. It is not possible to repress religion and spirituality. Secularity is not neutral, but is another ideological viewpoint. The critical issue is the promotion of social solidarity through cooperation not the elimination of difference. Whatever it is, it is no longer possible to ignore the impact of religion on social life in the Asia Pacific.

Note

This article is a revision of earlier comments made at a Conference on Religion in the Future of Multicultural Societies held in Prato, Italy in September 2004; a UNESCO conference on Shared Values for Intercultural and Interreligious Understanding held in Adelaide in Nov 2004, a further UNESCO conference on Religion in Conflict and Peace Conference held in Melbourne in April 2005 and in my final report to the Christian Research Association and other addresses given recently. Some parts of this article have appeared in other publications including *Australian Mosaic: A Journal Of The Federation Of Ethnic Communities*' Councils Of Australia January 2005 and a UNESCO Report.

RELIGION AND AUSTRALIAN CULTURAL DIVERSITY

ABSTRACT

Religion remains a central part of the identities of a declining majority of Australians. However the politics of religion, intimately related to ethnic and cultural differences, have become a central part of national debates in Australia. While religious change has been characterised by the rapid growth in non-Christian religions, Christian conservatives have become increasingly influential in the development of social policy. Meanwhile the growth of Islamic communities has been driven by immigration from over 60 Muslim countries, and is rapidly changing the makeup of parts of Australia's largest city, Sydney. Arguments over multiculturalism are increasingly being framed by critical perspectives on Islam.

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The current context

In August 2005, with the London terrorist bombings still ringing in the corridors of power, Australian Prime Minister John Howard ordered the appearance in the national capital of thirteen hand-picked and government defined Muslim leaders. They had been called to stand by the Prime Minister and denounce terrorism. This they did. At the same time representatives of some fifty Muslim groups who had not been invited to the meeting, possibly because they were defined as either too "extreme" or too low profile, issued a statement calling on the government to recognise the range of legitimate debate that should be allowed in the country on key issues that worried them – especially Australian government support for the American led wars in Afghanistan and Iraq.

For the first time since the First World War ninety years before, when Irish Catholic Australians condemned Australian government involvement in Britain's war against the Prussian, Austro-Hungarian and Ottoman empires (but especially against the Irish rebels), every level of Australian politics had become saturated with debates over religion and its place in the secular body politic of the Commonwealth. Whereas a decade before, religion had hardly ruffled the surface of multi-cultural Australia – the 1995 Global Diversity conference had only minor dimensions of discussion of religion and most public interest was ethnographic rather than political – global and local events in the new millennium had located religion firmly in the centre of public concerns. It was not simply the Islamic presence that had driven this concern, but a wider sweeping of the secular polity by activist religious organizations and a national government strongly influenced by the fundamentalist Christian rightwing. Australian modernity was becoming one in which despite declining numbers of self-identifying religious believers, evangelical Christian, Muslim, Hindu, Buddhist and Jewish institutions had become far more extensively enmeshed in the provision of the basic organisational necessities of modern society – education, health, welfare and so on.

Unlike the U.S. with its firm separation of church and state, Australian governments had supported and been supported by religious groups since the foundation of the European settlement; state aid for church schools had become bi-partisan policy in the 1960s. However it was not until the election of the conservative national government in 1996, that government preference for religious provision of services was enshrined as a policy priority. Senior church people became major figures in government policy deliberations, and conservative clerics, such as the Anglican and Catholic primates of Sydney, were increasingly influential with senior political operatives. Meanwhile the rapid rise of evangelical churches, particularly the global Sydney-based Hillsong Church, drew politicians to their national gatherings, and in 2004 delivered a critical Senate seat to the Family First Party, sponsored by a national network of these churches.

The pattern of religious affiliation since Federation in 1901 reveals the decline of religiosity and of Christianity, and the growth of other religions. Even so, identifying non-Christians make up less than one in twenty of the population, while Christians form three in five. The society is thus still very much Christian in its ethos and moral discourse, though overtly secular in its governmentality.

12.17 Major Religious Affiliations

Census Year	Christianity Anglican	Christianity Catholic	Christianity Other	Total	Other religions	No religion	Not stated/ inadequately described	Total '000
	%	%	%	%	%	%	%	
1901	39.7	22.7	33.7	96.1	1.4	0.4	(a)2.0	3,773.8
1911	38.4	22.4	35.1	95.9	0.8	0.4	(a)2.9	4,455.0
1921	43.7	21.7	31.6	96.9	0.7	0.5	(a)1.9	5,435.7
1933	38.7	19.6	28.1	86.4	0.4	0.2	12.9	6,629.8
1947	39.0	20.9	28.1	88.0	0.5	0.3	11.1	7,579.4
1954	37.9	22.9	28.5	89.4	0.6	0.3	9.7	8,986.5
1961	34.9	24.9	28.4	88.3	0.7	0.4	10.7	10,508.2
1966	33.5	26.2	28.5	88.2	0.7	0.8	10.3	11,599.5
1971	31.0	27.0	28.2	86.2	0.8	6.7	6.2	12,755.6
1976	27.7	25.7	25.2	78.6	1.0	8.3	11.4	13,548.4
1981	26.1	26.0	24.3	76.4	1.4	10.8	11.4	14,576.3
1986	23.9	26.0	23.0	73.0	2.0	12.7	12.4	15,602.2
1991	23.8	27.3	22.9	74.0	2.6	12.9	10.5	16,850.3
1996	22.0	27.0	21.9	70.9	3.5	16.6	9.0	17,752.8
2001	20.7	26.6	20.7	68.0	4.9	15.5	11.7	18,769.2

(a) Includes 'object to state'. ABS Census of Population and Housing.

How then does religious revivalism engage with the cultural pluralism of an avowedly secular modern country? While Christianity has been the dominant force on the religious landscape for two hundred years, three other groups – Muslims, Jews and Buddhists – each carrying a kernel of refugee displacement and the ambivalence in identities such experiences create – have been re-shaping the public discourses of the once self-assertively secular society.

Religious Affiliation

	1996	%	2001	%	Change %
Christianity		70.9		68.0	-1.1
Anglican	3,903.3	22.0	3,881.2	20.7	-0.6
Baptist	295.2	1.7	309.2	1.6	4.8
Catholic	4,799.0	27.0	5,001.6	26.6	4.2
Churches of Christ 75.0	0.4	61.3	0.3	-18.2	
Jehovah's Witness 83.4	0.5	81.1	0.4	-2.8	
Lutheran	250.0	1.4	250.4	1.3	0.2
Orthodox	497.0	2.8	529.4	2.8	6.5
Pentecostal	174.7	1.0	194.6	1.0	11.4
Presbyterian andReformed	675.5	3.8	637.5	3.4	-5.6
Salvation Army	74.1	0.4	71.4	0.4	-3.7
Uniting Church	1,334.9	7.5	1,248.7	6.7	-6.5
Other Christian	420.6	2.4	497.9	2.7	18.4
Buddhism	199.8	1.1	357.8	1.9	79.1
Hinduism	67.3	0.4	95.5	0.5	41.9
Islam	200.9	1.1	281.6	1.5	40.2
Judaism	79.8	0.4	84.0	0.4	5.2
Other religions	68.6	0.4	92.4	0.5	34.6
No religion	2,948.9	16.6	2,906.0	15.5	-1.5
Not stated/ nadequately described	1,604.7	9.0	2,187.7	11.7	36.3
Total	17,752.8	100.0	18,769.2	100.0	5.7

Source: ABS Census.

Christian Diversity

As the Australian colonies settled into place fifty years after the British first invaded the southern continent and claimed it for themselves, a hundred year long contestation began that would affect Australian politics in critical ways. The English and Scots who dominated the political and economic life of the colonies also faced the alienation of the Irish, many of them political prisoners from various uprisings against British rule. Catholicism then always carried this political quality. The Catholic ascendancy reached its height in early 1996, with a Catholic Prime Minister, Chief Justice, and Governor General, the first time such a triumvirate had come together – and it lasted for just three months (until the Catholic Prime Minister lost the general election).

Most recently conservative Christians in national politics have formed a coalition to press for Christian values in government policy. This coalition, known as the Lyons group, formed the heartland of support for John Howard in his challenge to the far more liberal John Hewson for party leadership in the early 1990s. Howard succeeded, and became Prime Minister in 1996 – delivering to his supporters through dramatic increases in funding for Christian schools, the appointment of key Christian advisors, and the transfer of major public sector services to Christian service organizations.

In recent years tensions within the mainstream churches over progressive versus conservative directions (over homosexuality, women priests, child abuse – many to do therefore with sexuality and Christian identity), have been exacerbated by the rise of evangelical churches and the increasing presence of diverse Christianities from Europe, the Middle East, Asia and Africa.

While ethnic Christianities are growing to reflect the pattern of immigration, a new phenomenon is the emergence of consciously multicultural Christian congregations – that is, drawing together the rising culturally diverse middle class in a cross-cultural celebration of faith.

Islam and the Muslim communities of Australia

In the past decade Islam has been one of the fastest growing religions, primarily from Australian-born children of Muslim immigrant parents. In parallel with that growth, strong anti-Muslim sentiment has appeared in older parts of the Anglo-Australian and longer established immigrant communities, exacerbated by international tensions generated by 9/11, asylum seekers from Muslim countries, the growth of Jemaah Islamiha in Indonesia and lethal attacks on Australians, and the various crises in the Middle East. Local factors have also exacerbated inter-communal relations, including a series of so-called "race rapes" by young Lebanese Muslim Australian men in Sydney, and deadly inter-family feuds relating to drug sales and organised crime in the same community.

While there was a Muslim presence in Australia throughout the late nineteenth and the early twentieth centuries, the growth in Muslim communities followed

Table 1 – Muslims by birthplace, Australia, 2001

Birthplace	Australia Muslims	Percentage all Muslims
Australia	102566	36.43
Afghanistan	9923	3.52
Bangladesh	7596	2.70
Bosnia & Herzeg.	9892	3.51
Cyprus	3708	1.32
Egypt	3061	1.09
Fiji	5772	2.05
India	2819	1.00
Indonesia	8087	2.87
Iran	6353	2.26
Iraq	7749	2.75
Jordan	1348	0.48
Kuwait	1610	0.57
Lebanon	29321	10.41
Malaysia	2975	1.06
N-W Europe	2668	0.95
Pakistan	9238	3.28
Singapore	2091	0.74
Somalia	3585	1.27
Syria	2261	0.80
Turkey	23479	8.34
Sub-total	246102	87.4
All	281576	

Source: (DIMIA 2003)

Selected source countries with Muslim populations NSW – all nationals	Birthplace 1996	Birthplace 2001	% change
Afghanistan	5826	11296	93.9
Bangladesh	5077	9078	78.8
Bosnia	13610	23848	75.2
Iraq	14004	24832	77.3
Lebanon	27000 (70224)	29300 (71000)	2.0
Pakistan	8358	11917	42.6
Somalia	2055	3713	80.7
Turkey	28869	29821	3.3
Muslims in NSW	102,288	140,907	38

Source: (ABS, 2003)

three different types of decisions regarding population and national interest in the 1960s and 1970s. The first decision reflected the move to end White Australia and the related assumption that such a move would allow Australia to accept members of the global professional classes – doctors, engineers, academics and business people – some of whom would be Muslims. The second decision reflected the immigration crises of the 1960s, and the need to replace the working class immigrants of the 1950s who were returning to their European countries of origin, with other industrial workers – primarily Turks. The third decision reflected Australia's humanitarian policy commitment, and the

response to pressures to admit refugees from the Lebanese civil war, and other Middle East conflagrations during and after the mid-1970s.

Together this created a Muslim population of immigrants and their descendants that as declared in the 2001 Census, numbered some 280,000, or 1.5% of the total population (up from 200,000 or 1.1% in 1996 and 147500 or 0.9% in 1991). Newspaper stories vary – some claiming up to 450,000 Muslims when reporting some community leaders (Chulov The Aust 17 Sep 2001).

While Muslims come from over sixty national backgrounds, the two largest groups are the Lebanese and Turks, most of whom are working class and concentrated in quite tight pockets in south western and western Sydney, and in parts of Melbourne. A Druse minority tend to be based in Adelaide.

The Muslim population rose some 40 per cent between 1996 and 2001 (the latest Census years); some communities rose rather more rapidly than this while others remained stable. The most significant increases took place at either ends of the economic ladder – impoverished refugees and well-off professionals and business people. The most significant group of Muslims are those born in Australia who contributed about 50 per cent of the increase – many of whom are the children of the two largest communities, while some are converts.

The Lebanese community was predominantly Christian (Maronite, Melkite and Catholic) until the 1960s. The early Muslim arrivals were Sunnis from northern Lebanon, around Tripoli, who settled in Canterbury in Sydney's inner west. They established the first mosque in Lakemba in the early 1960s. By 1971 about one in seven Lebanese-born residents were Muslims (3,500),five years later one in five (6,500),by 1981 one in three (16,000), by 1996 two in five (27,000), and by 2001 slightly more than that (29,300). In the period 1975 to 1977, some 14,000 Lebanese arrived in Australia from the civil war, being admitted as immigrants rather than as refugees. Nearly three quarters of Muslim Lebanese live in Sydney.

Muslim immigration from the post-1965 period has therefore had dramatic effect on the wider Australian awareness, and in particular has pushed the debate on multiculturalism in the wake of the waves of terror bombings after 2001. The London bombings, revealed as the work of "home-grown" terrorists, has had the greatest impact, leading the prime Minister to hold a controversial summit of selected "moderate" Muslim leaders (August 2005) to stand with him against terror.

One focus of debates about Islam has been the public persona of the so-called "Mufti" of Australia, a Sydney-based Egyptian-born cleric Sheik Al-Hilaly mainly associated with the large Lebanese Muslim community. He has been a controversial figure since his appointment in the 1980s; he has been accused of gross anti-Semitism, support for terrorists, and corruption. On the other hand he has been a major opponent of Wahabi Islamist forces (his mosque may have finally succumbed to them in mid-2005), and has stressed the importance of cultural diversity and multiculturalism. In May 2005 he emerged in the national media as the "arranger" of the release of Douglas Wood, an Australian businessman held by kidnappers in Baghdad. Hilaly had appeared to claim he was the reason that Iraqi troops found Wood and were able to release him. Australian government sources appeared unwilling to either support or undermine his version of events.

Hilaly was also conspicuously out of Australia during the Prime Minister's Muslim summit, apparently because he did not want to be compromised by appearing in it, and did not want to alienate himself from the government by refusing to accept the PM's invitation. For the popular media he remains the weather-vane of the Muslim presence, and a constant target of criticism. The discourses about him reveal much about Australian community disturbance in a period of social unease and fear.

The debate has ballooned into a fairly vigorous argument about Australian values and the demand that Muslim schools in particular be policed to ensure they are serving up the fare demanded by the more populist demagogues and right-wing politicia.

Conclusion

While religious diversity in Australia is far wider than just Christianity and Islam, these religions have been at the heart of most recent debates about multiculturalism. The debate has ballooned into a fairly vigorous argument about Australian values and the demand that Muslim schools in particular be policed to ensure they are serving up the fare demanded by the more populist demagogues and right-wing politicia. At its height one politician demanded that the hijab be banned in public schools – a demand rejected by conservative leaders, though not without sustained pillorying of Islamic schools as centres of un-Australian values.

On the other hand, a few inter-religious coalitions such as those between imams, priests and rabbis to build bridges between school students of the Abrahamic faiths, and initiatives by young westernised Muslims to distance themselves from terror, suggest some areas of autonomous community activity are bearing fruit. Yet the national discourse increasingly aligns multiculturalism with Muslim fundamentalism, and proposes ever more rigid definitions of acceptable behaviour and belief.

The overarching trend suggests that religion has moved back into the mainstream of the political flow, even if the urban elites find it bemusing and possibly pre-modern. Religion has become the central arena of dispute for Australian multiculturalism, the arena most fraught with anxious hostilities.

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LE PLURALISME RELIGIEUX EN BELGIQUE

ABSTRACT

Dans cet article, Corinne Torrekens explore les aspects démographiques et législatifs du pluralisme religieux en Belgique, mais également les aspects politiques, notamment au travers des difficultés rencontrées lors du processus d'institutionnalisation de la religion musulmane. A cet égard, elle évoque la formulation contemporaine du principe de neutralité de l'espace public liée aux transformations de l'identité nationale.

La question du pluralisme religieux est une question traditionnellement épineuse en Belgique. D'abord, parce qu'elle fait partie des lignes de fragmentation politique du pays et parce qu'elle touche à la structure même de la société belge, celle-ci étant constituée en piliers (libéraux, socialistes et catholiques) composés d'un parti, d'un syndicat et d'une mutualité. Ensuite, parce qu'elle est extrêmement complexe. Par exemple, il n'y a pas de religion d'Etat en Belgique mais celui-ci finance les écoles du réseau d'enseignement libre confessionnel (catholique) et organise, au sein des écoles publiques, les cours relatifs aux différentes confessions religieuses officiellement reconnues. Enfin, cette question du pluralisme religieux est restée vivace dans certains symboles (attachement du Roi, chef de l'Etat, à la religion catholique, etc.) et a accompagné les débats ayant trait à l'installation définitive des immigrés.

Les religions en Belgique en quelques chiffres

La Belgique est un pays de tradition et de culture catholiques. Environ 75 % de sa population est estimé appartenir à la religion catholique, sans considération pour le niveau de pratique puisque le taux de fréquentation de l'Eglise au moment de la messe dominicale est, quant à lui, estimé à seulement 15 %. L'islam représente la deuxième religion du pays avec entre 250 000 et 400 000 personnes issues d'un pays musulman (c'est-à-dire ayant la nationalité belge ou celle d'un pays où l'islam est la religion dominante), soit environ 3 à 4 % de la population belge. Encore une fois, le niveau d'intensité religieuse est très difficile à chiffrer, les statistiques nationales ne prenant en considération aucun critère quant à l'affiliation religieuse de la population. Néanmoins, le nombre de « musulmans pratiquants » est estimé à 10 % de la population musulmane. Les protestants arriveraient en troisième position avec environ 100 000 membres, suivis du judaïsme et de l'orthodoxie qui représenteraient chacun environ 40 000 membres. Enfin, la laïcité, en tant que mouvement philosophique officiellement reconnu, représenterait 18 % de la population.

Le cadre constitutionnel

La Belgique a acquis son indépendance en 1830. Lors de l'indépendance, les catholiques et les libéraux firent alliance, et une constitution progressiste, reconnaissant notamment la liberté des cultes, de la presse et de l'enseignement, fut adoptée. Le catholicisme perdit alors son statut de religion d'État et le mariage civil fut rendu obligatoire. Cependant, les biens du clergé ayant été confisqués lors de l'occupation française, la prise en charge, par l'État, de la rémunération des ministres du culte fut maintenue. La Belgique est un Etat neutre et non laïc comme l'est un pays comme la France. Cette neutralité de l'Etat belge lui interdit d'intervenir dans la nomination des ministres d'un culte quelconque mais lui permet, dans le même temps, de financer les cultes reconnus. L'Etat belge reconnaît un culte selon son utilité sociale, celui-ci devant regrouper un nombre relativement élevé de membres (plusieurs dizaines de milliers), être structuré et établi sur le territoire depuis plusieurs années. Six cultes sont actuellement reconnus en Belgique, à savoir les cultes catholique, protestant, israélite, anglican, musulman et orthodoxe. Les autres comme, par exemple, les témoins de Jéhovah, les mormons et les bouddhistes ne sont pas reconnus, et sont, le plus souvent, constitués en associations sans but lucratif (ASBL). Ils n'ont donc pas accès au financement public. La reconnaissance des cultes catholique, protestant et israélite découle d'actes antérieurs à l'indépendance de l'Etat belge et respectés au moment de la promulgation de la nouvelle Constitution. L'Eglise anglicane a été reconnue en 1870, l'islam en 1974 et l'Eglise orthodoxe en 1985. La laïcité est considérée, depuis 1993, comme l'une des composantes

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idéologiques de la société et ce, au même titre que les différentes confessions. La révision constitutionnelle institue, en effet, que peuvent désormais être rémunérés par l'Etat, les « délégués des organisations reconnues par la loi qui offrent une assistance morale selon une conception philosophique non confessionnelle » (article 181, §2). La reconnaissance officielle entraîne des avantages financiers conséquents comme la prise en charge par l'Etat des traitements et des pensions des ministres du culte, des aumôniers et des professeurs de religion ainsi que l'organisation des cours de religion dans l'enseignement officiel. Elle implique également la reconnaissance des communautés religieuses locales (temples, églises, etc.), qui peuvent dès lors bénéficier de fonds publics pour les travaux d'entretien et de rénovation. En outre, les bâtiments destinés à l'exercice d'un culte sont exonérés d'impôts. L'ensemble de ces éléments constitue un enjeu financier important. En effet, si globalement, les dépenses publiques consacrées aux cultes atteignent environ un peu plus d'un demi milliard d'euros, le culte catholique perçoit traditionnellement environ 80 % de cette somme, le mouvement laïque 13 %, les autres cultes ne dépassant pas les 0,6 % chacun. Cette répartition des finances publiques est largement critiquée comme ne correspondant plus à la réalité sociale et religieuse du pays.

