

Religion in a Secular World: The Case of Shariah Law in Canada



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As large numbers of Muslims continue to establish themselves in the West, they inevitably have to deal with the challenge of secularism. The fundamental question which is often asked is: how can a Muslim maintain his faith in a largely secular environment? Attempts to deal with this issue have led to the establishment of religious centres, Islamic schools, and various faith-oriented organizations, all within the framework of a multicultural society. A more recent effort is the attempt to incorporate Shari'ah-based arbitrations within the secular legal structure. In Canada, such an effort was met with unfortunate results. This paper attempts to understand the reasons for the unsuccessful endeavour to establish a Shari'ah-based tribunal system in Canada within the greater context of the conflict between religion and secularism, particularly in the modern world.

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Abstract

As large numbers of Muslims continue to establish themselves in the West, they inevitably have to deal with the challenge of secularism. The fundamental question which is often asked is: how can a Muslim maintain his faith in a largely secular environment? Attempts to deal with this issue have led to the establishment of religious centres, Islamic schools, and various faith-oriented organizations, all within the framework of a multicultural society. A more recent effort is the attempt to incorporate Shari'ah-based arbitrations within the secular legal structure. In Canada, such an effort was met with unfortunate results. This paper attempts to understand the reasons for the unsuccessful endeavour to establish a Shari'ah-based tribunal system in Canada within the greater context of the conflict between religion and secularism, particularly in the modern world. Keywords: Shari'ah, Islamic law, Shari'ah law in Canada, multiculturalism, Muslims in Canada, Muslims in secular liberal democracies, religion and modernity.

Introduction

“Controversial Shari'ah Law is becoming a part of the Ontario legal system. Is this the triumph of multiculturalism or is it a threat to the separation of church and state in Canada? That's the debate tonight on Counterspin.” Carol Off, “Is there Room for Religion in the Justice System,” Counterspin (March 10, 2004). With these words, the host of CBC Newsworld's Counterspin initiated what soon became a heated debate entitled “Is there room for religion in the justice system?” Only two days earlier a similar debate was broadcasted on CBC Radio's 'The Current'. In both cases, the topic of discussion involved the idea of establishing Shari'ah sensitive tribunals to mediate disputes between Muslims as an alternative to seeking arbitration in Ontario's civil courts. In both cases, the invited panelists who spoke for and against the idea, identified themselves as Muslims, and represented various Muslim organizations within Canada. While the Shari'ah is accepted as the legal and ethical code governing the private and public conduct of all Muslims, the idea of integrating it within the Ontario legal system has not met with unanimous approval from the Muslim community. Furthermore, the notion of incorporating Shari'ah-based arbitrations into the legal system, has been met with antagonism if not outright hostility from the rest of the Canadian public. This is despite the fact that the legal framework which permitted such integration had been in existence since 1991. In an attempt to ease the burden on the judicial system, the Canadian government introduced the alternative dispute resolution (ADR) provisions within the Arbitration Act, which allowed parties the option of resolving civil, family and religious disputes using culturally sensitive parameters—be it religious or otherwise. In fact, other communities had already implemented ADR procedures such as the Jewish rabbinical courts, known as the Beis Din in Ontario, as well as various tribunals set up by the First Nations' Peoples of Canada. However, never had discussions resulted in the division of community members and incited such a strong reaction from the media as it did with the attempt to formalize and centralize an Islamic tribunal system in Canada. As a result, the government commissioned Marion Boyd, Ontario's former attorney general, to conduct a review of ADR procedures and how they were being used by various communities. The resulting 150

page report supported the continued use of ADR procedures by faith-based communities with recommendations for various legislative, regulatory and public support changes to curb any potential misuse. Marion Boyd, "Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion," (2004). To much surprise, however, on September 11, 2005, Premier Dalton McGuinty ignored the report's recommendations, and announced that only one family law would be followed in Ontario. Bill 27—passed by the Ontario Legislature early the following year—effectively limited the domain of the Arbitration Act. The bill stipulated that family law arbitrations in Ontario, which are conducted according to Canadian law only and ignore religious laws or principles, would have legal status and be enforceable by the courts. What began as a group's attempt to establish an Islamic-based alternative to the secular court system under the existing legal framework ended with the amendment of a legislative act to prevent it. Whether this was due to mistrust against the perceptions of the Islamic Shari'ah or whether there were, in fact, legitimate concerns about the issue, the debate must be assessed within the context of a 'multicultural Canada' whose liberal humanistic values are often in conflict with those of a traditional religion such as Islam. This article attempts to assess the debate on Shari'ah law that took place between 2004 and 2006 in the province of Ontario. It will begin by examining the meaning of 'multiculturalism' in Canada and the role that Muslims play within the nation's cultural mosaic. It will then discuss the concept of the Shari'ah in Islam in an attempt to clarify the motivation for establishing Shari'ah-based tribunals in Ontario as well as the concerns that many Muslims and non-Muslims have voiced in opposition to it. The final section of this paper will attempt to highlight some of issues raised by the Shari'ah court debates in the greater context of the conflict between religion and secularism and its implications for Muslims in a liberal democracy such as Canada.

Origins of "Multiculturalism" in Canada

Canadians have historically prided themselves in the widely held belief, taught almost as dogmatic truth since the early years of a child, that Canada is a cultural mosaic committed to the idea of multiculturalism. The image of a cultural mosaic and the idea of a nation united through diversity is often juxtaposed with the opposing image of a melting pot where ethnic, cultural and ideological differences are lost in the giant cauldron of assimilation. But the concept of multiculturalism is not as self-evident as we may believe, and in the Canadian context, it may refer to any of three different, yet related, notions. As a descriptive term, multiculturalism can be used to describe the demographic and social reality of Canada that defines the ethnic make-up of this nation. One can argue that Canada has always been multicultural from even before the arrivals of the Europeans, as the native inhabitants of this land were already divided into several linguistic and cultural groups, each reacting and developing uniquely to its own regional conditions. With colonization—and, as some would argue, the confiscation—of the land, by the British and French, as well as the subsequent migration of many Europeans, the multicultural nature of Canada shifted to accommodate these changes. Within the last few decades, the cultural mosaic has visibly altered with the arrival of immigrants from non-European countries. In fact, of the 1.8 million immigrants who arrived between 1991 and 2001, 58% came from Asia and the Middle East, 11% from

the Caribbean, Central and South America and 8% from Africa. Census 2001. The increased migration of such a large and continentally differentiated group of individuals has contributed in making Canada a very diverse society. Yet Canada is not unique in this regard and to understand the idea of multiculturalism in Canada, one must examine the other ways in which the term has been used. As a proscriptive term, multiculturalism refers to an ideal. It is based on the idea of cultural pluralism which considers each culture or ethnicity as a valuable entity in its own right. It also involves the idea that all cultures can and should coexist peacefully, and in the postmodern context, it implies that no particular culture has the right to impose its hegemony over any other culture. It is important to realize, however, that the notion of multiculturalism as an ideal cannot be isolated from the liberal humanistic framework under which it is commonly understood. Finally, multiculturalism is also a state policy and a relatively new one in the history of Canada. It is the term used for the “umbrella of government policy and program initiatives designed to respond to ethnic and racial diversity within Canadian society.” Harold Troper and Morton Weinfeld, “Canadian Jews and Canadian Multiculturalism,” in Howard Adelman and John H. Simpson, eds., *Multiculturalism, Jews and Identities in Canada* (Jerusalem: Magnes Press, 1996), p. 30. First established by Prime Minister Trudeau in 1971, it emerged in response to the recommendation in Book IV of the Report from the Royal Commission on Bilingualism and Biculturalism, which recognized the contribution of other ethnic groups in Canada. Through it, the government agreed in principle to assist “all Canadian cultural groups that have demonstrated a desire and effort to continue to develop a capacity to grow and contribute to Canada”. “Statement of Prime Minister Trudeau,” House of Commons Debates, 171, October 8, 1971. This is a radical change from the government’s earlier position which sought “integration through assimilation”, a policy which had devastating effects on aboriginal reservations, communities and children attending residential schools. With the establishment of this new policy, the term ‘assimilation’ was replaced with terms such as ‘equal opportunity,’ ‘cultural diversity’ and ‘mutual tolerance.’ But the policy did not only wish to tolerate the multiplicity of ethnicities in Canada; it sought to validate their differences with the somewhat vague idea that it would be ‘culturally enriching’ for Canada to do so. It is in this context that we may understand the establishment of the Alternative Dispute Resolution scheme, for it is incomprehensible in the absence of a state policy on multiculturalism. Yet precisely because of the state commitment to ethnic preservation, many ethno-cultural groups had utilized the ADR scheme on the grounds that through it they would ensure the survival of their culture in Canada. Furthermore, the state had pronounced its support to all ethno-cultural groups equally, “the small and weak groups no less than the strong and highly organized.” Ibid. This implies that in the absence of valid reasons, any attempt on the part of the state to prevent one group from utilizing the ADR provision would be deemed discriminatory. It was this premise that legally permitted Muslims to propose the establishment of Islamic-sensitive tribunal systems to cater to the religious needs of a growing Muslim population in Canada.