L'islam représente la deuxième religion du pays avec entre 250 000 et 400 000 personnes issues d'un pays musulman (c'est-à-dire ayant la nationalité belge ou celle d'un pays où l'islam est la religion dominante), soit environ 3 à 4 % de la population belge.

Le contexte politique de la reconnaissance et de l'institutionnalisation de l'islam

Nous avons soulevé, ci-dessus, combien la reconnaissance officielle d'un culte implique des enjeux financiers importants et peut dénoter d'attitudes discriminatoires à l'égard des cultes « minoritaires ». Ceci est incontestablement le cas en ce qui concerne l'islam. En effet, la religion musulmane a été reconnue en 1974, il y a donc déjà plus de trente ans. Cependant, le processus d'institutionnalisation de cette religion, qui concerne l'ensemble des mesures concrètes à prendre (notamment le financement) afin que cette reconnaissance soit effective, est toujours en cours. La Belgique, a fait appel dans les années 1960, à une main d'œuvre d'origine étrangère (principalement Marocaine et Turque), pour des raisons économiques et démographiques. Ceci étant, elle ne s'est réellement perçue comme une société d'accueil et d'installation de cette immigration que très tardivement. Ceci a entraîné des tensions quant à la présence des immigrés et aux accommodements nécessaires de la collectivité par rapport à certaines pratiques musulmanes (organisation de la fête du sacrifice, par exemple). La reconnaissance de la religion musulmane a eu lieu en 1974 et l'islam a rejoint les autres confessions officiellement reconnues par l'Etat belge. Cependant, cette reconnaissance s'est faite dans un contexte particulier : celui de la crise économique et pétrolière des années 1970. Les préoccupations de l'Etat belge étaient, à cette période, bien plus orientées vers des considérations diplomatiques qu'intérieures. La gestion du dossier « islam » fut laissée au Centre islamique et culturel de Belgique, alias la Grande Mosquée du Cinquantenaire, située à Bruxelles et appelée de la sorte en raison de sa visibilité architecturale la faisant ressembler à une « vraie » mosquée. Dirigé par l'Arabie Saoudite, le Centre n'est pas parvenu à acquérir la légitimité suffisante au sein de la population musulmane, principalement maghrébine et turque. Plusieurs tentatives, dans le chef de l'Etat belge, visant à remplacer le Centre par un organe plus représentatif, se succèderont. Certaines de ces tentatives seront rejetées par le Conseil d'Etat qui considère qu'en vertu de la séparation des pouvoirs, l'Etat ne peut se charger de l'organisation de l'organe représentatif d'un culte. Cette décision entamera une longue période d'instabilité du culte musulman, emplie de négociations et de nominations de représentants musulmans, les autorités politiques belges, poussées par la crainte de l'islamisme politique depuis l'irruption de celui-ci sur la scène inter-nationale lors de la révolution iranienne, entendant garder un moyen de contrôle sur l'organisation de l'islam belge. Ce processus aboutira à deux périodes d'élections, en 1998 et en 2005, en vue d'assurer la constitution d'un « Exécutif des musulmans de Belgique ». Néanmoins, si un certain nombre de mesures concrètes concernant la finalisation du processus d'institutionnalisation de la religion musulmane ont finalement été réalisées, comme l'organisation des cours de religion, après bien des difficultés (des parents ayant porté plainte devant le refus de certaines localités d'organiser les cours de religion musulmane comme le prévoit pourtant la loi), bien d'autres sont actuellement toujours en suspens. Il en va ainsi de la nomination des professeurs de religion, de la rémunération des imams et également de la reconnaissance des mosquées comme communautés religieuses locales.

La neutralité comme refus de toute visibilité religieuse

Depuis la fin des années 1990, un grand nombre de citoyens musulmans ont fait de la reconnaissance de l'islam et de la lutte contre les discriminations religieuses dans le processus d'institutionnalisation, un enjeu important de la reconnaissance de leur identité et, plus généralement, de l'identité musulmane d'une partie de la population belge. Un certain nombre d'affaires, comme celles concernant le port du voile islamique, ont révélé la crispation de la société belge à l'égard des manifestations de la religion musulmane dans l'espace public. En effet, l'ancien conflit confessionnel entre cléricaux et anti-cléricaux a refait surface et s'est focalisé sur ce qu'impliquait la neutralité de l'Etat à cet égard.

La Constitution belge garantit la liberté religieuse, l'article 19 reconnaissant « la liberté des cultes, celle de leur exercice public, ainsi que toute la liberté de manifester ses opinions en toute matière ». Et alors que le principe de neutralité de l'Etat implique « le respect des conceptions philosophiques, idéologiques ou religieuses des parents et des élèves » (article 24, § 1), on a vu celui-ci être défini, dans le discours politique, comme le refus de tout signe religieux, le rapprochant de la conception française de la laïcité, totalement anachronique au contexte belge. D'autres éléments permettent de mettre en évidence ce virage dans la conception de la neutralité de l'Etat, par exemple, les difficultés rencontrées par les mosquées de la capitale pour faire admettre des critères architecturaux non européens (minaret, coupole, etc.). Cette conception du principe de neutralité, actuellement dominante dans le discours politique contemporain, tend à rejeter le fait que l'espace public est un lieu de luttes pour la reconnaissance des identités. Car, l'espace public est bien l'espace nécessaire pour apparaître en public mais, il est issu d'une interaction historique particulière entre un Etat en construction et une Eglise dominante qui a abouti à un compromis quant à leurs relations et sphères d'influence. Ce qui veut dire qu'il est porteur d'une identité dominante. La présence des églises en tant que bâtiments, et donc en tant que marqueurs symboliques de l'identité dominante dans l'espace public, rend caduc le raisonnement politique actuel autour du principe de neutralité qui tente de le définir comme le rejet de toute forme d'expression religieuse dans l'espace public. Cette évolution témoigne de la formalisation contemporaine du principe de neutralité qui est liée aux redéfinitions de l'identité nationale suite aux migrations. En effet, le développement de l'utilisation politique contemporaine du principe de neutralité est concomitant de l'émergence d'enjeux liés à l'accommodement des différences culturelles et, de façon plus spécifique, à l'inscription de l'islam dans les territoires urbains. Or, il semble qu'à l'heure actuelle, le principe de neutralité tend à se construire en tant qu'argument politique visant à rejeter toutes formes d'expression d'identités culturelles et religieuses « autres ». Il est développé par des acteurs incapables de percevoir les marques concrètes de leur propre religiosité (même passée). En ce sens, il revient à considérer que seuls les « autres » sont *ethniques* au sens de porteurs de signes culturels et religieux. Cette question de la neutralité de l'espace public interroge la capacité de l'identité nationale à intégrer des éléments nouveaux à sa définition. Elle implique que soit pris en considération le fait que les demandes de reconnaissance et de légitimation de l'identité musulmane dans l'espace public sont effectuées par des citoyens belges dont la religion musulmane fait désormais partie intégrante de leur identité et qu'elle doit donc pouvoir, à ce titre, bénéficier d'un droit de cité dans l'espace urbain.

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RE-VISIONING RELIGION IN THE CONTEMPORARY PERIOD

The United Church of Canada's Ethnic Ministries Unit

ABSTRACT

In western societies, there is a tendency to ignore religion until it (or one of its self-designated representatives) causes trouble. This article addresses both the reasons for this tendency to "fetishize" destructive forms of religion, as well as some of the constructive practical and political expressions of religiosity. The case study Paul Bramadat has chosen is the Ethnic Ministries Unit of the United Church of Canada, a group that has much to teach us about the possible place of religion in our world

After many decades of accepting specious arguments about the dismal future for religion, many people in western societies are just now beginning to come to terms with the reality that religion has become – in fact always has been – one of the most significant features of contemporary national and international life. No longer can any scholar, policy-maker, non-governmental organization representative, or even any person-on-the-street credibly claim to be well informed without knowing something about religion, especially its involvement in some of the most complex and seemingly intractable problems in our world (Biles and Ibrahim 2005; Bramadat and Seljak 2005; Kymlicka 2003).

However, the particular kind of attention religion does get these days is quite problematic. The tendency in our society is to ignore religion only until some religious individual or group behaves, well, rather badly. In response to this pattern, this magazine and this article address some of the constructive practical and political expressions of religiosity. The case study I have chosen is the Ethnic Ministries Unit of the United Church of Canada, a group that has much to teach us about the possible place of religion in our world. By way of an introduction to this group and this essay, I would like to reflect briefly on the current backdrop against which religious discourse occurs in our society.

After many people recognize that they (we) had for too long relegated serious discussions about religion to the margins of public discourse, the problem looms large: if fairly substantial (perhaps even increasing) numbers of people organize themselves around atavistic, totalitarian, or apocalyptic religious convictions and communities, and if these groups can and do win the support of literate people within democracies, then are we not indeed headed for another dark age, as some of our sages (Jacobs 2004) fear? These concerns are rooted in reality. My own sense is that those who do not share at least some of these worries about the effect of religion in contemporary society ought to pay closer attention to the claims of people who act sincerely and rationally in accordance with explicitly religious values many members of liberal democracies happen to think of as anti-modern (Bramadat 2000; Jurgensmeyer 2002; Lincoln 2002). The problem is not just that such groups exist or that they are powerful (though of course both of these facts are in themselves problems), but rather that many of us tend to fetishize these kinds of actions and actors, and in so doing tend to have a difficult time understanding them in their proper context.

The nearly exclusive focus on violent or otherwise aggressive forms of religion is partly the fault of sensationalized and discriminatory media coverage of admittedly cataclysmic events such as September 11th 2001 (Karim 2003; Said 1997); partly the fault of a neo-conservative political juggernaut in the United States; partly the fault of the still powerful grip of the secularization hypothesis (Swatos 1999); and partly the fault of the deep and ancient human tendency to demonize another group or individual as a means of organizing and establishing one's place in the world (Pagels 1988). Of course, this provides some context for, but does not excuse, our tendencies to allow ourselves to be guided by highly questionable assumptions about religious and ethnic communities.

The media, political, and public fetishization of religiously inspired violence, chauvinism, and imperialism, has regrettably obscured the formidable efforts of millions of tireless religious individuals and communities devoted to justice, non-violence, and benevolence. Numerically, such people probably represent the majority of the religiously motivated actors in the world (though it must be said that there is no way to confirm this). I mention this not to suggest – as one is expected to suggest these days – that these more "progressive" individuals and the groups they form represent the

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"true" face of religion; such a claim would deny both the historical record of diversity within each tradition, and the agency and coherent reasoning of those committed to worldviews that many people (myself included) abhor.[1] I mention this simply to foster a more balanced account of religion in our historical period.

Such a re-balancing of our public discourse with respect to religion is necessary because one still hears the claim that the other-worldly, patriarchal, authoritarian, etc., logic that many people assume to be the foundations of all religions (and religious people) stands in opposition to the lofty goals of modernity. Such a criticism presupposes that the so-called political Islam of Osama bin Laden (and millions of Muslims), the political Christianity of George Bush (and millions of Christians) and the political Hinduism of India's Bharatiya Janta Party (and millions of Hindus) somehow accurately represent the larger traditions to which these groups – one must say, legitimately – belong. Interestingly, though, one rarely hears people dismiss the social value and efficacy of liberal democracy *in toto* just because of the electoral ambiguities (to put it mildly) of the 2000 U.S. election, the sponsorship scandal in Canada, or the many upheavals in the Italian and Ukrainian political systems. The same kind of practical moral heterogeneity that is accepted (or at least tolerated) in political, ideological, and economic movements, is thought to be completely incommensurate with religious movements.

What is often overlooked is the fact that many religious communities are involved in positive social change (meaning, social action oriented towards the improvement of humankind irrespective of ethnic or religious identity). This list may be obvious, but it is worth consideration, nonetheless: Salvation Army soup kitchens; religious groups and coalitions aimed at reducing ethnoracial discrimination against themselves and other groups (B'nai B'rith, CAIR-CAN); the Mennonite Central Committee's non-proselytizing relief efforts in impoverished regions; many groups' mobilization in the 1980s to protest apartheid in South Africa and military dictatorships in Central and South America; the role of religious commu-nities in the settlement of refugees (Beiser 1999; McLellan 1999); not to mention most recently the massive, global, and often faith-based generosity shown in wake of the tsunami of December 2004 and hurricane Katrina in September 2005. To remain silent about such efforts, especially in light of the volume (in both senses of the word) of the often quite paranoid rhetoric in public discourse, just contributes to the invisibility of the more progressive individuals and groups.

In order to promote a more nuanced discussion of religion in our intellectual discourse, in the rest of this essay I would like to discuss briefly an example of a religious community that is making an effort to engage one of the great challenges and opportunities in the contemporary metropolis – ethnic diversity – in a creative manner.

The tendency in our society is to ignore religion only until some religious individual or group behaves, well, rather badly.

The United Church of Canada is the largest Protestant denomination in Canada, with roughly 2.8 million adherents.[2] It originated in a 1925 merger between Canadian Methodists, Congregationalists, about 70 per cent of the Presbyterians, and the small General Council of Union Churches. So, it began in a practical compromise between related Protestant denominations, and aimed to serve the broad base of the mainline Protestant world by developing theologies and structures that would appeal to a wide Canadian audience. While it does not represent nearly as substantial a segment of the overall Protestant religious "market share" as it did in the past, its place in the Canadian religious scene is still significant (see Bibby 2002; 1993; 1987).

Given its denominational roots, it is not surprising that the overwhelming majority of its members during the 20th Century were white Europeans of largely British origin. Nonetheless, for many decades (and in some cases from the very beginning of its mandate), the church has included many almost exclusively Asian and Black West Indiancongregations. However, many members from these minority congregations felt excluded from the mainstream of this denomination. Denominational leaders responded to these experiences of exclusion at the 29th General Council meeting in 1982 by adopting reports that affirmed the value of ethnic diversity within the church. Before and after this important first formal acknowledgement, ethnic minorities struggled to express their complaints of exclusion from the larger structure, and also sought to find ways during these years to contribute their voices to the broader denominational discourse. In 1996, the Church created the Ethnic Ministries Council (now called the Ethnic Ministries Unit (EMU)) to address the denomination's shortcomings with respect to its acceptance of diversity.[3]

The EMU's official mission statement (developed in 1998 and revised in 2000) is: "To nurture and support the ministries of Ethnic Ministries congregations and ethnic minorities of The United Church of Canada to participate fully and faithfully in the Church's life and mission as a developing, growing, and gifted presence." Working to achieve the unit's objectives are 59 member congregations, 24 elected members of the unit-wide committee, six conference ethnic ministries committees, and six paid staff members. The member congregations represent a wide variety of ethnicities, although the four principle sub-units or associations represent Filipinos, Chinese, Japanese, and Koreans; a fifth "coalition" of congregations includes communities in which African, Armenian, Caribbean, Finnish, Ghanaian, Hungarian, Italian, Taiwanese, Ugandan, and Welsh Christians are the majority populations. Inaddition to providing support for almost exclusively ethnic minority congregations (Koreans, Japanese, etc.), the unit also seeks ways to improve the integration of ethnic minority individuals within predominately white (and European) congregations. Clearly, the EMU reflects the increasing diversity in the United

Church of Canada. Moreover, it addresses that ethnic diversity in an explicit manner that openly and critically acknowledges the white privilege that has been woven into the fabric of Canadian Christianity for centuries and the United Church for its entire history.

A critic might see the EMU as an attempt to reach out – after decades of neglect, according to the EMU's own common narrative – to its ethnic margins, mainly to stop or slow down the decline in membership and identification. Such a critic might point out that, like other Protestant denominations, the United Church is facing quite troubling declines in membership and identification. Between 1991 and 2001, the numbers of Canadians who identified themselves on the Canadian census as United Church Christians fell by 8.2 per cent (other Protestant declines were: 7 per cent for Anglicans, 35 per cent for Presbyterians, 4.7 per cent for Lutherans). Although the United Church remains the largest Canadian Protestant denomination by a fairly wide margin (the next largest deno-mination is the Anglican Church, with 800,000 fewer adherents), its leadership cannot help but feel discouraged by the recent census findings, which simply confirm the continuation of a pattern of decline that is decades old (Bibby 1993; 1987). One might argue that the EMU is simply a way to delay that decline.

Other critics might wonder whether or not the larger church might see the EMU as an expedient way to get ethnic congregations to accept the denomination's controversial positions on feminism, same sex marriage, or the ordination of gays and lesbians. Many ethnic congregations are uncomfortable with these changes and the EMU could serve as a means of imposing the values of the liberal leadership on more conservative members. The discourse common within the EMU is that the unit is both a) helping the church to better address the spiritual needs of its ethnic minority adherents (those in ethnic minority congregations and those in mixed or mainstream (i.e., white) congregations), and b) helping to cultivate a profound, systemic, denomination-wide integration and appreciation of ethnic minority members and commu-nities. Critics might ask, however, whether or not beneath the paradigm shift this would actually entail, the EMU is in fact acting as a proxy for the denominational "centre" which is subtly imposing its will upon the intransigent moral "periphery."

These are legitimate critical concerns. It does seems likely that the EMU's efforts to improve the place of ethnic groups and promote respect for ethnic diversity in the larger denominational discourse might slow the exodus of members from (and might even attract new ethnic members to) the denomination. Furthermore, the EMU might also help to advance the church's progressive moral stance vis-à-vis human sexuality in certain ethnic communities, many of whose members are for various reasons opposed to elements of this stance. However, it would be cynical and unfair to dismiss the EMU's formation in the 1990s and its current mandate as merely part of a shrewd management strategy either to improve the church's membership rates or to tame unruly moral conservatives. The situation is, as usual, more complicated than this. Personally, I take seriously the church's and the EMU's claims to be engaged in a "re-visioning" of the church that is intended to keep this venerable institution meaning-fully and dynamically engaged with the pluralistic and postcolonial environment in which they now find themselves.

It does seems likely that the EMU's efforts to improve the place of ethnic groups and promote respect for ethnic diversity in the larger denominational discourse might slow the exodus of members from (and might even attract new ethnic members to) the denomination.

It is important to see the emergence and activities of the EMU in their broader social and religious context. The EMU is, after all, just one part of the church's efforts to become more inclusive with respect to gender, ethnicity, race, sexual orientation, class, and other historical markers of exclusion and marginalization. Instead of resisting or lamenting the erosion of the ethos of anglo-conformity that has been such an integral part of the denomination's history, church leaders appear to be embracing these transformations.

The EMU has been in existence for nearly ten years, and to mark this milestone, the church plans to review the activities and agenda of the unit to ensure that lessons are learned from a decade of experience, and also to respond to rapid changes (mostly related to immigration) in the surrounding culture. It seems likely that such a review will not only help the denomination better understand the EMU's past and future tasks, but will also provide insights that will be of use to observers in other religious traditions, and non-religious people interested in promoting a more inclusive society. In the midst of a sometimes-paranoid public discourse about the dangers of religion to liberal democracy, we need to remember the EMU and the many other examples that demonstrate the enduring power of religion to promote values that are quite consistent with – among other policies and traditions – Canadian multiculturalism.

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Notes

[1] One need not adopt a morally unmoored relativism in order to acknowledge that so-called fundamentalists within each tradition have legitimate grievances and often operate within intellectually consistent and historically rooted worldviews. This does not mean, of course, that one has to agree with such people or groups; nor does it mean that one cannot use a variety of methods to limit their activities.

[2] All statistics in this essay are derived from the 2001 national census. See: http://www12.statcan.ca/english/census01/Products/Analytic/companion/rel/canada.cfm .

[3] For information on the EMU, see: http://www.united-church.ca/em

MULTICULTURALISM AND FUNDING FOR ONTARIO'S ISLAMIC SCHOOLS

ABSTRACT

This article examines the role of Islamic schools in Ontario in integrating the Muslim community into the civic and economic life of Canada. While many liberal commentators see these independent religious schools as a danger to multiculturalism and a common civic life, David Seljak argues that such judgments are grounded more in ideological constructs than empirical evidence. Seljak suggests that, while these schools operate as a fortress that protects Muslim students from the dominant society, they also act as a bridge, allowing those students to negotiate a relationship to secular Canadian society.

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Since the 1980s, immigrant communities in Ontario reframed the debate around religious education from one of moral duty to multicultural education (Davies 2001) and now to one of fundamental human rights. The latest shift was a result of the November 1999 ruling of the United Nations Human Rights Commission that Canada supported state-sponsored religious discrimination because it funds only Roman Catholic separate schools along side of public schools (Bayefsky 2000). Now arguing for equal rights, as well as for the benefits of real multicultural education, immigrant communities – along side of various non-Roman Catholic Christian groups – have pressured policy-makers to rethink their reluctance to fund religiously-based independent schools. The Ontario government has refused to extend funding to independent religious schools and the Supreme Court of Canada has allowed this discriminatory policy to stand.[1] Consequently, Muslims in Ontario are forced to choose between the religiously neutral public schools or private schooling.[2]

However, for many Muslim Canadians, so-called "neutral" public schools pose a problem. Many immigrants, for example, experience public schools as means of assimilation. If immigrant communities cannot "hold on to their young", they will not survive the dissipation of their tradition as the second generation is socialized into the host country's culture and social structures. Immigrant groups, along with more established religio-ethnic communities, often argue that schooling must reflect and encourage their cultural values – values that are, as often as not, religious in character. In this paper, I hope to introduce the current debate around multicultural education and private religiously based schools, using the work of an interesting Canadian scholar, Jasmin Zine. I hope to illustrate how religiously-based independent schools help integrate certain ethno-religious groups into Canadian society, acting sometimes as a "fortress" that protects group identity and solidarity but, just as frequently, as a "bridge" that connects members of the community to the broader Canadian population (Bramadat 2000).[3] These schools help Muslim immigrants and refugees integrate into Canadian society as well as to create counter-cultural communities that challenge the values of the dominant Canadian society. In this way, they help to create the conditions, I will argue, of a healthy multiculturalism.

As the controversy surrounding the decision by France to ban the presence of religious symbols in public schools – a law clearly aimed at the wearing of the *hijab* by young Muslim women – demonstrates, education remains a flashpoint in debates on multiculturalism. In Ontario, as in France and elsewhere, debates on religion in school quickly expand into questions about fundamental values regarding rights and freedoms of individuals, families, and communities, the common good, state power, the nature of democracy, pluralism, and multiculturalism, as well as the very definition of rationality and freedom. They raise questions of tolerance and its limits as well as the viability of the dominant strategy of most Western nations in the face of religious diversity, that is, the secularization of political culture and public institutions (such as schools) in order to avoid religious compulsion or favoritism.

For Muslim students, integration into the secularized public school system is fraught with difficulties.[4] Jasmin Zine has documented various acts of discrimination, misunderstanding, and injustice experienced by Muslim students in Toronto's public schools. Sometimes the discrimination is open. In one instance, an administrator prohibited the creation of a Muslim group at a school – despite the fact that there were several Christian clubs already operating. More frequently, the discrimination is more subtle. Young Muslim women who choose to wear the *hijab* report that their teachers often assume they must be uneducated, or that their families oppose their education. Other Muslim students report that their teachers have

lower expectations of them and consequently channel them into the lower non-academic streams. At an even deeper level, there are the Western and Christian assumptions and values that form the basis of the curriculum and moral culture of the school. Finally, and perhaps most decisively, there exist informal sanctions imposed on young Muslims by other students. Muslims who refuse to conform to youth-culture norms regarding dress, sexuality, pop culture, and alcohol and drug consumption are frequently ostracized (Zine 1997, 2000, 2001). In sum, concludes Zine, the dominant public school culture that assumes secularity as normal "minoritizes" Muslim students. Alienated by the culture of their schools, Muslim students may drop out, or as Dei et al. prefer to say, these minoritized students are "pushed" out by a school culture that refuses to recognize them (Dei et al. 2000:9-10).

In response to this sense of alienation, a number of Muslims have created independent schools.[5] There are currently 36 Islamic schools registered with the Ontario Ministry of Education, offering both primary and secondary education.[6] While these schools are required to register with the Ministry, they need not follow its curriculum nor hire qualified teachers. Unlike a number of provinces, Ontario provides no funding to private schools whether religiously based or not. Consequently, parents, teachers, and various Muslim communities bear the cost of supporting them. Even so, the number of Islamic schools in the province continues to grow. The first school opened in the 1980s and by 1999, there were 25 such schools (Scrivener 2001). Although there are between 4,000 to 6,000 students in these schools in Ontario, there are many parents still waiting to find available placements for their children. Some schools have Àwaiting lists as long as 650 names; others have parents who register their children at birth (Zine 2004: 15). When asked about why they endure the expense and risk of sending their children to Islamic schools, most parents answer that they want their children to grow up in the Muslim faith. Equally important is the desire to protect their children from a secular popular culture that stresses liberal sexual attitudes, consumption of drugs and alcohol, and unruly behaviour (Scrivner 2001).

Many worry about the "fracturing" effect of these private schools. Public schools, they argue, should be a place where immigrant children of all income levels, faiths, and cultures learn together (Ontario Public School Boards' Association 2001). Indeed, even some Muslims oppose the existence of independent Islamic schools, arguing that they threaten to ghettoize and segregate the community (Jafri and Fatah 2003:A17). Such positions are also taken by liberal theorists and policy-makers who worry that children in independent religious schools will be socialized into illiberal values and will not experience the benefits of interacting with a multi-religious and multicultural student body (see Spinner-Havel 2000 for example). However, an increasing number of thinkers question the neutrality of secular public schools and argue that refusing to recognize religious difference or even acknowledge religion in the curriculum or school culture serves to marginalize and alienate large sectors of the population (Sweet 2002).

However, an ideological commitment to so-called "neutral" education ignores the reality of the integrative function of religiously based schools. Indeed, the debate occurs so frequently on the ideological level that people often ignore empirical reality. Opponents of funding to private religiously based schools overlook the fact that Ontario's publicly funded Roman Catholic school system – guaranteed by the Canadian constitution – has not created a segregated Catholic population. Moreover, they also have no way of knowing what actually occurs in religiously based schools – especially Islamic schools – because the research has not been done. This is why Zine's research is so important.

Zine's work shows that such critics take a one-sided view of Islamic schools and similar institutions. While ethnic and religious institutions can operate as a "fortress", that is, a religio-cultural ghetto that protects group identity and solidarity, they can (and often do) function as a "bridge" for group members to the wider society (Bramadat 2000). This latter function is most often ignored by commentators as well as scholars who too often study these groups and institutions in terms of what they protect people from instead of what they empower people to do. Islamic schools certainly protect Muslims from the pressures of assimilation, Zine reports, and they certainly empower them to create and sustain unique cultural identities. However, they also allow Muslims to interact with other Canadians on the basis of equality and mutuality. In many of these schools integration into Canadian society is a foundational goal. As Nisar Sheraly, principal of As-Sadiq Islamic School in Thornhill, said of Muslim students: "We'd like them to grow up as proud Muslims who also can say, 'We are Canadian.'" (Scrivener 2001). The project of integration, or of bridge function, is evident in conscious attempts to integrate students into Canadian civic society and into the market economy. Islamic schools in Ontario are not separatist.

While ethnic and religious institutions can operate as a "fortress", that is, a religio-cultural ghetto that protects group identity and solidarity, they can (and often do) function as a "bridge" for group members to the wider society.

As part of my wider research project on religion and education in Canada, in 2003 Jasmin Zine gave me a tour of the Islamic Academy in 2003 in Scarborough, Ontario.[7] The school offers Islamic and academic education to boys and girls from Junior Kindergarten to high school. Typical of many Ontario Islamic schools, the Islamic Academy offers both the government-approved curriculum as well as Islamic education, which includes courses in the Arabic-language, *Sunnah* understanding, memorization and study of the Qur'an, *Islamiyyat*,(Islamic studies), *Hadith* memorization, and instruction in *Da'wah* (spreading the word of Islam). One option for students is *hifz* classes, in which students spend three years (Monday to Friday 8 am to 4 pm)

memorizing and reciting the Qur'an. The culture, as well as the curriculum, of the school is clearly Islamic. The food in the cafeteria is *halal* and the school day allows for prayer. Girls must wear the *hijab* and many of the boys may wear "Islamic hats".[8] The manual for parents and students stresses that the school is a "safe place" where the group identity of students can be preserved, encouraged, and given room to blossom and where the students will be protected from a number of social ills inherent in a liberal secular society. One prominent section of the manual is called "Saving Our Children" and states that, while the Qur'an demands that parents save their children from hellfire, there are no easy answers to how to do this in "in this world of teenage pregnancies, homelessness, alcohol, drugs, lawlessness, and an ever-widening generation and cultural gap between parents and children".

However, equally prominent throughout the literature is the emphasis on academic excellence and integration into Canadian society. These objectives are listed in the section of the manual entitled, "Our Goals", which include:

- To provide an Islamic and academic education (a necessary combination for intellectual and moral development) in an Islamic environment, for both brothers and sisters
- To encourage the development of each student's Islamic identity and manners, so that they may become a role model in Canadian society

The school's website and manual boast that its students have successfully moved from the Islamic Academy into prestigious universities and colleges. The Islamic Academy is especially proud of its computer facilities. Having recently moved into a campus formerly occupied by a business college that trained people in computer software use and design, the school is equipped with hundreds of computers (almost one per child) and has integrated them into the curriculum. It is clear that the Islamic Academy wants its students to move seamlessly into the mainstream of Canadian economic and civic life – while maintaining their Islamic identity and solidarity.

This is not to deny that there may be real problems with Islamic schools or that there is not tension between them and Canadian society. Although they are a minority, some Islamic groups have become authoritarian, anti-egalitarian, and violent. Other groups are sexist. However, these failings do not disqualify the legitimacy of Islamic schools *per se*. Zine suggests a critical approach to the question. Zine agrees that Islamic schools will inevitably clash with the dominant liberal culture of Canadian society. This may not always be a bad thing. Often Islamic schools serve communities that challenge the hegemonic discourse of a European culture that defines itself as superior, rational, and universally valid. Like other indigenous knowledge, Islamic culture challenges Western discourses about what is true, beautiful, and good (Zine 1997). If multiculturalism is to be anything more than a program of polite assimilation, Canadians have to encourage the creation of centres of learning that would produce a culture critical of existing values and practices. That is the political role of Islamic and all minority group schools.

If multiculturalism is to be anything more than a program of polite assimilation, Canadians have to encourage the creation of centres of learning that would produce a culture critical of existing values and practices. That is the political role of Islamic and all minority group schools.

At other times, it may be the Islamic schools that have to learn from Canadian culture. Of course, it is the issue of gender that is often at the centre of resistance to Islamic schools, and Zine is clearly uncomfortable with conservative Islam's attitude to women. However, she argues, while Islamic schools certainly do socialize children into specific gender roles, many of the preconceptions of outsiders are rooted more in "gendered Islamophobia" than any real knowledge of what goes on in the schools themselves. In some schools at least, Zine has found gender equity in curriculum and academic expectations and achievements (2004: 362-63). Still, she does not deny that more work needs to be done to ensure gender equity in Islamic schools and to challenge the authoritarian and puritanical school culture that places an inordinate emphasis on policing girls (310-315). However, Zine does object to the use of the argument to deny Muslims the right to educate their children in their own tradition.

Many of the barriers to Islamic schools' integrating their students into Canadian society may stem more from a lack of resources than any particular Muslim practice or value system. Zine reports that Islamic schools that serve poor immigrant and refugee communities are so strapped for resources that students do not have books (2004: 364-379); teachers are often poorly paid and lack accreditation. While some schools are professionally administered and well-funded, others are husband and wife operations that lack the very necessities of modern schools, such as textbooks, a library, a gymnasium, or internet connection. In particular, the schools that serve low-income immigrants and refugees (for example, the Somalian community) cannot raise tuition. The government's refusal to fund independent religious schools is destined to reinforce the economic marginalization of these groups.

I have argued in the past that the debate around public funding for independent religious schools in Canada should remain open (Seljak 2005). Ontario should not automatically follow the U.S. model that prohibits any state funding for "religion" – at least not before we know what actually goes on in independent religious schools. The decision should be based on empirical evidence not ideological commitment. After all, France – which many Canadians rightfully criticized for its recent law against religious symbols in the classroom – provides full funding for Islamic schools as long as they teach the state curriculum and hire qualified teachers. Other Canadian provinces – such as Alberta, Quebec, and British

Columbia – fund private schools, including religious schools at 50 to 60 per cent of the rate they provide for public schools. The fragmentation and ghettoization predicted by liberal commentators has failed to materialize.

On the other hand, should these schools by abandoned by mainstream society, they could indeed become the instruments of socio-economic ghettoization and religio-cultural fragmentation that many fear. Including them in the educational mainstream of Canadian life may help Muslim immigrants and refugees to integrate into Canadian economic and civic life. Such inclusion would hopefully create nodes of resistance to the hegemonic culture of the Canadian mainstream, nodes that may provide the counter-cultural ideas, values, traditions, and practices (such as those concerned with self-discipline, communitarianism, and social justice) that will enrich our future. In combination with a rigorous program of making our public schools more sensitive to religion as an important social factor (both by including it in the curriculum and by developing policies to recognize and respect religious diversity in schools), funding independent Islamic schools could also signal to Muslim Canadians that Canada welcomes their unique contribution to our diverse ethno-religious community. Because religiously based independent schools serve both as fortress and bridge for many Canadian Muslims, they may be uniquely placed to contribute to the give and take that is the central feature of a truly multicultural society.

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Notes

[1] The Supreme Court has upheld the practice, ruling that the Charter of Rights and Freedoms (1982) specifically states that it cannot be used to challenge the provisions of the British North America Act that defined the structure of Canadian society. Article 93 of the BNA Act (1867) guaranteed public funding for Roman Catholic schools in Ontario. Consequently, the Court decided that the "freedom of religion and conscience" clause neither forced the government to provide funding for religiously based independent schools nor to revoke the privileges of the Roman Catholic community. On the courts and the question of religion and education in Canada, see Khan 1999.

[2] "Private schooling" ranges from home schooling to Ministry-registered Islamic schools that teach the provincial curriculum in addition to Islamic education.

[3] Bramadat (2000) discusses the fortress-bridge function of a conservative Christian group on a secular Canadian campus. Like many Muslim communities, the main tension for conservative Christians seems to be over values and lifestyle issues (especially alcohol consumption and permissive sexual mores) and not ideas and beliefs. Bramadat writes: "In short, the members of this group (and perhaps other evangelicals) are able to maintain their religious identities in a secular environment because they sustain and employ an elaborate psychosocial construct that enables them to manage, transform, and sometimes diminish the otherness they experience when they confront non-Christian worldviews, values and individuals." (146) This describes almost perfectly the role of Muslim Student Associations and Islamic schools described by Zine (1997, 2004).

[4] Ontario's public school system was defined by non-denominational Protestant Christianity until the 1960s. Only after several court challenges based on the 1982 Charter of Rights and Freedoms was the system purged of all formal Christian practices and content.

[5] For example, many of the students that Jasmin Zine interviewed felt that they would like to send their children to public schools to avoid the racism, low expectations, and struggles they faced in the public system (Zine 2004:182).

[6] All but one of these schools is from the Sunni tradition, the other being a Shia school (Zine 2004:15). To find a list of Islamic schools in Ontario, see www.edu.gov.on.ca/eng/general/elemsec/privsch/.

[7] In order to preserve confidentiality, the name of the school has been changed and all identifying markers suppressed.

[8] Indeed the school manual forbids the wearing of all hats except "Islamic hats". One school administrator I spoke with said that she was well aware of the fact that these hats are features of ethnicity rather than religion, but all the same, parents were very enthusiastic about the fact that their children could attend school wearing hats popular in their country of origin. It is interesting to note the way in which religion and ethnicity are blended in the minds of parents who send their children to these schools.

RELIGIOUS DIVERSITY IN CANADA

in the Shadow of Christian Privilege

ABSTRACT

This article explores the contours of religious diversity in Canada and finds that while nascent religious pluralism is discernible, vestigial Christian privilege appears to be impeding the substantive inclusion of religious minorities in the Canadian "shared citizenship model."

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Religion in general and religious diversity in particular appears to create discomfort and at times strikes fear in the average Canadian. Religiously affiliated extremists like those Sikhs who were responsible for the Air India bombing; the form of Christianity that guided Timothy McVeigh in the bombing of the federal building in Oklahoma; the Buddhist extremists who deployed nerve gas in the Tokyo subway; the Hindu nationalists responsible for large scale slaughter of Indian Muslims; extreme Jewish Zionists who have contributed to turmoil in the Middle East; or Muslim radicals who have been linked to bombings in Bali, Madrid, New York and London, dominate the portrayals of religion and pluralism in popular discourse, especially the mass media (Juergensmeyer 2001).

Even when death and destruction are not directly pinned on the religious, commentators are quick to find fault. Gender equality and human sexuality are two of the most frequently cited exemplars of how the values of the religious clash with the supposedly secular values of contemporary Canadian society. Less attention is paid to the unequal treatment of women almost across the entire spectrum of Canadian society. Even less energy is spent on ascertaining why it is that gays and lesbians in Canada have had to force governments, and the people they represent, to the judicial wall in order to attain the same rights accorded to other Canadians for decades.

What makes the Canadian case interesting on the question of religion is how its world-renowned multicultural framework interacts with religious diversity and whether it truly results, or even can result in harmonious religious pluralism. There are many who would suggest that this is an impossibility. We are not among them.

Legislative/Constitutional Framework

Unlike many of the countries covered here, Canada does not have an established religion. Indeed, Prime Minister Paul Martin has recently reacted to a planned meeting of Vatican officials to discuss sanctions against Catholic politicians who violate church doctrine on the question of homosexuality by declaring that there is a division between church and state in Canada (*Ottawa Citizen* 2005). He is not alone. Public discourse is full of decision leaders like politicians and journalists who are quick to pronounce the division of church and state in Canada (Biles 2005). This is technically accurate, yet there is no denying the privilege that Christianity has had in Canada and largely retains until today. Researchers are more likely to describe Canada as a nation with a "shadow establishment" (Martin 2000).

This quasi-status of Christianity should not be overly surprising in a nation where the vast majority of citizens are Christians and where Christianity has been a central element of Canadian society since the arrival of Europeans (Ogilvie 2003). The result is a wilful ignorance to the enduring power and privilege accorded to Christianity in Canada today. Examples of this ongoing power and privilege include: denominational schools in many provinces (Seljak 2005); national s ymbols and imagery imbued with Christian references (Biles and Ibrahim 2005); the continued battle over the *Lord's Day Act* in Nova Scotia; frequent skirmishes over the appropriateness of prayer marking the opening of councils and legislatures (Harvey 2000); and the nearly complete domination of Christians and Jews in the elected offices of the land (Andrew, Biles, Siemiatycki and Tolley forthcoming).

On the one hand then, Canada has a very pervasive Christian ethos, and on the other there is a remarkable suite of legislation including the Charter of Rights and Freedoms as part of the *Constitution Act*, the *Canadian Multiculturalism Act*, the *Human Rights Act*, and the *Immigration and*

Refugee Protection Act that seek to frame an inclusive Canada where there is no place for the distribution and retention of privilege and power on the basis of ethnicity, race, religion, national origin, gender, sexual orientation, or ability, to name but a few. Canadians are therefore faced with an unsettling discordance between the inclusive society to which we aspire and the fact of continuing Christian dominance.

Demographics

Addressing this discordance becomes ever more pressing. Religious diversity in Canada is growing at breakneck pace.[1] While Christian denominations have been in steep decline over the last few decades, this decline appears to be stabilizing (Bibby 2004). At the same time, growth among Jewish, Hindu, Muslim, Sikh, Buddhist and other non-Christian religiously affiliated Canadians continues to grow rapidly. The Canadian Muslim population grew at a rate of 128.9 per cent between 1991 and 2001, a rate of growth only exceeded by those Canadians reporting an affiliation with Aboriginal spirituality (175 per cent). Projections conducted by Statistics Canada for the Department of Canadian Heritage suggest that these populations will continue to grow and will account for between 9.2 and 11.2 per cent of the Canadian population by 2017. In 2001 these Canadians comprised 6.3 per cent of the population, up from approximately four per cent in 1991 (Statistics Canada 2005).

Thus, while most global religious traditions and Christian denominations have been extant in Canada for extended periods (Bramadat and Seljak 2005, forthcoming), this renewed growth suggests that Canadians and their governments had better seriously address religious pluralism, if we are to ensure that the Canadian approach to "shared citizenship" continues to thrive. True, these traditions, like Christian denominations, are internally heterogeneous, and their absolute numbers remain small. For example, the largest minority faith, Islam, had just 579,700 adherents according to the 2001 Census of a total population of just over thirty million. Nevertheless the tripling of communities in a twenty-five year period to over a tenth of the Canadian population is a seismic shift in demography comparable to the rise of "visible minority" populations in the 1970s and 1980s.

Examples of compromises

We are not without hope in this regard as practical examples of negotiated compromise surround us. International scholars suggest that some of the most telling areas of exploration for how governments address diversity are in three institutions that almost completely structure the lives of the individuals committed to their care: education systems, corrections and the military (IJMS 1999). In the Canadian case there is clearly movement towards a space more open to religious pluralism. For example, as Seljak observes, the secularization of the education system in Newfoundland and Labrador in 1997 is indicative of "the retreat of Christianity" across the country (Seljak 2005).

Similarly, the Chaplaincy Service of the Correctional Service of Canada (CSC) has worked in recent years to ensure that non-Christian inmates' needs are addressed. The CSC has had to approach Treasury Board for additional resources to provide halal and kosher meals as well as other religiously required items (Galloway 2003). In addition, religion was included as part of a human rights audit undertaken in 2002 (CSC 2002). While the primary finding of the report was that "Resource and basic service standards for minority faith groups are either too vague or non-existent," there is no denying that progress has subsequently been made: the Correctional Service hired an imam in Quebec and announced its intention to hire a full-time imam in Ontario in addition to the part- time leaders from a range of faiths already engaged by the CSC (Chen 2004).

> Despite internal heterogeneity amongst Christian denominations and other faiths, in general religious Canadians have been cast as illiberal by their fellow citizens and have been demonized accordingly.

The Canadian military and the Department of National Defence, which has been severely criticized for its attitude towards diversity following the Somalia affair[2] and the disbanding of the airborne regiment after videos of racist and degrading hazing were aired on the news, has also made significant inroads. Harassment awareness training has been made mandatory and recruitment strategies have been developed to attract Canadians of all backgrounds (Pratt 2004). These efforts are starting to show results: The first Muslim to serve as a military chaplain, Suleyman Demiray was appointed in December 2003; and the first hijab wearing Canadian woman to serve in the Canadian military, Wafa Dabbagh, reports she has been welcomed by the navy (Harvey 2003, Lajoie 2004).

Challenges: Public Discourse and Attitudes

Despite the abundance of examples of successful compromise amongst Canadians of diverse backgrounds, challenges, of course, remain. The most pressing at the moment is the relentless treatment of Canadian Muslims as an un-integratable mass of illiberal individuals who pose a threat to Canadian society. A problem that predates the 2001 terrorist attacks, that have merely intensified what some term "Islamaphobia" (Carens and Williams 1996). This erroneous and bigoted attitude is widely held, is extremely unhelpful in building an inclusive Canada, and results in some serious illiberal behaviours on the part of other Canadians and Canadian institutions.

The most evident area of public discomfort with religious diversity pertains to national security and public safety. Since the terrorist attacks of September 11, 2001 Canadians have repeatedly reported that they are willing to sacrifice some human rights for greater safety.

This feeling is shared by Canadians of all religious backgrounds, where the challenge comes is in ensuring that all Canadians are treated equally and some are not asked to sacrifice more than others.

Similarly, issues around gender relations and sexual orientation have taken center stage in Canada over the last year. The question of faith based arbitration in Ontario has garnered headlines across the country and around the world. While the Premier of Ontario has declared that sharia will not be accepted in Ontario and that his government will therefore revise legislation to outlaw all faith based arbitration in the area of family law, the role of women in Islam has been fore grounded and cast once again in a negative light[3]. Far less attention is paid to the role of women in Catholicism or Judaism for example (Carens and Williams 1996).

Same sex marriage has been an even more contentious issue in the Canadian context and has led to extensive public discourse around the appropriate relationship of religion and public policy. Aspersions have been cast from both sides of the debate. Despite internal heterogeneity amongst Christian denominations and other faiths, in general religious Canadians have been cast as illiberal by their fellow citizens and have been demonized accordingly. Public debate in the Canadian context tends to be rather controlled and seldom strays from the multicultural frame, this was not the case in this instance: rhetoric was in many cases extremely nasty (Biles 2003).

Finally, examples of mundane discrimination, mundane in the sense of the nitpicky silly issues that shouldn't preoccupy a society, continue to affect minority religious communities. Planning permission is one of the most commonly cited. Nothing is more difficult to build in Canada than a mosque (Isin and Siemiatycki 1999), although as McClelland and White (2005) chronicle, Canadian Buddhists are not exempt from mistreatment either. Chinese Canadians seeking to ensure funeral homes are not built in their neighbourhoods are also frequently in for a rough ride (Mullington 2000). In almost all cases, minority communities eventually prevail, but not before they have expended considerable time, energy and financing that Christian Canadians do not have to invest in similar activities.

One final example, although more systemic than the other mundane examples listed here is the near complete dominance of the Christian calendar in Canadian institutions. Even though other countries like Singapore have long adjusted to multiple faiths' high holidays, Canada lags behind. The Government of Canada allows its employees to decide whether they will work on the August long week end or St Jean Baptiste Day[4], they do not offer the same opportunity to employees deciding whether to work on Christmas Day or Yom Kippur. Canadian universities are no better, while many will allow students to move their exams, only York University schedules exams to avoid faith days and it is just one of four Canadian universities that has a policy ensuring that assignments are not due on faith days (Harvey 2002).

Surely a society committed to inclusion should take some collective responsibility and action to ensure that disproportionate costs are not borne by some of its least advantaged citizens who merely wish to exercise their rights.

Opportunities: Moving Ahead

These ideological blinders that see the world only through the eyes of Christianity must be removed if Canada is to successfully become an inclusive society in the twenty-first century. As we have seen from the demographic projections, Muslim, Buddhist, Hindu, Sikh, Jewish and other religious traditions are going to continue to grow in Canada, and grow rapidly. Their concerns cannot be ignored *ad infinitem* without serious issues of exclusion emerging. Like the British and the Australian governments which have recently commissioned large studies on religious diversity (Weller, Feldman and Purdam 2001; Cahill, Bouma and Dellal 2004), it is time to take a serious look at Christian privilege, to ascertain where the "secular" state interacts with citizens in uneven ways, and to devise inclusive pluralistic solutions that will benefit all Canadians. We could do far worse than establish a unit of government devoted to unpacking this difficult issue and mapping our way forward. Race relations units in the 1980s and early 1990s were vital to unpacking white privilege, Status of Women Canada to this day promotes gender-based analysis to tackle male privilege, and the Official Languages Commissioner seeks to protect official language minorities' rights. Who looks after the rights of Canadians who aren't Christian?

Conclusion:

Religious diversity is here to stay. Only a commitment to real religious pluralism will ensure that the Canadian commitment to a "shared citizenship" model under girded by a multicultural ideology will flourish in the 21st century. As we have demonstrated in this article, there is an ability to negotiate amongst faith communities to ensure equitable outcomes. True to form for the two-way street model of integration in Canada, Canadians and Canadian institutions must make space for minority religious traditions, and those traditions must adapt to Canadian society. While this plays itself out in myriad ways across Canada everyday, what is lacking is a coherent national approach. So, while Hindus may have adapted burial rituals to meet Canadian health regulations (Bannerjee and Coward 2005), and the Correctional Service of Canada may have hired imams in Ontario and Quebec, more often than not individuals, families and communities must deploy scarce resources and fight each of these battles themselves. Surely a society committed to inclusion should take some collective responsibility and action to ensure that disproportionate costs are not borne by some of its least advantaged citizens who

merely wish to exercise their rights. The experience of Buddhists seeking to build a temple on the Niagara escarpment should be enough to get governments to ensure other Canadians do not face similar problems (McClelland and White 2005).

Religious diversity is not a bogey (wo)man that Canadians should fear. Just as Catholics and Jews have become important components of Canadian society, without we might add, society coming apart at the seams, so too can other faiths take their rightful place in Canadian society.

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Notes

[1] Of additional interest is that - far more Canadians reported in the 2001 Census that they had no religion. This group totalled 4.8 million in 2001 and accounted for 16% of the population, compared with 12% (3.33 million) a decade earlier. These numbers can be attributed to the growing number of atheists/agnostics in Canada, but also to some groups that felt their religion was not captured by the Census form (eg. Chinese religion) and also people who were concerned about their religion being noted by various authorities.

[2] Shidane Arone, a Somali man, was beaten to death by Canadian soldiers for trying to steal from them while the Canadian military was in Somalia as peacekeepers.

[3] The last time gender roles in Islam were as prevalently discussed in the media was in the early 1990s when discussion of female genital mutilation was widely debated. This largely came to an end when the Government of Canada amended the criminal code and prohibited the practice in Canada or the removing of people from Canada for it to be done.

[4] St Jean Baptiste Day is a nationalist holiday celebrated in Quebec.

RELIGIOUSLY-BASED ALTERNATE DISPUTE RESOLUTION: A CHALLENGE TO MULTICULTURALISM

ABSTRACT

Ontario has always allowed consenting parties to resort to private arbitration based on any form of law freely chosen by both to resolve family law disputes. This article outlines how a Muslim group's proposal to arbitrate family law matters based on Muslim personal law has led to widespread questioning of Canada's multicultural policies and suggests that there is a balanced approach which can reconcile the concerns.

In October 2003, a group calling itself the Islamic Institute of Civil Justice (I.I.C.J.) announced in rather grandiose terms its intention to incorporate a business which would offer arbitration of family law matters, based on Islamic principles. Its major proponent, Syed Mumtaz Ali, claimed the I.I.C.J. was "the beginning of a Sharia Court in Canada." Well known as an advocate for Islamic political identity, Ali had written articles proposing that Muslims should be treated similarly to Aboriginal nations with respect to the development of their own legal system and had defended the right of Quebecers to separate from Canada on the basis of cultural self-determination.[1] Ali claimed that, once Islamic-based arbitration was available, all "good Muslims" would be expected, as part of their faith, to have family matters resolved only in this forum as opposed to the secular courts of Canada.[2] His implication was that the law in Ontario had recently changed and that his Institute would henceforth offer a parallel legal system based on Sharia law.

These pronouncements precipitated immediate and vocal opposition both within the Muslim community and across Canada. Under the mistaken impression that the Ontario government had taken or planned to take specific action to allow Canadian laws to be superceded by Sharia law, opponents worked with the media to perpetuate this myth. Recognizing the volatility of the issue, the Ontario government asked me to conduct a review of the use of arbitration in family law in general and specifically to consider the impact on vulnerable individuals of alternate dispute resolution using religious laws. The Review received almost fifty written submissions from a wide variety of groups and individuals, conducted consultations with two hundred and fifty people, and considered the policy implications of various options. The full report of the Review was released on December 20, 2004; it includes an overview of the applicable laws, a summary of the positions of proponents and opponents, including their suggestions for remedy, an analysis of the policy issues, and recommendations to government for legislative, regulatory and program measures to address the issues raised during the Review.[3] It is not possible to outline all the findings of the Review in this space but a brief summary of the positions may help frame an appreciation of the challenge to multiculturalism posed by this controversy.

Along with most jurisdictions, Ontario encourages a wide range of dispute resolution methods that provide alternatives to the adversarial win/lose forum of the courts. Large numbers of family law disputes are resolved through separation agreements, voluntarily agreed to by both parties, often with the assistance of independent legal advice and/or mediation; these agreements may or may not come to the attention of the courts, depending upon the specific remedies being sought. Ontario law has always allowed parties to choose arbitration as one alternative means of resolving family law and inheritance matters as long as both parties agree freely and without coercion to do so. Under the law, the parties can agree on an arbitrator or arbitrators they feel will hear their matter fairly and both parties can agree on the form of law, including religious law, that will be used by the arbitrator in making a decision. The enabling legislation, the Arbitration Act, originated in the nineteenth century and was updated in 1991; Ontario is one of seven provinces to adopt a uniform arbitration act developed by the Uniform Law Conference of Canada, a group dedicated to modernizing and harmonizing laws across Canada.

The Arbitration Act applies only to civil matters that are subject to provincial jurisdiction (such as separation, property division, and support of dependent spouses and children) and provincial matters that are not specifically excluded by the Act (such as labour law.) Matters under federal jurisdiction, such as criminal law or civil divorce, cannot be arbitrated. Arbitrators can only order the

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parties to do things they could have agreed on their own to do and cannot order any remedy that is illegal under Canadian law, since parties cannot lawfully agree to break the law. The courts retain the right of judicial review with respect to the fairness and equity of the process and the parties cannot waive their right to such review. The courts can also overturn decisions which are found to be egregious or which are not in the best interests of children. The Review received submissions from religiously-based arbitration organizations in the Jewish, Muslim and Evangelical Christian faiths that have operated in Ontario over many years, apparently without significant judicial intervention.

Increasingly over the past twenty years, jurisdictions have implemented alternative dispute resolution methods following research and reviews. The rationale includes the swifter time frame for resolution of disputes, the lower costs, both to the state and the individual, the reduction of emotional stress, the specialized expertise needed to deal with the sensitive issues of family law, and the sense of personal agency experienced by disputants. Many mediators and arbitrators point out that parties who are engaged actively in the resolution process are often more likely to respect the outcome, even if that result is not what they had hoped to achieve. Those advocating for religiously-based alternate dispute resolution argue that diverse parties must have the right to choose to have their matters heard by those who understand their religious priorities, who respect their traditions and who speak their language (both literally and figuratively;) the results have both legal and religious authority, thus encouraging compliance on both secular and religious grounds.

Many opponents of arbitration came to Canada from other lands to escape the oppressive yoke of states like Iran, Afghanistan or Pakistan, where Islamic law governs every aspect of life; they expressed fear that the use of Muslim family law principles in family law arbitration is just "the thin edge of the wedge," believing that allowing such practices opens the door to the gradual implementation of full Sharia law, applicable to all Canadian Muslims. Feminist organizations claimed that religious principles are inherently conservative and prejudicial to women and that arbitration on the basis of Muslim family law in particular will erode the individual equality rights women have striven to have enshrined in Canadian law over decades of political action. Some of these groups suggested that Muslim women would not have the knowledge or the strength to assert their own rights when these conflict with the communal rights of Islamic society. Secular humanists, believing in the complete separation of church and state, deplored what they depicted as a further intrusion of religion into the realm of the state; they demanded that the government take immediate steps to remove the right of any religious group to arbitrate family law matters using religious laws. All these groups raised questions about the status of women in Muslim states and the vulnerability of women and children to violence within that culture. Those opposed to Canada's multicultural policies seized upon this issue as an example of why Canada should limit the expression of cultural diversity and insist that everyone, however heterogeneous our population, should be required to adhere to exactly the same laws and processes.[4]

The basic tension inherent in multiculturalism is how to balance the rights of minority groups within a multicultural society and yet protect the rights of individuals who are members of those minority groups. The responses to the Review revealed a wide range of views on how multiculturalism can be viewed in Canada. There was a minority who advocated for full jurisdiction for religious/cultural minorities over the family law and inheritance matters, with minimal intervention from the state; for this group, the minority group should be able to apply religious laws even where these are in serious conflict with the laws or policy imperatives of the state and the state should have little power to act on behalf of an individual member of the group, even if that individual's rights have been contravened by the process. This view has been called a policy of "non-interventional accommodation."[5] At the other end of the scale, another minority response advocated vigorously for a complete separation of church and state, with religious and cultural minorities having no authority whatsoever over matters that are subject to state laws.[6]

> Ali claimed that, once Islamic-based arbitration was available, all "good Muslims" would be expected, as part of their faith, to have family matters resolved only in this forum as opposed to the secular courts of Canada.

Family law is often a litmus test for how a jurisdiction interprets multiculturalism. Family law serves to delineate who belongs in the community and who does not, according to the community's own norms. Family law also has a distributive function, allocating rights and obligations, including financial security, to the members of the community. Complete delegation of power over family law to a minority group empowers the group not only to determine its boundaries of inclusion and exclusion, but allows those in power in a community to determine the level of enfranchisement of individuals within the group. This is extremely problematic where a community is seen by some to have little regard for the rights of certain members, such as women. The non-interventionist approach, "renders invisible those violations of members' basic individual rights which occur under the shield of an identity group."[7] By placing primacy on the right of the minority group to protect itself from external influences, those individuals in the minority group whose rights may be violated must bear the burden of the protection of the culture within the dominant society. As a result, individual autonomy is sacrificed for the sake of group survival. Where, as in Ontario, the existing family law regime is available to all residents but is not mandatory, there are limited state

guaranteed protections, aside from the right to avail oneself of a particular set of laws. It is simply not tolerable that any individual might lose legal rights and protections because of the exercise of power by a minority group. It is therefore essential that these laws continue to be available to all, regardless of the community to which they belong, and that no community is given the right to stop people from having access to those laws.

Similarly problematic, however, is the notion that cultural and religious minorities could suddenly be deprived of rights they have enjoyed for decades and which they firmly believe are guaranteed by the Charter of Rights and Freedoms. The secular absolutist approach is based on an assumption that secular laws treat everyone equally. The primary shortcoming of this position is that it fails to acknowledge that some people live their lives in a manner more closely aligned to their faiths than others, so that secularism is experienced as a constraint. Ontario laws are framed by the combined influence of the Judeo-Christian tradition and the enlightenment focus on the individual as opposed to the community, both grounded in English common law. As a result, the laws of the province and their application are more easily digestible by some cultures than others, making their impact disproportionate on those who do not belong to the dominant culture. This disproportionate impact may serve to alienate from the mainstream those who do not see themselves reflected in our laws. Many opponents of arbitration in family law urged the government to make resolution of family disputes possible only through the secular court process. Those who identify primarily with their religion, as opposed to our laws, and whose religious rules require them to seek mediation and arbitration of disputes, rather than litigation in the secular courts, would experience such a requirement as oppressive and discriminatory. Undoubtedly the practice of religious arbitration would simply go underground, leaving vulnerable women and children with no recourse under Ontario law.

Instead of choosing one of these two polar views of multicultural accommodation, Ayelet Shachar suggests we seek to achieve "transformational accommodation," whereby group religious and cultural freedoms are balanced with individual rights and freedoms.[8] This notion is based on the understanding of individuals as being at the intersection of various identities. Not only are indi-viduals members of the collective group to which they belong, but they also have additional dimensions of gender, ability, age, and so on.

The intersectionist view of identity…would acknowledge the multidimensionality of insider's experiences and would capture the potential double or triple disadvantages that certain group members are exposed to given their *simultaneous belongings*. Moreover, an intersectionist view would recognize that group members are *always* caught at the intersection of multiple affiliations. They are group members (perhaps holding more than one affiliation) and, at the same time, citizens of the state.[9]

Commitment to individual rights lives at the core of the legal and political organization of any liberal democracy and underpins freedom of religion and expression, and the rights of minorities to legitimately enter into dialogue with the broader society with any kind of legitimacy. It is illogical and untenable to claim minority rights in order then to entrench religious or cultural orthodoxies that seek to trample the individual rights of select others. Toleration and accommodation must be balanced against a firm commitment to individual agency and autonomy.

Increasingly over the past twenty years, jurisdictions have implemented alternative dispute resolution methods following research and reviews. The rationale includes the swifter time frame for resolution of disputes, the lower costs, both to the state and the individual, the reduction of emotional stress, the specialized expertise needed to deal with the sensitive issues of family law, and the sense of personal agency experienced by disputants.

Incorporating cultural minority groups into mainstream political processes remains crucial for multicultural, liberal, democratic societies.[10] By utilizing provincial legislation that is already used by other religious groups, the Muslim community is drawing on the dominant legal culture to express itself and engage in institutional dialogue. In using the existing law, the community is inviting the state into its affairs, since state intervention, in the form of judicial oversight, is specifically set out in that law, while at the same time creating a forum in which its religious obligations can be met. The Muslim proponents of religiously-based arbitration consistently pointed out that, according to the Quran, Muslims living in a non-Islamic country are required to follow the laws of that country. The recommendations flowing out of the Review attempt to strike a balance by allowing religiously-based arbitration to continue, but only if the process and the decisions are consistent with the Ontario Family Law Act. Arbitration agreements and decisions would be included under Part IV of the Act. As suggested by proponents from both the Muslim and the mainstream communities, the recommendations include provisions for the regulation of arbitrators and mediators, requirements for record keeping, written decisions with reasons and monitoring of decisions in an anonymous form. The Review also recommends that resources be allocated to ensure that affirmative steps are taken so that individuals within all communities understand their rights and obligations under the law and that a genuine

public dialogue commences about how we can fruitfully engage in building a shared sense of identity in an atmosphere of peace and mutual respect. It remains to be seen whether the government will seize this opportunity to create "transformational accommodation" in family law arbitration, thus protecting the choices of all individuals while promoting the inclusion of minority groups in our society.

Notes

[1] Ali, Syed Mumtaz. "Oh! Canada—Whose Land? Whose Dream?" The Canadian Society of Muslims, 1991, online <http://muslim-canada.org/ocanada.pdf>

[2] Ali, Syed Mumtaz. "Islamic Institute of Civil Justice and Muslim Court of Arbitration, Muslim Society of Canada," 2003.

[3] Boyd, Marion. "Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion." December 20, 2004, online<http://www.attorneygeneral.jus.on.ca/english/about/pubs/boyd>

[4] Ibid. See Section 4, "Summary of Consultations."

[5] Shachar, Ayelet. "Reshaping the Multicultural Model: Group Accommodation and Individual Rights." (January 1998) 8 Windsor Review of Legal and Social Issues.

[6] Shachar, Ayelet. *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge: Cambridge University Press, 2001, p. 73.

[7] Shachar, Ayelet. "Reshaping the Multicultural Model: Group Accommodation and Individual Rights" (January 1998) 8 Windsor Review of Legal and Social Issues, p. 83.

[8] Ibid.

[9] Schachar , Ayelet. "Group Identity and Women's Rights in Family Law: The Perils of Multicultural Accommodation." (1998) 6:3 The Journal of Political Philosophy, p. 285.

[10] Kymlicka, Will. *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995) p. 50.

MULTICULTURALISM IN A TIME OF PRIVATIZATION

Faith-Based Arbitration and Gender Equality.

ABSTRACT

In this article, Audrey Macklin explains how the family law regime permits separating or divorcing parties to opt-out of the default statutory rules for custody, property division and support and engage in private ordering by way of negotiation, mediation and arbitration. In law and in practice, courts seldom examine these arrangements in advance. When domestic contracts are reviewed, courts are reluctant to find lack of consent or to set aside substantively unfair outcomes. Macklin says disallowing faith-based arbitration under the *Arbitration Act* still enables parties to utilize faith-based mediators as a means of concluding judicially enforceable domestic contracts. In addition, parties can still seek out clerics to arbitrate their disputes; they simply cannot rely on the courts to enforce the agreements. Thus, it is not obvious that the Ontario government's resolution of the issue enhances the position of vulnerable women.

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The recent controversy over Islamic family law arbitration in Ontario is over – for now. The Ontario government recently announced that the *Arbitration Act* will exclude faith-based family law arbitration from its purview, meaning the courts will not enforce religiously based arbitral awards. For reasons that I will elaborate below, I doubt this decision will ameliorate the problems that many opponents associate with religious arbitration.

This issue has largely been fought on the terrain of multiculturalism, where the interests of vulnerable Muslim women subject to prejudicial rules are pitted against assertions of communal identity and self-determination. While many issues of multiculturalism concern accommodation of particular cultural or religious practices (such as style of dress or days of rest), state enforcement of decisions rendered by religious clergy delegates authority over an entire sphere of regulatory activity otherwise reserved to the state. This raises the prospect of limited self-governance or what Ayelet Shachar refers to as multicultural jurisdiction.

Viewed through this lens, attention is drawn toward the relationship between the religious/cultural community and the individual, where communal norms and practices are the source of the potential harm. Thus, a standard reading of the so-called sharia tribunal debate[1] goes something like this: Muslim women who submit to Islamic arbitration of their family law disputes will be judged according to an antiquated, sexist, set of norms that disadvantages them relative to the secular legal regime in terms of custody, support and property entitlements. Whether the content of Islamic law is inherently misogynist or whether it is so interpreted by men with an interest in maintaining patriarchal power, the result is the same. Because many Muslim women are recent immigrants, they tend to be financially, socially, linguistically and psychologically dependent on their husbands and religious community. Therefore, they are less likely to withhold consent to religious arbitration even if the outcomes predictably disadvantage them.

The role of the state in this scenario is to mediate between the legitimate interests of religious communities in regulating personal matters according to deeply held religious beliefs, while upholding the equal entitlement of Muslim women to the protection of the state law. Resolution of the Islamic arbitration issue thus seems to fit perfectly within the framework of the classic multicultural dilemma.

This triangulation of the state-individual-community nexus tends to treat the relationship between the individual woman and the state as presumptively unproblematic. Indeed, it is typically the normative referent against which a non-state community regime will be measured. At worst, the liberal democratic state will be complicit in oppressive conduct of a religious community if and when it enforces the latter's decisions.

I do not deny the validity of the analytical framework described above, but I want to suggest that it is decidedly partial. I elect to refract the debate through another lens, one that proceeds from the specificity of the Canadian legal context and which unsettles the putatively unproblematic relationship between the state and the individual subject of family law. My contention is that the state's commitment to privatisation actually provides more explanatory force in the present context

than do normative claims about multiculturalism and gender equality[2]. As a preliminary matter, it is necessary to sketch certain elements of the existing family law regime.

Many people assume that the current family law regime sets out universally applicable rules about property division, spousal support, child custody and child support that are triggered by relationship breakdown. Couples can litigate and let a judge apply the rules to the facts of their case, or the parties can agree to resolve their various issues in accordance with those rules and without litigating.

If this were an accurate depiction of reality, I am virtually certain that the Islamic arbitration proposal would have met with immediate and categorical rejection by the government. The campaign would have been read as an attempt to erect a parallel, independent justice system that exempts participating Canadian Muslims from the responsibilities and protections of the secular regime. Within this discursive field, the equality of all citizens before and under the law would, in my view, have handily prevailed over countervailing claims of multicultural rights and freedom of religion – even in Canada, this most multicultural of nations[3].

But as it happens, family law in Ontario does not conform to the picture I sketched above, and this divergence significantly complicates the resolution of the debate over Islamic law arbitration. The family law regime governing couples in Ontario is an admixture of federal law (*Divorce Act*) and provincial law (*Family Law Act*). For present purposes, suffice to note that the statutes set out default criteria for distribution of property, support (spousal and child) and custody, following relationship breakdown. Reformist projects over the last thirty years have made considerable progress in addressing the gendered consequences of marriage breakdown. Property division rules recognize the role that the unpaid labour of wives play in enabling husbands to maximize their career development and wealth accumulation. Principles of spousal support acknowledge that many women forfeit their own careers in the paid labour force to stay home with children, with the result that some may never redeem their early potential, or even attain complete financial self-sufficiency. The default rules have moved far beyond regarding the traditional role of stay-at-home wife as a choice for which husbands bear no financial responsibility upon marriage breakdown.

At the same time, parties may opt out of much of the 'one size fits all' model of the statutory regime. Rather than litigating in the ordinary courts, parties may resolve these issues by drafting their own agreement (domestic contract) or by employing a neutral mediator to assist them to negotiate an agreement (mediated settlement). They may also engage an independent arbitrator of their choosing to adjudicate the dispute in a less formal manner than a courtroom trial before a judge (arbitral award). Arbitration of family law disputes is seldom used in comparison to mediation, and this is an important consideration: regardless of the outcome of the arbitration debate, mediation will remain the more popular method of alternative dispute resolution (ADR) anyway. Negotiation, mediation and arbitration do not directly involve courts or judges. They are private.

Having embarked on any of these ADR paths, the parties may also choose the rules that will guide them. These can range from bargaining with a view to maximizing economic self-interest, to abiding by religious norms. If they employ the services of a mediator or arbitrator, they may instruct that person to advise them (in the case of a mediator) or to decide (in the case of an arbitrator) according to whatever norms they choose, including religious law[4].

In sum, the current state of the law already permits parties to engage in private ordering in family law. Parties may devise their own agreement, mediate, or hire an arbitrator to adjudicate according to whatever rules they choose. The results may not conform to the results that would have obtained had they applied the default rules, but the ordinary courts will generally enforce the agreements or awards anyway. Indeed, the *Arbitration Act* grants parties considerable latitude to stipulate whether and to what extent parties may have recourse to the courts in relation to the arbitral award. Apparently, a few religious arbitrations taken place in Ontario annually among Orthodox Jewish Beit Dins and Ismaili Muslim arbitration bodies.

> This issue has largely been fought on the terrain of multiculturalism, where the interests of vulnerable Muslim women subject to prejudicial rules are pitted against assertions of communal identity and self-determination.

Proponents of ADR promote it as cheaper, faster, less adversarial, less intimidating, more empowering and more satisfying for the parties than the traditional justice system. Critics express concern about the privatization of family law. Behind the cloak of confidentiality shielding ADR from public and judicial scrutiny, some worry about the ways in which women's financial, emotional, and social vulnerability can be exploited to their disadvantage. Negotiation, mediation or arbitration among parties presumes formal equality, but no observer of family law can doubt the potential existence or depth of substantive inequality between a couple.

Arbitration is institutionally distinct from other ADR mechanisms insofar as it is regulated under the *Arbitration Act*, which applies to commercial disputes as well. In the domain of Canadian family law, parties may not arbitrate status, including marriage, divorce or paternity[5]. Arbitrators have no jurisdiction over Canadian criminal law, and one cannot 'opt out' of Canadian criminal law in favour of another normative regime. Thus, allegations that Islamic arbitrators would be legally entitled to perform polygamous marriages or order the stoning of adulterous women are unfounded and verge on fear-mongering.

The availability and scope of judicial review of these negotiated or mediated domestic contracts (pre-nuptial agreements, separation agreements etc.) is set out in Ontario under Part IV of the *Family Law Act*. For example, in Ontario, an agreement may be varied or set aside if a party challenges it and the court finds the agreement to be 'unconscionable'. It appears that, apart from ensuring adequate arrangements for financial support for children, courts do not routinely examine the custody, property or spousal support provisions at the time of contractformation. In other words, courts will not actually scrutinize the content of a domestic contract unless and until one party seeks to enforce or vary it over the objection of the other, a condition that may only arise years after a contract was signed, or never.

This position locates the initial menace to the norm of gender equality not in conflicting norms of Islamic law *per se*, but in the state's institutional configuration of family law into a system that permits parties to 'opt-out' of public norms and effective judicial scrutiny, exposing s usceptible women of all faiths (or no faith) and ethnicities to exploitation of economic, social, psychological advantage. Pitching the critique at this entry point challenges the implicit assumption that the secular operation of the *status quo* delivers a normatively satisfactory standard of fairness, gender equality and justice against which faith-based alternatives can and should be measured. It is important to submit the Ontario *Family Law Act* to this closer investigation partly because the Boyd Report concluded that concerns expressed by opponents of faith-based arbitration could be resolved by bringing arbitral awards under the domestic contract provisions of the *Family Law Act*.

Proponents of ADR promote it as cheaper, faster, less adversarial, less intimidating, more empowering and more satisfying for the parties than the traditional justice system.

To appreciate how this secular standard contained in the *Family Law Act* operates, consider the 2004 case of *Hartshorne v. Hartshorne*. The Supreme Court of Canada reversed two lower court judgments and upheld a pre-nuptial agreement prepared by the man, presented to her, and signed by his future wife on their wedding day. The couple already had one child and the woman was pregnant with their second child, though neither party was aware of it at the time of the wedding. The animating principle of the pre-nuptial agreement was the wholly secular norm of formal equality: the property allocation upon divorce should "leave with each party that which he or she had before the marriage." (para, 65). As is typically the case, such a principle operated to the detriment of the woman. Independent legal counsel advised the woman that that the agreement was grossly unfair in comparison to her default entitlements to the matrimonial home and property under the statutory family law regime in her province[6]. She signed anyway. Here is what the dissent said about power relations between the couple:

> There are indications that the respondent was in a vulnerable position in negotiation – [though] not enough for the agreement to be unconscionable. The respondent had already been out of the workforce and dependent on the appellant for almost two years and had only ever worked as a lawyer (and before that, an articling student) in the appellant's firm. The agreement was concluded under pressure with the wedding fast approaching. The respondent sought changes to the agreement before execution but was unable to persuade the appellant to agree, except with respect to minor changes, such as the insertion of a clause to the effect that her signature was not voluntary and was at his insistence. These circumstances illustrate the appellant's position of power within the relationship, as well as the respondent's correlative dependence. That she remained at home for the rest of the marriage relationship to take care of the couple's children further illustrates the power dynamics at play. (para. 90).

Despite this context, the majority paints the Agreement with the patina of mutuality by describing it as reflective of the "intention of the parties", and baldly admonishes the wife that "if [she] truly believed that the Agreement was unacceptable at that time, she should not have signed it." (para. 65). In the result, the Supreme Court of Canada endorses a stark, zero-sum approach to autonomy and consent: If the circumstances do not amount to "duress, coercion or undue influence" in law (which both majority and dissent agree they did not), then the context is irrelevant to assessing the fairness of the agreement, and the irrebuttable presumption is that both parties acted with equal autonomy. Because the Court determined that events in their life together as husband and wife unfolded more or less as anticipated by the pre-nuptial agreement[7], and because Mrs. Hartshorne was still entitled to spousal and child support, the majority of the Supreme Court of Canada declined to find the agreement unfair.

A salient difference between domestic contracts (including pre-nuptial agreements) and arbitration is that in the former, the parties ostensibly negotiate the terms of their contract, whereas in the latter, the parties negotiate the terms of the agreement to arbitrate, but the outcome of the arbitration itself is imposed by an external adjudicator. It is not evident, however, what normative or legal consequences should attach to this distinction. The inquiry into consent in arbitration settings would simply be displaced to the consent to submit a dispute to arbitration. In terms of assessing substantive outcomes, one might consider it defensible to hold people more strictly to contractual terms they devise themselves, while taking a more generous approach to those who have had a

potentially unjust or perverse award inflicted upon them by an arbitrator. However, if the terms in a domestic contract are more or less dictated by the stronger party (as they were in *Hartshorne*), and if arbitration outcomes fall within a predictable range, the normative gap between contract and adjudication narrows and this formal d istinction between contract and adjudication seems unable to bear the normative burden of distinguishing between acceptable and unacceptable exploitations of unequal bargaining power[8].

The specificity of Muslim women's vulnerabilities may diverge from those of Mrs. Hartshorne (a white, Christian, middle-class, Canadian citizen lawyer). Nevertheless, decisions like *Hartshorne* suggest that the Supreme Court of Canada takes a fairly inflexible view of consent and of the remedial options available in the face of consent obtained under conditions of unequal bargaining power[8].

If opposition to Islamic family law arbitration is predicated on a prediction of inferior outcomes (from a gender-equality perspective) than the default statutory regime, one must surely take into account the current impact of private ordering as an alternative to the statutory regime, and both the practical and doctrinal impediments to judicial intervention in the event of substantively problematic outcomes.

Would it – or should it – matter to a court if a pre-nuptial agreement or a separation contract whose terms departed significantly from the default regime happened to have been mediated by an imam? Given the existing juridical landscape, one must ask whether a court would look behind the signature on the contract unless a party was genuinely misled, did not obtain independent legal advice, or was coerced by real or apprehended violence. Trying to distinguish an 'Islamic' agreement from the secular domestic contract in *Hartshorne* raises the risk of resorting to a pathologized construction of Muslim women that renders them uniquely incapable of consent owing to the influence of their faith, their kin and their community. Alternatively, a court could declare that Islamic law (in all possible forms) is necessarily, inherently, or inevitably misogynist, and thus inevitably generates substantively unjust outcomes. The objectionable nature of these distinctions should be obvious.

If the hidden culprit in this story is the opt-out aspect of family law's default regime, one solution might be to prohibit alternative dispute resolution according to any rules other than the public, legislated standards of Ontario family law. Pre-nuptial agreements would become pointless, since the rules of property division and support cannot be applied in advance of the relationship. Parties would also generally be precluded from consensually departing from the fixed model of distributing the financial and custodial consequences of family breakdown. Faith-based arbitration would simply be one among the prohibited forms of alternative dispute resolution[9]. Parties could organize the financial and personal consequences of relationship breakdown as they wished, (as they can now), but could not rely on the courts to enforce those arrangements.

Another approach would be to preserve the ability of individuals to choose their own rules (religious or otherwise), but require all domestic contracts and awards to be reviewed at an early stage by a judge for adherence to such broad public norms as gender equality, fairness, reasonable expectations and autonomy. If we can agree that compliance with these norms can be realized through a diverse array of practical arrangements, it should be possible to validate private agreements that depart from the outcomes that would obtain under the legislative framework. Of course, this would entail a diminution of privacy for affected parties, and a certain increase in judicial workload. Reducing the burden on the courts is one of the major reasons for encouraging private ordering in the first place, and probably operates to constrain the political feasibility of any options that emerge from a principled approach to gender equality or multiculturalism.

Religious women who participate in faith-based ADR and then enter into domestic contracts can expect the same level of scrutiny, concern and protection by the courts that secular women currently receive. Whether this is read as a source of relief or concern remains in the eye of the beholder.

Each of these options begets its own theoretical, political and pragmatic challenges. These are properly the subject of a more extensive discussion. At present, the government's proposed resolution will mean that faith-based family law arbitrations will not be recognized by the ordinary courts. People may still rely on imams or rabbis or ministers to adjudicate their disputes, and may confront various types of informal but powerful communal pressure to abide by those outcomes despite the absence of state-based coercion. Alternatively, people can consult a cleric informally or employ religious mediators to attain the same or similar results through mediation, and those agreements will be incorporated into divorce proceedings and potentially enforceable in the ordinary courts. Religious women who participate in faith-based ADR and then enter into domestic contracts can expect the same level of scrutiny, concern and protection by the courts that secular women currently receive. Whether this is read as a source of relief or concern remains in the eye of the beholder.

I use this description 'sharia tribunal' advisedly because both proponents and opponents of Islamic arbitration from within the Muslim community seem to agree that the term sharia is misused in this context.

Similarly, the fact that many European states actually allow or require non-nationals to resolve family law matters according to the state of their nationality may

appear to be 'multicultural' in effect, but these regimes are decidedly not 'multicultural' by design, at least not in any contemporary sense.

My conclusion would not necessarily be the same in respect of national minorities, such as aboriginal people.

Notes

[1] I use this description 'sharia tribunal' advisedly because both proponents and opponents of Islamic arbitration from within the Muslim community seem to agree that the term *sharia* is misused in this context.

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[4] See, e.g. *Arbitration Act*, s. 35 ("an arbitral tribunal shall apply the rules of law designated by the parties").

[5] In addition to policy reasons militating against allowing the determination of status via arbitration, Canada is a federal state, and the solemnization of marriage and its dissolution through divorce fall within federal jurisdiction. The provinces do not have jurisidiction over marriage and divorce.

[6] Under the terms of the pre-nuptial agreement, Mrs. Hartshorne would have received a 50% interest in the matrimonial home and 50% of property accumulated during the marriage. Instead, upon separation, Mrs. Hartshorne's share of property (including matrimonial home) was estimated at $280,000, while Mr. Hartshorne's share was $1.2 million.

[7] In fact, the woman had a second child (unbeknownst to her, she was pregnant when they married) and the child had special needs.

[8] I do not suggest that there are no countervailing reasons in support of holding people to their agreements (predictably, closure, incentivizing responsibility etc.); reasonable people may disagree about the correctness of the *Hartshorne* decision.

[9] Prohibiting only faith-based arbitration, would serve little purpose. Most couples prefer mediation over arbitration anyway, and there is no reason to think that faith-based mediation would pose different or fewer problems than faith-based arbitration.

RELIGIOUS ARBITRATION IN FAMILY LAW

A challenge to women's equality in contemporary Canadian society

ABSTRACT

During the recent debate over the continued use of religious arbitration in family law in the Province of Ontario, the National Association of Women and the Law (NAWL) opposed religious arbitration and any use of the Ontario Arbitration Act to settle family matters. NAWL argues that while arbitration may be suitable in the commercial law setting, it is entirely inappropriate in family law since state policy must always take into account systemic patterns of sexual inequality. NAWL acknowledges that people are free to participate in religious processes that may involve family matters. However, the decisions of religious authorities ought not to have any civil effect and they should never be legally binding.

In December 2003, the creation and promotion of religious tribunals by the Islamic Institute for Civil Justice sparked significant media and other public discussions in Canada and around the world as to the implications of the proposed "Sharia Courts". The National Association of Women (NAWL), a pan-Canada feminist law reform organization with a track record of upholding women's human rights through law, in collaboration with the National Council of Muslim Women (CCMW) and the National Organization of Immigrant and Visible Minority Women of Canada (NOIVMC) played a key role in researching the impacts of religious tribunals on the equality rights of women.

Eventually NAWL joined with over 50 groups in a CCMW-led No Religious Arbitration Coalition to educate the public about the findings of the NAWL research and to convince Ontario politicians that religious arbitration threatens women's equality rights. On September 11, 2005, Premier Dalton McGuinty announced that his government will put an end to all family law arbitration based on religious principles. The fact that Ontario was seriously considering supplanting public law in favour of tribunals based on religious principles and that serious public debate ensued with mainstream media supporting the tribunals only underscores what NAWL already knew. Women's rights in Canada must be protected in contemporary Canadian society, a liberal democracy hosting many religious groups within an increasingly fundamentalist world. While NAWL's research was sparked by the prospect of the Islamic Tribunals, NAWL knew that fundamental forces within all religions pose equally serious threats to women's equality rights.

From the outset is was clear that the discrete issue of Islamic religious tribunals under the Ontario Arbitration Act would increase the privatization of family law, a trend in Canada that NAWL's current and past work has flagged as a problem for women . While NAWL's research did initially focus on the Islamic tribunals in Ontario the research journey quickly widened the debate to the consideration of all religions. However, despite repeated efforts to publicly oppose religious arbitration generally, the media and other public discourse continually cast the debate in terms of Sharia Law. This was a problem for two reasons – first, it at once sensationalized and narrowed the argument focusing only on Islam and often employing dramatic stereotypes of Muslim practices around the world. Second, as the Canadian Council of Muslim Women consistently pointed out, it confused the terms "Sharia Law" and " Muslim Personal Laws". The No Religious Arbitration never did oppose "Sharia Law" but rather opposed all religious arbitration including that based on Muslim Personal Laws. Refusal by the mainstream media to understand the language caused confusion and hurt. Sharia law in fact refers to the comprehensive terms by which all Muslims practice their religion. Muslim Personal Laws on the other hand refer to a complex system of jurisprudence that is not woman positive. Practicing Muslims, such as the Canadian Council of Muslim Women would not oppose Sharia since it is their very lifeline to their religion. The members of the Muslim Community who worked within the Coalition found it very difficult to constantly have Sharia under attack – it was in fact a personal attack against them. This inability to widen the debate was problematic. It at once has potential to both stigmatize Muslims and to cast people who oppose the introduction of religious principles into Canadian law as Islamophobes.

NAWL's position went considerably farther than resisting religious arbitration and went much farther than current practice. NAWL recommended that Ontario follow Quebec's example and

BONNIE DIAMOND

The National Association of Women and the Law (NAWL) is a feminist non-profit organization that has worked to promote human rights for all women in Canada since 1974. Bonnie Diamond is the Executive Director of NAWL.

explicitly exempt family law matters from arbitration. NAWL believes that while arbitration may be suitable in the commercial law setting, it is entirely inappropriate in family law where gender dynamics, unequal power relations between men and women and systemic discrimination are always at play. As currently practiced, arbitration allows people to pick and choose the law that will apply to them. Arbitration in family law is a convenient method of circumventing democratic law reform that not coincidentally displeases many historically privileged groups, including men. Arguably, arbitration is a form of "backlash" to feminist reform in different areas of the law, aimed at re-establishing impunity and power historically exercised by men. By promoting a "choice of law", the government is facilitating the disappearance of hard-won progressive developments in the law. When justice is privatized, public policy ceases to rule. Arbitration in family law effectively introduces a "two-tier" system of justice and women, particularly marginalized women, are the losers.

Marion Boyd, who conducted research for the McGuinty government, argued that it is inappropriate to require a universal application of the laws adopted to protect women in the "private" sphere and that women should be free to "live as they choose"[1]. This neoliberal vision of "choice" disregards not only the painful dynamics of divorce and separation, but most importantly, the overall social and economic context of the lives of many women: susceptibility to homelessness upon the breakdown of a marriage, the precariousness of immigration status, abject poverty and persistent racism. Given the inability of most women to afford legal counsel and the fact that ideological and religious groups may offer free mediation and arbitration services, women's free choice remains dubious. The discourse in favour of choice is reminiscent of arguments of the freedom of individual workers to bargain fairly the terms of a contract with an employer, now discredited through the well-established mechanism of unions and minimum wage legislation. The notion of free choice in the context of family arbitration is gender-insensitive as it does not take into consideration the real power dynamics at play and the collective rights at stake for women.

Women's rights in Canada must be protected in contemporary Canadian society, a liberal democracy hosting many religious groups within an increasingly fundamentalist world.

Feminists have often said that "the personal is political". What is meant by this statement is that in the intimate, "private" and "personal" space of the family women are all too often subjected to discrimination, exploitation and abuse by men. These gendered, systemic patterns of sexual inequality need to be acknowledged and taken into account in state policy. While the Canadian government and even the international legal order has come to recognize their obligation to correct violations against women in the "private" sphere, arbitration threatens to put women back to the realm of "family government" principles or rules of religious elites who have not demonstrated a commitment to the egalitarian principles established through the years.

In a society where sexual inequality of women is still systemic, women need to be ensured of "equal protection" and "equal benefit" of the law. All women need to be secure in the knowledge that they will be protected by state legislation and official courts that are accountable and that act according to the rule of law and democratically-adopted legal frameworks.

NAWL recognizes that the recommendation to prohibit arbitration in family law marks a significant departure from what is currently practiced. However, the organization firmly believes that arbitration is inappropriate in family law.

Specifically regarding religious arbitration, given that religious freedom, both domestically and internationally, may include the right to create religious tribunals, NAWL acknowledges that people are free to participate in religious processes that may involve family matters. Parties must be free to adhere to the recommendations of religious authorities according to their faith. However, the decisions of religious authorities ought not to have any civil effect and they should never be legally binding. Any family law decision coming from a religious tribunal would thus be advisory only.

Religious arbitration in family law offends the tenet of separation of "church" and state. A religious authority invested with the power of rendering an enforceable order, typically without the possibility of appeal, is transformed into a legal authority. This blurring of the distinction between religion and law erodes the authority of the state in the elaboration of legal rules that should have universal application to all persons living within its jurisdiction. As the former Quebec Minister of Justice, Paul Bégin has noted,

> …the conduct of men and women in our society must under no pretext be placed under the rule or laws of religion…[A]ll persons have the inalienable and non-negotiable right to invoke the law, above and beyond any religious rule…they have the right to the protection of the law at all times and in all circumstances…The creation of [religious tribunals] under discussion in Ontario represents a major and dramatic setback for women and children's civil rights, to which we cannot consent under the guise of freedom of religion or reasonable accommodation.[2]

Indeed enforceable faith-based arbitration may be incompatible with freedom of religion itself, which as the Supreme Court has noted recognizes individual liberty and subjective choice in the interpretation of religious norms.[3] The interpretation of a religious obligation by an arbitrator may be in conflict with an individual's

understanding of the religious precept. Thus, when a religious order is given legal effect it could force an individual to act contrary to her belief.

The fact that most religions can be interpreted as endorsing male domination and female inferiority, sanctioning religious decision-making as part of the legal order would very often condone the commission or the perpetuation of potential discriminations. The Canadian Council of Muslim Women has stated:

> We are believing women who are committed to our faith and our members are very concerned that the use of Muslim family law will erode the equality rights of Muslim women that are guaranteed under the Canadian Charter of Rights and Freedoms…Sanctioning the use of religious laws under the Arbitration Act will provide legitimacy to practices that are abhorred by fair-minded Canadians, including Muslim women.[4]

Professor Jean-Francois Gaudreault-Desbiens is of the opinion that this situation creates a responsibility on governments to ensure that women's inequality is not exacerbated:

> [W]henever there is a risk that the situation of a vulnerable party could be worsened as a result of the application (or misapplication) of religious norms, the state should at the very minimum ensure that it does not facilitate the application of such norms or that it potentially reinforces their power over such a vulnerable party.[5]

Thus, NAWL opposes the use of religious principles as a legal framework for arbitration in family law, as it has existed in Ontario's Arbitration Act. No one should be forced by a state sanctioned legal mechanism to respect a religious injunction. All men and women, whatever their culture or religion, have a right to equality and justice and to the enjoyment of all of their universally recognized and constitutionally entrenched human rights.

NAWL recognizes the continued deficiencies within the traditional court system and the need to address them. But these deficiencies should not justify the development of a parallel legal order, controlled by minority communities or religious groups. On the contrary, the government must renew its commitment to accessible justice, in a climate that does not tolerate racism and that accommodates cultural diversity.

Ontario and Canada are bound by human rights obligations included in the Canadian Charter of Rights and Freedoms, and international human rights instruments, such as the Universal Declaration of Human Rights, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Elimination of Racial Discrimination, the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights. Each of the obligations under the above covenants requires that the state protect disadvantaged individuals and groups. A government must not, either by positive action or by omission, maintain legislation and policies that have a discriminatory impact on women particularly when they have a disparate impact on women of colour and/or women from different religious minorities. Such legislation and/or policies cannot be justified in a free and democratic society. A system of justice that privatizes family law abrogates the state's responsibility toward its people. The government of Ontario has taken the first step to rectify the current situation of injustice and create a system whereby each individual's human worth and dignity are protected. Those of us who have worked towards eliminating religious arbitration in family law welcome Premier McGuinty's rejection of religious tribunals. In this decision the McGuinty government has chosen in favour of social cohesion and the upholding of human rights for those who hold the least institutional power within the community, namely women and children. The job now remains to improve the public court system so that all women can have fair and equal access to their rights.

Notes

This article is extracted from a research publication conducted by the National Association of Women and the Law (NAWL) entitled Arbitration Religion and Family Law: Private Justice on the Backs of Women authored by Natasha Bakht. The complete publication is available at NAWL Religious Arbitration)

1 Boyd states: "It is not clear to me that we should aspire to the level of state intrusion in our lives that is implied by the application of the Charter to privately ordered relationships. Of course, in any given area, the government can decide it wants to regulate for the purpose of achieving conformity of conduct in accordance with a given set of principles. However, this in no way diminishes the fact that we accept that there are private spheres in which people should be free to live as they choose without being forced to subscribe to the values of the state." Boyd Report, *supra* note 248 at 76.

2 "L'étant Québecois doit se prononcer. Et clairement contre" *Le Devoir*, (12 January 2005) A7 [translated by Andrée Côté]. A few days after this opinion, the current Minister of Justice Monsieur Jacques Dupuis re-affirmed the position of his government that no faith based arbitration or mediation would be allowed under Quebec law. Jacques Depuis "Pas question de modifier le Code civil du Québec" *Le Devoir* (15 January 2005) B5 [translated by Andrée Côté].

3 Amselem, *supra* note 143.

4 Letter to Dalton McGuinty, Premier and Michael Bryant, Attorney General of Ontario from Alia Hogben, Executive Director of Canadian Council of Muslim Women (14 January 2005) online: CCMW <http://www.ccmw.com/ShariainCanada/Letter%20to%20Ontario%20Premier%20Attorney%20General.htm>.

5 Gaudreault-Desbiens, *supra* note 209 at 30.

IS THE 'WAR ON TERRORISM' A WAR ON RELIGIOUS PLURALISM AND LIBERTY IN CANADA?

ABSTRACT

Not since Europe's religious battles, has religion played such a prominent role in national security matters. The authors of this article suggest this is understandable since the perpetrators of September 11th claimed to have done so for religious reasons: this was the continuation of a war between the "West" and "Islam". Because the actions had an overtly religious dimension, many argue that religious pluralism and liberties should be curtailed, especially for the Muslim community. However, the authors argue these measures limiting religious freedoms and pluralism are myopic and misguided. Since the framing of security has a religious dimension, religious pluralism must be accommodated to ensure national security.

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In a speech in Cape Town, South Africa, on June 7, 1966, Robert F. Kennedy said:
"There is a Chinese curse which says, 'May he live in interesting times'.
Like it or not, we live in interesting times…"

Although Robert F. Kennedy was referring to a different time and context, those who witnessed the attack on the twin towers on September 11th, the proceeding 'War on Terrorism' and the introduction of various anti-terrorism legislations around the world, too live in interesting times.

Not since Europe's religious battles, has religion played such a prominent role in national security matters. This is understandable since the perpetrators of the terrorist act claimed to have done so for religious reasons: this was the continuation of a war between the "West" and "Islam". Appropriately, the Muslim community was quick to condemn the terrorism in their name, and reconfirmed that Islam has nothing to do with these atrocities.

Because the actions had an overtly religious dimension, many argue that religious pluralism and liberties should be curtailed, especially for the Muslim community. Internationally, it seems that these voices are getting louder and are being heard. The Madrid train bombing, the murder of Dutch filmmaker Theo van Gogh and the London train bombings in July 2005, have sparked a new debate on religious pluralism and accommodation. Why are educated young people, born in Europe, blowing themselves up? Why do they want to murder their fellow citizens? Could changes in public policy prevent future attacks? The search for answers has led many governments to introduce new regulations restricting the liberty of their domestic Muslim population.[1]

However, these measures limiting religious freedoms and pluralism are myopic and misguided. Since the framing of security has a religious dimension, religious pluralism must be accommodated to ensure national security.

What do we mean by religious pluralism? Professor Paul Ingram, a professor of religion at Pacific Lutheran University makes the distinction between "religious pluralism" and "religious diversity." He argues that religious diversity is simply an empirical fact (in other words, see Statistics Canada to determine the number of Muslims, Jews, Christians, Sikhs, Agnostic that there are in the country), but religious pluralism is predicated on dialogue where it is "not mere tolerance of 'the other' but is an active attempt to understand the other."[2]

Any government action that facilitates this dialogue accommodates and encourages religious pluralism and liberties would be positive and welcome. However, any action to the contrary may lead to the 'ghettoization' and marginalization of the Muslim and other faith-based communities. Such a scenario would be counter-productive to national security.

This paper will answer several key questions:

1. In Canada, does the Anti-Terrorism Act jeopardize religious pluralism and religious liberty?
2. Are there incidents whereby Canadian Muslims feel targeted or have concerns? and,
3. Are there any recommended practical accommodations of religious pluralism?

In Canada, does the *Anti-Terrorism Act* (the "Act") jeopardize religious pluralism and religious liberty?

It does seem on the surface that the Act does jeopardize religious pluralism and liberty. The shock and horror of the terrorist attacks in New York and Washington sent the Canadian government into a flurry of activity, trying to decide how best to deal with the new terrorist threat against the West.[3] The Canadian government felt compelled to showcase to the world (and the U.S. in particular) that it was an equal partner in the war against terrorism, and that it too, would introduce new legislation focusing on anti-terrorism. After a flurry of legislative proposals, the suggestively named *Anti-Terrorism Act* was passed on December 18, 2001, less then three months after the attack.

The new legislation was heralded by the Liberal government as legislation essential to protecting Canada's borders, her people and allies. Increasingly, however, the Act is perceived as the most comprehensive threat to Canadian civil liberties ever enacted. The critics of the Act voiced their criticism immediately. They did not question that they are living in perilous times and that law enforcement officials should be given special tools to deal with terrorists, but in seeking to protect the country, the Act denies the very freedoms that Canadians seek to protect.

The Act concerns the proscription of terrorist groups. By "terrorism", the Act means "the use or threat of action […] designed to influence the government or to intimidate the public or a section of the public and […] made for the purpose of advancing a political, religious, or ideological case.[4] The listing of religion among the purposes of terrorism is not common in previous anti-terrorism legal provisions: for example, the U.N. *Declaration on Measures to Eliminate International Terrorism* defines terrorism exclusively in connection with "political purposes" and mentions religion only among the elements that cannot, in any circumstance, justify terrorism. The escalation marked by the Act means the lawmaker is now aware that terrorism can be inspired by a religious purpose and he is no longer prepared to grant religion a presumption of innocence, as happened in the past.

So far only one person has been charged with the new offences of participating in a terrorist group and facilitating terrorism.[5] Further, the Supreme Court has upheld one of the most controversial powers under the Act – the power to require people to reveal information about terrorism in investigative hearings, even if that information would incriminate them.

In contrast, the Supreme Court tempered investigative hearings by prohibiting the use of information in subsequent extradition and immigration proceedings and by stressing the presumption that such hearings would be held in open court with the media present. Three dissenting judges argued that the Act did go too far. They objected to the government's use of this new power in the middle of the Air India trial. Two of the judges concluded that investigative hearings offended judicial independence by requiring judges, as opposed to police, to investigate people. Investigative hearings, as well as the power to prevent arrest on reasonable suspicion of involvement with terrorist activities, will sunset[6] at the end of 2006, unless they are renewed by Parliament. At the same time, the rest of the legislation is permanent.

According to Kent Roach and other critics, the definition of terrorism in the Act is too broad.[7] It covers five pages of legislative text applicable to politically or religiously motivated disruptions of essential public or private services that intentionally endanger a person's life or cause serious risk to public health or safety.

Even the Supreme Court does not subscribe to such a broad definition of terrorism. It read a much narrower definition of terrorism into Canada's immigration law: one that focuses on intentional death or serious bodily injury to civilians so as to intimidate a population or compel action by a government or an international organization. Although the Supreme Court noted that Parliament was free to change this definition, it also argued that its tighter definition of terrorism caught the essence of what the world understands as terrorism. In order to enhance civil liberties and to focus investigative resourceson the most serious threats, the Supreme Court's tighter definition of terrorism is more appropriate then that used by Parliament.

> The inquiry's four months of public testimony reveal a government that in this most crucial of areas — protection of Canadian citizens — was constantly at odds with itself.

In light of the new prominence that religion plays in the Act, it is not surprising that the Muslim community complains that it is dispro-portionately affected by the Act and other security-related regulations.

Are there incidents whereby Canadian Muslims feel targeted or have concerns?

Yes, there are incidents whereby Canadian Muslims feel that they are being religiously profiled and collectively punished.

Almost immediately after the attacks, reports of racism in the form of verbal and physical attacks against people of Middle Eastern/Arabic background or who were perceived to be Muslims began to pour in.[8]

According to results of a survey released one year after the 9/11 attack by the Council on American Islamic Relations – Canada ("CAIR-CAN"), a majority (60 per cent) of Canadian Muslims say they experienced bias or discrimination since the 9/11 terrorist attacks.[9] A similar number (61 per cent) also experienced kindness or support from friends or colleagues of other faiths. Eighty percent said they knew a Muslim who was harassed.[10]

In addition, Canadian Muslims point to the following other incidents that concern them in the post 9/11 environment.

Maher Arar

Maher Arar is the Canadian Arab-Muslim man who was wrongfully detained in New York in September 2002, by U.S. authorities and summarily deported to the country

of his birth, Syria.[11] It seems clear that this is a case of the U.S. rendition policy.[12] In Syria, he was jailed for 374 days. He says he was tortured. Upon his eventual release, public pressure mounted on the Canadian government to formally commence a public inquiry in to this situation. The government was quite hesitant, but finally succumbed to public pressure.

Although the inquiry is not complete, in the words of Thomas Walkom of the *Toronto Star*, "if there is a lesson from … the inquiry it is this: Canadians who get into trouble shouldn't depend on their government to help them out."[13]

The inquiry's four months of public testimony reveal a government that in this most crucial of areas — protection of Canadian citizens — was constantly at odds with itself.

For instance, Canadian officials seemed wilfully blind or did not care about the possibility of Arar being tortured. The inquiry has revealed that in April 2002, the Royal Canadian Mounted Police passed on to their U.S. counterparts absolutely everything they knew about Arar and other unspecified Canadians without first filtering the information to ensure it was either relevant or accurate.

According to Walkom, the most disturbing revelation is evidence that the RCMP appeared to be reporting directly to the U.S. government, rather than to its own political masters. Testimony revealed that the Mounties knew before Arar touched down in New York that he was going to be arrested by U.S. officials. But they didn't bother telling anyone else in the Canadian government. Indeed, the foreign affairs department — lead player in Canadian external affairs — didn't find out until Arar had been in custody for almost a week.[14]

National Security Certificates

Another area where the Canadian government has used questionable measures in identifying terrorist suspects is in the use of security certificates. Since 9/11, the Canadian government has made more frequent use of security certificates under the Immigration Act, as opposed to criminal charges, to detain terrorist suspects.

In mid-February of this year, Adil Charkaoui was released on bail, but only after he had been detained 21 months on a security certificate. Other men – Mohamed Mahjoub, Mahmoud Jaballah, Hassan Almrei, Mohamed Harkat, Manickavasagam Suresh and the recently deported Ernst Zundel have also been detained under security certificates.

Currently, all the people held under these certificates are Muslim men born in the Arab world. They have been subjected to conditions, as the U.N. Committee on Arbitrary Detention recently noted, that are more severe than those imposed on Karla Homalka.

In a positive move, the September 2005, the Supreme Court announced that it will finally review the constitutionality of security certificates. The Court granted that opportunity to Adil Charkaoui.

Are there any recommended practical accommodations of religious pluralism?

In addition to the eight recommendations for reform that was released by the Canadian Arab Federation, CAIR-CAN and the Canadian Muslim Lawyers' Association on September 20, 2005,[15] there are other practical steps the Canadian government can take to better accommodate religious pluralism and preserve national security.

The House of Lords in the United Kingdom has taken a much bolder and rights friendly approach than Canada's Federal Court of Appeal by holding indefinite detention of non-citizen terrorist suspects as both disproportionate and discriminatory.

1. Cross Cultural Roundtable on Security

In April 2004, the Canadian Government released its national security policy. The policy articulates core national security interests and proposes a framework for addressing threats to Canadians. It attempts to do so in a way that fully reflects and supports key Canadian values of democracy, human rights, respect for the rule of law, and pluralism. To this end, the Government created a Cross-Cultural Roundtable on Security (the "Roundtable") in March 2005, which is comprised of 15 members of ethno-cultural and religious communities from across Canada. The Roundtable is to engage in a long-term dialogue to improve understanding on how to manage security interests in a diverse society and will provide advice to promote the protection of the country and her citizens in an inclusive manner.

The Roundtable is the first of its kind in the Western world and the Government should be commended for its innovative strategy to partner with front-line communities. Perhaps, it would have been more beneficial to create such a Roundtable at the time the Act was enacted in 2001. However, it is better late then never.

The Roundtable must be given the budget and procedural flexibility to meet with various ethno-cultural and religious communities so as to proper gauge the impact of anti-terrorism legislation on specific communities. For the Roundtable to be effective, the Government must take the advice and recommendations from the Roundtable seriously. It is too early at this stage to determine the effectiveness of the Roundtable.

2. Learn from the British

The House of Lords in the United Kingdom has taken a much bolder and rights friendly approach than Canada's Federal Court of Appeal by holding indefinite detention of non-citizen terrorist suspects as both disproportionate and discriminatory. In that court's view it was arbitrary to rely on immigration law to deal with terrorism given that not all terrorists will be non-citizens and that

removal of a terrorist from a country may only export terrorism. The Lords also found that it was discriminatory to subject suspects to harsher treatment because they were not citizens. Despite its boasts about multiculturalism, Canada has not yet taken the argument about discrimination against non-citizens seriously.

The British system is arguably fairer than Canada's because it allows senior lawyers with security clearances to see and challenge all of the government's evidence. In contrast, the Canadian system only provides the detainee with a summary of some of the national security evidence that the government presents to the judge. The British also accept their international law commitments of never deporting a person to face torture. In contrast, the Supreme Court and now the Canadian government, regrettably has refused to close the door to that disturbing possibility. Despite its boasts about being a leader with respect to international law, Canada seems willing to contemplate violating the right against torture, one of the most basic and absolute rights recognized in international law.

3. Government Programs targeting moderate and moderating Muslim groups

A joint initiative between the government and moderate and moderating Canadian Muslim organizations intended to steer young Muslims away from extremism and to get them to integrate better into mainstream Canadian society should be introduced.[16] This idea was first put forward by British community leaders in late September in response to the London bombings. The British government responded by spending £5m over the next 18 months to pursue this initiative.

A number of working groups should be set up by the Deputy Prime Minister's office. A national advisory council of imams and mosques to teach English to imams, encourage more Canadian-born Muslims to become Islamic clerics so as to reduce the reliance on foreign-based ones and to advise mosques on how to prevent them being used by extremists;

A national forum against extremism and Islamaphobia to provide a regular discussion point for Muslims to talk about issues as they affect their local communities, with access to government to share outcomes and understandings; and a nationwide road show of influential, populist religious scholars to explain the true meaning of Islam and condemn extremism.

However, there is concern that while helping create better community relations and understanding between Muslims and the wider community, one feature of these proposals is that public money should not be spent on schemes trying to convert people to Islam. There is a concern that this could cause resentment in other faith groups and be wholly counter-productive if it is distinct from other multi-faith initiatives.

Conclusion

There is no attempt here to minimize the threats to Canada or her people. Nor is there any justification for international terrorism in the name of religion or ideology. The government is compelled to pursue those who want to harm innocents, and the government is well justified in applying the severest punishment on such criminals and also to those who aided and abated them. But it must be recognized that terrorists of al-Qaeda "win" not by destroying buildings or subway lines. They win principally by destroying the fabric of the societies that they target, and the fabric includes the institutional relationships, including that between church and state, which enables spiritual vitality and dialogue.

The obligation of the Government and her citizens is to avoid the excesses of the past wars,[17] where innocent groups and individuals were victimized by state sanctioned oppression, and to stand on guard to preserve civil liberties despite perceived national security threats. Canada and Canadians must accommodate religious pluralism; it will make the land and her people safer from terrorist attack.

Notes

1 In the Netherlands, for instance, the government has introduced a range of measures designed to produce greater integration of the Muslim community. Anyone who wants to go settle there, and who has attended school in the country for fewer then eight years, now has to pass a compulsory integration test demonstrating knowledge of the Dutch language and culture.

There is also a series of measures directed at the Muslim community specifically.[1] All Imams recruited in Islamic countries must follow a one-year integration course before they can work in the Netherlands. In France, the government passed a controversial bill banning Muslim women from wearing the *hijab* or headscarf. The French claim that they had to do this to protect secularism.

2 Paul Ingram (p. 137)

3 The situation was even more complicated as prominent American politicians like Hillary Clinton and George Pataki incorrectly suggested that Canada is weak on its immigrant screening and that several of the 9/11 bombers entered the US via Canada.

4 The action falls within the scope of the Act if it (a) involves serious violence against a person, (b) involves serious damage to property, (c) endangers a person's life, other than that of the person committing the action, (d) creates a serious risk to the health or safety of the public or a section of the public, or (e) is designed seriously to interfere with or seriously to disrupt an electronic system.

5 On March 31, 2004, the RCMP charged Mohammad Momin Khawaja of Ottawa under the Act, alleging that he was part of a terrorism plot in London, United Kingdom. The trial has not commenced.

6 In legislative terms, "sunset" means that the provisions become inoperative and cease.

7 See his landmark work *September 11: Consequences for Canada* (McGill Queens University Press, 2004)

8 Muslims across Canada were harassed, taunted and threatened and their places of worship desecrated. Several Muslim schools — in Vancouver, Calgary, Toronto, Ottawa and Montreal — were closed and many Muslim children were kept home from public schools for fear of physical attacks. Mosques in Oshawa, St. Catharines, and Montreal were reportedly attacked by firebombs; Muslim children in Oakville, Ont., said they were assaulted; and Muslim women were targeted because of their distinctive mode of dress. The type of incidents reported ranged from verbal abuse to physical threat, abuse, and the destruction of property. According to a report by the Toronto Police Services, there was 66 percent increase in hate crimes in 2001 (Toronto Services Board, 2001). The largest increase was against Muslims between September and December, 2001.

9 See http://www.caircan.ca/itn_more.php?id=A90_0_2_0_M for more information on CAIR-CAN's September 5, 2002 survey results.

[10] The survey polled 296 Muslims from across Canada and according to CAIR-CAN was intended to provide a window into the lives of Canadian Muslims in the first year after the 9/11 attacks.

[11] Since the US does not have official diplomatic relations with Syria, Arar was first flown to Jordan and then transported to Syria.

[12] This policy allows the US government to transport detained persons to third countries that have questionable track records on torture, in order to solicit information.

[13] Thomas Walkom, "Few Heroes in Arar Saga" *Toronto Star*, September 3, 2005 A5.

[14] We recommend that you read Walkom's whole article to see other examples of Canada's mistreatment of Maher Arar.

[15] To see a copy of the *Joint Statement of Principles & Recommendations for Real Security* by the three organizations, please go to www.muslimlaw.org.

[16] Examples of moderate Muslim organizations include the Canadian Federation of Muslim Women, Ihya Foundation and the Muslim Youth Association of North America, to name a few.

[17] For instance, the internment of the Japanese and Germans.

REDEFINING MULTICULTURALISM

ABSTRACT

What has shaped our understanding of multiculturalism in Canada? This poignant historical overview allows us to look back at more than three decades of Canadian multicultural policy and what it means to create a society in which differences are celebrated rather than feared. From the Royal Commission on Bilingualism and Biculturalism, to the Charter of Rights and Freedoms, to the Multiculturalism Act, Karen Mock outlines the various steps taken towards this end. She addresses the challenges of today, concluding that we are presently at a crossroads in the fight against racism – but one which holds considerable promise for the future should we choose to solidify our commitment to human rights, democracy, equality and social justice.

Much has changed in Canada since the Multiculturalism Policy was first articulated. We have come from the euphoria of the commitment to celebrate our differences, to the tensions of a backlash against multiculturalism, with continuous challenges to redefine this unique concept that has attracted world-wide attention and admiration. It is beyond the scope of this article to trace the entire history of multiculturalism in Canada. But a brief glance at some of the research and thinking that shaped and reshaped our understanding of multiculturalism will add insight into where we are now, and hopefully provide a foundation for determining future directions in ensuring that all Canadians benefit fully from our multicultural society.

In the years leading up to the declaration of the Multiculturalism Policy in 1971, the government had become increasingly concerned about the integration of immigrants and the relations between cultural groups. The culmination of the so-called 'Quiet Revolution' and the emerging demands of Quebec for recognition of French language and cultural rights, resulted in the creation of the Bilingual and Bicultural (B & B) Commission to discover the views of all Canadians as we moved towards the recognition of two official languages. But a "third voice" was heard across the country, as group after group spoke to the contributions and aspirations of the so-called "other" cultural communities. The B & B Report came up with an additional volume, recognizing ethnocultural minorities and advocating the protection of their cultural and linguistic rights. Multiculturalism was acknowledged as a reality within the bilingual framework.

In October 1971, Multiculturalism was declared an official policy of this country, and the government began to support heritage languages and activities of ethnocultural communities, as well as continuing its earlier programs designed to enhance long-term integration. The emphasis of the multiculturalism programming was on cultural retention and cultural sharing..."Celebrating Our Differences", with the initiative for the direction of the programs coming from groups themselves. At the same time, removal of some of the systemic barriers in our immigration policy began to allow fairer access to Canada, and the voices of racial minorities began to be heard. There was a greater push nationally and internationally for equality and justice for all minority groups. Along with the multiculturalism policy, there were tremendous related developments in the early '70s. Hate propaganda, the promotion of hatred against identifiable groups, became a criminal offence in Canada in 1970, when the hate laws were adopted as amendments to the Criminal Code (Sections 318-320). That same year, Canada ratified the International Convention on the Elimination of All Forms of Racial Discrimination. The Canadian Human Rights Act of 1977, and various provincial human rights codes, were also enacted to provide greater protection of minority rights.

After several serious racial incidents in Toronto streets and subways, Walter Pitman (1975) alerted us that "Now Is Not Too Late" in his call to action to combat growing racial tension. The Toronto Board of Education (1979) reminded us that "We Are All Immigrants to This Place" with a need to provide better services to the multicultural population of the city. They followed with the "Report on Multiculturalism" and the "Report on Race Relations", and other Boards of Education began to follow suit across the country, to develop policies to promote equality and to implement procedures for handling racial incidents. Usually it was a catalytic event that led to policy

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development. For example, in the city of North York in Ontario, an invitation to the KKK to come into a classroom to present "the other side" made the principal and school board realize they had no policy to prevent people from coming into schools to spout racist ideology. At the same time, having nowhere else to turn, parents launched a class action suit with the Nova Scotia Human Rights Commission against the local school board to improve education for Black students. Right across the country it was recognized that if people interpreted multiculturalism as cultural retention and cultural sharing, but not as breaking down the barriers to real equality, the policy's promise would never be fulfilled. A stronger, more direct thrust was needed.

In 1982 the Charter of Rights and Freedoms entrenched multiculturalism and equality rights in the constitution, guaranteeing equal protection and benefit of the law, free from discrimination on the basis of race, national or ethnic origin, colour, and religion. In the '80s, amendments to various Human Rights Codes provided the Commissions the power to monitor and enforce those rights. In 1984 the National Association of Japanese Canadians (NAJC) published "Democracy Betrayed", making public the history of Japanese Canadians, and they launched the campaign for redress for the complete abrogation of human and civil rights of Japanese Canadians. And the "Equality Now!" Task Force (1984) and "Employment Equity" Commission (1984) pointed out systemic racism in education, the media, health services, the criminal justice system and employment across the country. Both reports called for the immediate implementation of measures to combat discrimination and increase equity for disadvantaged and vulnerable groups. In 1985, the Urban Alliance on Race Relations and the Social Planning Council asked "Who Gets the Work?" and their research was unequivocal in finding blatant discrimination in hiring practices and in the workplace; and there were ongoing reports of harassment of minorities by the police.

In some circles, the concerns of the '80s were heard loudly and clearly, and it was eventually recognized that equality issues were the results of systemic inequalities and therefore beyond the capability of individuals or communities to resolve. That is, the co-operation and active involvement of government and institutions were required to achieve such goals as employment equity and the acceptance, not tolerance, of all communities as part of the so-called mainstream. These concepts are at the very core of the 1988 Canadian Multiculturalism Act.

It is clearly stated in the Act that it "recognizes the diversity of Canadians as regards to race, national or ethnic origin, colour and religion as a fundamental characteristic of Canadian society". Embedded in the Act is the notion that it is also a policy that is "designed to preserve and enhance the multicultural heritage of Canadians while working to achieve the equality of all Canadians in the economic, social, cultural and political life of Canada." As an act of parliament, the Multiculturalism Act is directed to all Canadians, not just to ethnocultural or racial minority communities. The 1988 Act gave government institutions responsibility to implement multicultural organizational change, and the Department of Multiculturalism provided programming not just for community groups, but for so-called "mainstream" institutions - police, healthcare facilities, education, social service, the arts - to develop and implement multiculturalism policies and programs towards equality of access and service delivery. The Act explicitly recognized the special status of Aboriginal Peoples.

We have come from the euphoria of the commitment to celebrate our differences, to the tensions of a backlash against multiculturalism, with continuous challenges to redefine this unique concept that has attracted world-wide attention and admiration.

Redefining Multiculturalism: Where Are We Now?

In the early 1990s, if people like me were feeling demoralized, frustrated, fearful, helpless and exhausted, then how much more so the visible minority youth and their parents? For many we also have to add the words angry and betrayed. The only really surprising aspect of the riot and looting in May 1992 in Toronto...or later in Vancouver... or racial gang fights in Halifax schools... is that it came as a surprise to anyone. The Canadian Race Relations Foundation Act was finally proclaimed in 1996 with the mandate to document the history of racism in Canada, expose its current manifestations, and to work for and with all Canadians towards the creation of a society that ensures equality and justice for all, regardless of race, colour, or ethnic origin. However, by the mid '90's there was the perfect combination of factors that escalated racial tension and violence:

First, fiscal restraint was a reason - or should I say excuse - given for not implementing equity initiatives. Many programs continued to be cut back in this area particularly at the provincial level, the jurisdiction responsible for employment legislation. A recession causes people to retrench and compete, and to think of "me", not to be concerned about empathy and altruism and promoting the "other" in the interest of equality. Such a climate leads to attempts to preserve the status quo and systemic barriers to equality, rather that moving towards anti-racist organizational change.

Secondly, though related to the first, is the severe backlash we've experienced towards multiculturalism and all that it stands for - a resistance that is unjustified, and perpetrated by those who want to preserve the status quo. A recessionary climate leads people to blame others for their misfortune, and in particular to scapegoat minorities. Analysis of the data gathered by police hate crimes units over the past decade shows a negative

correlation between interest rates and incidents of racism and hate crime.

Thirdly, international events influence the present climate in Canada. There has been a rise in the right and in xenophobia worldwide. David Duke in the U.S., LaPen in France, the neo-Nazis throughout Eastern Europe, all created a climate in which overt racism began to be commonplace and served as a stimulus for people here to become more bold in their racist behaviour. Also comparisons with Europe and the atrocities of "ethnic cleansing" in some parts of the world lead some Canadians to think we don't have problems here; and so they can blame the victims for complaining, rather than acknowledging the racism that is inherent in our own society. In the post September 11th climate, we saw a backlash against racial minorities, and a real rise in overt racist incidents and hate crimes against Muslim and Arab Canadians, Jews, and immigrants and refugees, as documented in the Canadian Race Relations Foundation's Appeal for Vigilance Against Racial and Religious Intolerance (2001), recent proof yet again that racism is very close to the surface. In the anti-terrorism frenzy and under a heightened security agenda, racial profiling is common, and there have been many reports of human and civil rights violations.

The fourth factor that can escalate racial tension and even violence is the increasing divisiveness among and between equality seeking groups themselves. The essence of our work is to break down the barriers to equality so there can be shared power and equal access for all groups. But because of the politicization of these issues, and also because of the failure of governments to introduce innovative models (e.g. of funding, management, organizational culture), groups are forced to function within existing structures, and end up competing for power, relegating the notions of shared power and the empowerment of others to lip-service. Increasing attempts to grab power for oneself or ones own group also leads people into the dangerous and divisive practice of comparing pain and victimization, and may even result in racism or violations of the human rights of other groups in the promotion of ones own agenda.

The challenge for the future of multiculturalism, indeed of Canadian society as we know it, is to build on a model of shared resources in a climate of declining resources - to develop coalitions and cooperation (not competition) in the interest of social cohesion and integration which are the true goals of multiculturalism. But multiculturalism will *not* be achieved until racism is eliminated.

Taking Action: Where Are We Going?

The time is long overdue for putting all the policies, recommendations and theories into consistent practice - for putting the words into action.

Education and training are essential - multicultural anti-racist training in the police, the media, the education system, and the criminal justice system. Community based organizations and other NGOs can offer assistance in this regard. Anti-racist education workshops to school boards, and guidance on policy development and implementation should be compulsory and system wide; courses and materials for use in policing services and judicial education programs are also available.

Legal/Legislative Initiatives are also applicable in our discussion of where should the government go in resolving the current situation created by the last several years of backsliding. The federal government's creation of employment equity targets as a result of the "Embracing Change" Task Force was a step in the right direction, but we continue to hear of overt and systemic discrimination against racialized minorities, even in the public service. There must be effective policies in place in each of our institutions at every level of government, if we are ever going to change behaviour and achieve true equality and equity.

> The only really surprising aspect of the riot and looting in May 1992 in Toronto...or later in Vancouver...or racial gang fights in Halifax schools... is that it came as a surprise to anyone.

We were optimistic when the Multiculturalism Department was created several years ago, with its own Minister and Deputy Minister; and with its increasing emphasis on anti-racism and anti-hate initiatives, it appeared that the will to take the risk was there. But that will eroded. Multiculturalism was one of the departments significantly reduced, when it was folded into the Department of Canadian Heritage and placed again under the auspices of a junior minister as Secretary of State for Multiculturalism. And the Action Plan Against Racism and Hate, promised further to the World Conference Against Racism, has been delayed yet again. Can we withstand the onslaught of right-wing thinking and veiled racist ideology of some of the opposition to multiculturalism, anti-racism and human rights initiatives? Will the federal leadership in human rights and race relations be able to withstand the continued dismantling of many of provincial agencies and programs in these areas? There are hard won rights and freedoms that we cannot allow to be undermined by those who only wish to maintain privilege and power. Neither should we be co-opted nor corrupted by the same quest.

We have come along way, and Now is NOT Too Late. But we were close. Racism has been acknowledged as a reality in Canada; but we will never achieve the vision of our multicultural society until racism is eliminated. The essence of the Canadian Multiculturalism policy is the commitment to removing the many barriers to equality, so that ultimately all groups within Canada have equal access, equal opportunity, and equal rights, thereby becoming fully Canadian. As we look back over more than three decades of Multiculturalism in Canada, it is gratifying to see how far we have come. Because of our laws and our codes, individual rights are protected. Because of our

commitment to a multicultural Canada, communities are working together to fight racism and to achieve group rights. I am still hopeful we will achieve the goals of the Multiculturalism Policy, because of our commitment to human rights, democracy, equality and social justice, principles that will continue to inform our shared vision of what it means to be Canadian.

Notes

This article was supposed to appear in Canadian Diversity's Volume 4:1 Multicultural Futures. We apologize for mistakenly omitting it from that issue.

A longer version of this paper was presented at the Centre for Asia-Pacific Studies, and appears in Kess, J.F., Noro, H., Ayukawa, M., and Lansdowne, H (Eds.) Changing Japanese Identities in Multicultural Canada. University of Victoria, Victoria, British Columbia (2003).

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MUSLIMS AND MULTICULTURAL FUTURES IN WESTERN DEMOCRACIES

Is Kymlicka's pessimism warranted?

ABSTRACT

In a recent edition of *Canadian Diversity* (volume 4.1, winter 2005), respected philosopher Will Kymlicka admits to hastily predicting a growing convergence across Western democracies towards liberal multiculturalism. He observes that rising opposition to multiculturalism in western democracies is often a function of the relative size of their Muslim populations. Jack Jedwab attempts to test the hypothesis by looking at demographic data on Muslims and opinion surveys on multicultural issues.

In a recent edition of Canadian Diversity (volume 4.1, winter 2005), respected philosopher Will Kymlicka admits to hastily predicting a growing convergence across Western democracies towards liberal multiculturalism. Accordingly public institutions would better accommodate ethnocultural diversity within a larger framework of a liberal-democratic constitution with firm protection of individual rights and non-discrimination. While acknowledging different experiences across democratic countries he now maintains that his prediction was inaccurate. While it takes a big person to admit such an error, Kymlicka's new forecast may also be a bit too rash as the 'ideal' may take more time to reach.

He attributes his purported error to three factors: illegal migration (he believes that the higher the proportion of illegal migration the more public antagonism to multiculturalism). At one end of this continuum, he says, would be a country like Canada, which has probably the lowest level of illegal immigration amongst the Western democracies. Hence it sustains a strong level of public support for multiculturalism. Second he refers to liberal versus illiberal practices when it comes to the sort of "culture" that is being recognized and accommodated by multiculturalism policies. It is very difficult to get public support for multiculturalism policies if the groups that are the main beneficiaries of these policies advocate illiberal cultural practices. In the West today, he points out that it is primarily Muslims who are seen as raising this risk. Kymlicka contends that "…Muslims are not only seen as potentially bringing with them illiberal practices, but also as having a strong religious commitment to them, and hence as more likely to try to use the ideology of multi-culturalism as a vehicle for maintaining these practices." Thus on Kymlicka's continuum the proportion of immigrants who are Muslim may be a good predictor of growing public opposition to multiculturalism. Canada, he argues, is at one end of the spectrum as Muslims account for less than 2 per cent of its overall population hence multiculturalism remains popular in the country.

It is hard to establish the causal relationship between the rise of Muslim populations and the erosion of support for multiculturalism. While it is clear that there is a rising concern across Western democracies with the rise of Islamic identity it is still unclear that this has been steadily eroding support for multiculturalism. In some jurisdictions this presupposes that the support was there prior to Kymlicka making his projection and that it since plummeted. Moreover the other question is whether it is the share of Muslims in a given democracy or their percentage increase. If it is the latter than it is worth noting that in the past decade the percentage increase in Muslim populations has been as significant in Britain and Canada than it has been in many other Western democracies.

Of course Kymlicka is not providing ammunition to political movements that want to curb Muslim immigration to western democracies. To say the least it would be ironic to hear right-wing political leaders demand the elimination of Muslim immigration in the name of preserving multiculturalism. And Kymlycka concludes-I think correctly- that:"…it is precisely when immigrants are perceived as illegitimate, illiberal and burdensome that multiculturalism may be most needed."

JACK JEDWAB

Jack Jedwab is the executive director of the Association for Canadian Studies.

Easier to predict demographic future than Multicultural one

Predictions about future social conditions are always very risky. Forecasting our demographic future is somewhat less so. Once considered a predominantly Christian country, according to Statistics Canada the country is in for a dramatic shift in the religious composition of its population as it approaches its 150th birthday in 2017. Of the scenarios issued by Statistics Canada for 2001-2017 the most probable outcome has the Muslim population in Canada rising by approximately 160 per cent, the number of Buddhists by 35 per cent, Sikhs by 65 per cent and Jews by 10 per cent.

In Montreal by 2017 there will be more Muslims than all other non-Christian groups combined and it is very likely that there will be more Muslims in the metropolitan area than Protestants of school age-that is under the age of 15. There is no doubt that the evolution of the country's religious composition has had an impact on Canadian perceptions of the state of intergroup relations. Until recently when asked about the most important conflicts between communities, Canadians have referred to either tension between English and French populations, aboriginal and non-aboriginal or more recently friction between white and non-white. However a large-scale survey conducted in 2004 by the firm Environics for the Association of Canadian Studies (March 29-April 18, 2004) revealed that Canadians' concern over language and aboriginally-based conflicts has diminished and for the first time in several decades it is conflict between religious groups (43 per cent) that are seen as the most important source of tension in the years ahead. The poll had interethnic tensions as the second greatest concern of Canadians (18 per cent) with English and French (13 per cent), Aboriginal and non-Aboriginal (12 per cent) and White and non-White (7 per cent). But the rise in concern over intergroup tension on the basis of religious identification has not resulted in erosion in public support for multiculturalism according to opinion surveys conducted over the past few years.

Evolution of Canada's Major Religious Groups, 2001-2017

	2001	2017
Muslim	579.7	1421.4
Jews	340.8	375.1
Buddhist	304.2	413.9
Hindu	303.6	583.9
Sikh	289.0	495.7
Other	105.0	135.2
Total	1922.0	3425.3
Rest of Population	28 694.0	31 157.0
Total	30 616.0	34 582.0

Source: Statistics Canada, Scenario B-Projections 2001-2017

According to a May 2004 Ipsos poll there is widespread acceptance of the benefits of religious pluralism with Europeans more divided than North Americans about the desirability of a society with shared values and customs and Canadians by far most favourably disposed towards immigration.

Demographic Change and Multiculturalism

The relationship between rising opposition to multiculturalism in western democracies and growth in Muslim populations is reminiscent of the link made between poor economic performances and diminishing support for immigration. In either case the hypothesis is difficult to test without time-series data that correlates these respective trends in this case as regards the growing presence of Muslims with evolving public opinion around multiculturalism and the related degree of openness to various aspects of cultural pluralism. Moreover assuming a direct relationship may prevent other factors from being considered that contribute to diminishing multiculturalism. Amongst these is the degree of demographic diversity and the extent to which religious identification is important amongst the population.

Kymlicka notes that the Canadian share of Muslims is less than two per cent and thus infers that it is substantially higher numbers and shares of this group in Europe that may result in reduced support for multiculturalism. Islam is now the second-largest religion in Europe and it has become increasingly visible in the public domain (see Appendix for figures on Muslims in selected countries). But Kymlicka's hypothesis deals more with the collective perception of the rise in Muslim population irrespective of its internal diversity. There are many ethnic communities within the Muslim group with diverse historic experiences across Europe. In Britain, Pakistani Muslims are the largest group, in Germany and the Netherlands, Turkish Muslims are largest, in the Netherlands there are significant numbers of Moroccan and Surinamese and in France and Spain they are mainly from the Maghreb.

Some insights about the purported erosion in support for diversity can be drawn from recent polling in Western democracies around concerns over Islamic identity. Opinion surveys in North America and Europe continue to point to what might be regarded as contradictory tendencies around issues of diversity. According

Estimated percentage of Muslims and following questions; it is better for a country to have a variety of people with different religions? Is it better for a country if almost everyone shares the same customs and values? Overall would you rank immigrants as having a good or bad influence on the way things are going in you country?

	Estimated Percentage of Muslim populations (2001-) -	Acceptance of religious pluralism pluralism (combined strongly and somewhat agree)	Better with same customs and values (combined strongly agree and somewhat agree	Influence of Immigrants on your country is good (Very or Somewhat good)	Influence of immigrants on your country is bad (Somewhat or very bad)
Canada	1.9	83	40	73	20
United States	3.0	90	27	42	47
Great Britain	2.7	77	46	32	60
France	7.5	71	52	39	53
Germany	3.7	56	48	39	56
Spain	1.2	70	53	36	47

Source: Globus-IPSOS-Public Affairs, Interview Dates, May 7-17 (the Netherlands was not included in the poll)

Muslim Population Statistics in Selected Countries Institute of Islamic Information and Education Shaik Musheer, www.iiie.net/Intl/PopStats.html; Islam and Muslims in Europe at http://euro-islam.info/pages/nether.html and *Statistics Canada, 2001*

to a May 2004 Ipsos poll there is widespread acceptance of the benefits of religious pluralism with Europeans more divided than North Americans about the desirability of a society with shared values and customs and Canadians by far most favourably disposed towards immigration.

It is worth noting that support for religious pluralism is mush softer in Europe than North America with countries like Germany (13 per cent), France (28 per cent) and Spain (30 per cent) not expressing as 'strong agreement' with the idea that it is better for a country to have a variety of people with different religions as does Canada (46), the US (61) and Great Britain (36). The acceptance of religious pluralism may also be related to the degree of importance attributed to religious identity and the extent of its practice. In this regard when asked between 2003 and 2004 whether they attended Church at least once a week percentages were highest in the United States (43 per cent), Canada (27 per cent), Spain (21 per cent), with Netherlands and the UK between 10 per cent and 15 per cent and less than 10 per cent reporting such attendance in France and Germany.

> To say the least it would be ironic to hear right-wing political leaders demand the elimination of Muslim immigration in the name of preserving multiculturalism.

In May 2005 (prior to the terrorist bombings in London), the Pew Research's Global attitudes survey inquired into the degree of concern over the perceived domestic and international threat arising from Islamic extremism. Concerns over its domestic expres-sion were highest in Spain despite a lower share of Muslims in other parts of Europe or North America. It is worth keeping in mind that Spain was

Estimated Percentage of Muslim populations and results to questions about Islam in selected countries

	Estimated Percentage of Muslim populations (2001-)	In your opinion how a strong a sense of Islamic identity do have-percentage very strong	Islamic identity on-the rise Percentage saying yes	Concerned about the rise of Islamic extremism in our country-Percentage Very Concerned	Unfavorable Views of Muslims Percentage Unfavorable	Banning Muslim Head Scarves-Percentage Agree
Canada	1.9	20	51	22	26	37
United States	3.0	20	50	31	22	33
Great Britain	2.7	29	63	34	14	29
France	7.5	19	70	32	34	78
Germany	3.7	33	66	35	47	54
Spain	1.2	30	47	43	37	43
Netherlands	6.0	32	60	32	51	51

Source: Global Attitudes Project: Pew Research, 2005

Estimated Percentage of Muslim populations and following questions; percentages that think that rise of Islamic identity if a bad thing and reasons they give for this opinion? Which one of the following worries you most about Islamic identity in our country today? It can lead to violence; it can lead to a loss of personal freedoms; it will prevent Muslims from integrating into our society.

	Estimated Percentage of Muslim populations	Rise of Islamic identity a bad thing %	Leads to Violence	Loss of Freedoms	Prevent Integration
Canada	1.9	52	29	27	40
United States	3.0	48	47	23	23
Great Britain	2.7	56	30	12	55
France	7.5	89	50	25	25
Germany	3.7	85	41	12	46
Spain	1.2	76	48	18	30
Netherlands	6.0	87	26	27	47

Source: Global Attitudes Project: Pew Research, 2005

the most recent victim of a terrorist attack prior to the Pew survey.

Furthermore such levels of concern do not easily correlate with either the perceived rise in Islamic identity or the percentage respectively agreeing with the banning of the Muslim head scarf (something that receives greater support in Europe than in North America). In Spain though the perceived rise in Islamic identity is lower extremism is highest. In France where the population is least inclined to think that Muslims have a strong sense of Islamic identity the banning of the head scarf obtains the most support of the countries examined. In Canada and the U.S. where opinion on rising Islamic identity is at levels similar to that of France the banning of the Muslim head scarf secures far less support.

What does appear to correlate is the presence of Muslims with the perception that there is a stronger sense of Islamic identity and with banning Muslim headscarves.

With the exception of Canada, a majority in the other countries think that rising Islamic identity is a bad thing (amongst Canadians a near majority felt that way). Amongst those who believe so Canadians, Brits and Germans are most preoccupied with such a tendency obstructing integration while French, Spanish and Americans are most worried by it leading to violence. Concern is somewhat less that the rise of Islamic identity will lead to a loss of freedom than is the preoccupation with violence or integration.

Caution needs to be exercised when making predictions about the collective mind set of national populations around issues of diversity. Tragic events can sharply modify opinion but may not have a sustained effect. After the terrorist attacks of September 11th there was a decline in public support within Canada for immigration. But within a few months public opinion reverted to pre-September 11th levels.

For some observers the growth of Muslim populations will result in ongoing challenges as governments address issues associated with the place of religion in schools and in public institutions more broadly. In many Western democracies, guidelines/ national norms (i.e. rights charters or policy statements) are often in place for determining where conflicts may arise between the promotion of cultural pluralism and citizens rights. Caution needs to be exercised when making predictions about the collective mind set of national populations around issues of diversity. Tragic events can sharply modify opinion but may not have a sustained effect. After the terrorist attacks of September 11th there was a decline in public support within Canada for immigration. But within a few months public opinion reverted to pre-September 11th levels.

And, despite Kymlicka's pessimism, surveys conducted a month following the terrorist attacks in London did not appear to have meaningfully influenced opinion about multiculturalism in that country. In a survey conducted by the firm MORI (August 10, 2005) one month after the bombings in London, some 62 per cent of respondents agreed that multiculturalism makes Britain a better place to live. Some 86 per cent disagreed that their area no longer felt like Britain any more because of immigration. While it is true that some opinion leaders in that country have called for an end to multiculturalism that view seems more like a death

wish in light of continued public support of the ideal. It remains difficult to predict whether our futures will be multicultural. But as to getting there, Kymlicka correctly observes that:"…the path…in many countries will not be smooth or linear. "

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Appendix 1 – Total National Populations and number and percentage of Muslims, 2001-

Country	Total Population	Number of Muslims	Muslim Percentage
Canada	30, 616 000	579, 700	1.9%
France	59,551,227	4,466,342	7.5%
Germany	83,536,115	3,090,836	3.7%
Netherlands	16,318,199	979,092	6.0%
Spain	40,037,995	500 000	1.2%
United Kingdom	58,489,975	1,579,229	2.7%
United States	293,027,571	8,790,827	3.0%

The data was reproduced from Shaik Musheer, The Institute of Islamic Information and Education http://www.iiie.net/Intl/PopStats and from Islam and Muslims in Europe at http://euro-islam.info/pages/nether.html. and for Canada from Statistics Canada. In Spain an estimate if offered and it should be noted that in the Netherlands there is a discrepancy between the two sources of information to which we refer with the Islam and Europe figures at 700 000 Muslims thus lowering the percentage.

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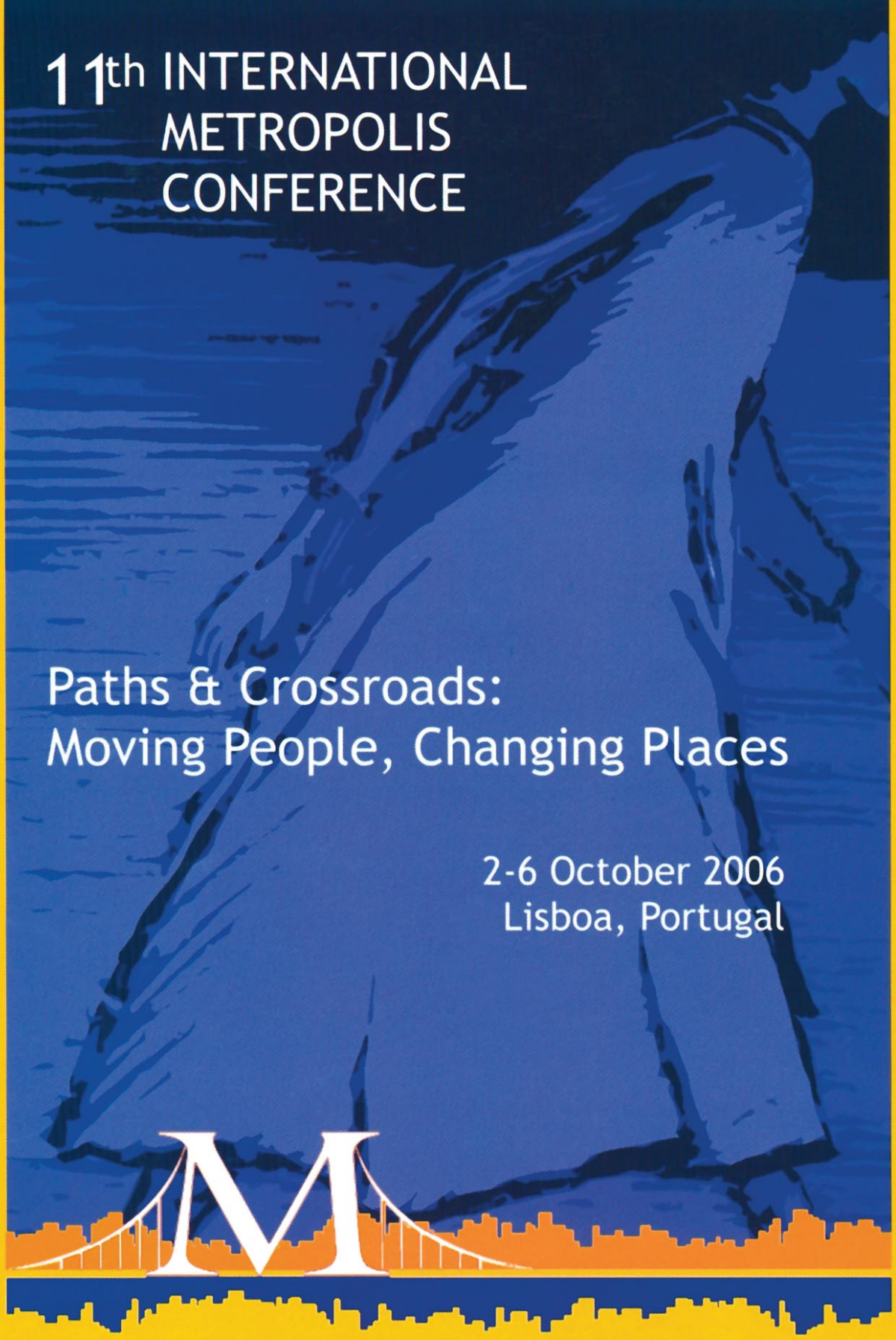

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