Muslims as an ethno-religious group in Canada

Muslims have been immigrating to Canada in large numbers from all parts of the Muslim world.

According to the 2001 census, Canada has a total population of 580,000 Muslims, a staggering increase of 130 percent since 1991. Census 2001. Of these, over half live in Ontario. Since it is not possible to isolate any one particular region from which the majority of Muslims in Canada have emigrated, an interesting question arises: taken as a collective, can one consider the Muslims in Canada—with all their ethnic, linguistic, sectarian, and ideological differences—as a distinct entity? Furthermore, the question of whether or not there is such a thing as “the Muslim community” in Canada is an important question since within the multicultural framework of Canada, group status, and especially ethnic group status becomes increasingly important. One way to answer this question is to examine how Muslims generally view themselves. In the case of adherents of the Jewish tradition, most of them, regardless of their nationality, have a shared sense of peoplehood, and hence it is not surprising that they identify themselves and are identified by others as a separate ethnic group. A similar phenomenon can be found in the Islamic faith as well, and it can be argued that Muslims of all ethnicities also feel a shared sense of ‘people hood’—that they too belong to one community, that of the Prophet Muhammad , which in Islamic terminology is called the ‘ummah of Muhammad ’, or simply the ‘ummah’. In fact, in the very early history of Islam, one of the first things carried out by the Prophet Muhammad after his migration from Mecca to Medina was to formally solemnize a brotherhood between those of his followers in Mecca (known as the muhajirūn—“the migrants”) and those who welcomed him in Medina (known as the ansar—“the helpers”). The significance of this event was immense: this new religion would be united not through tribal loyalty, but through the acceptance of a new Islamic identity. While several regional, sub regional and sect based rituals have evolved, the hajj is perhaps the most profound expression of the universal unity of the ummah where each and every Muslim—Shi’ite and Sunni, Arab and non-Arab, rich and poor—is required to perform the rites of the pilgrimage together in their effort to reorient themselves to God. The bond that unites the ummah then is based on faith and not ethnicity. Although the Qur’an recognizes different nations, it judges people on their relationship with God.

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۗ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ ۗ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

O mankind! Indeed We have created you of a male and a female, and made you into tribes and nations that you may know one another; surely the most honourable of you in the eyes of God is the one who has taqwa (i.e., God-consciousness). Surely God is All-Knowing, All-Aware. Qur’an 49: 13. It is for this reason that those of the Christian and Jewish traditions, for example, are considered “Ahl al-Kitab” (i.e., “the people of the book”)—regardless of their ethnicity—and, in the traditional Islamic world, have enjoyed greater privileges than other groups such as polytheists or atheists. The rise of individual nation-states and the movement towards nationalism has posed a great challenge to the notion of the ummah. The dilemma is: Where does the loyalty of a Muslim lie as he is both a citizen of an independent state and a member of the Muslim ummah? In an article on the Islamic view of ethnicity

and nationalism, Muhittin Ataman discusses some of the responses to nationalism on the part of various scholars of the Islamic world throughout the twentieth century. In his research he points out that most, if not all, mainstream Islamic scholars find the notion of nationalism contrary to the basic spirit of Islam. Muhittin Ataman, "Islamic Perspective on Ethnicity and Nationalism: Diversity or Uniformity?" *Journal of Muslim Minority Affairs*, 23, 1 (2003), pp. 98–100. A person of the Islamic faith is first and foremost a Muslim, and then belonging to a certain tribe or nation and even yet in more modern times, a nation state. The confusion between national identity and religious identity in the Palestinian–Israeli conflict is an interesting example. On the one hand, there is no doubt that a certain Palestinian nationalism is at play in the conflict. On the other hand, however, the support for the Palestinian cause—whether real or figurative—on the part of the majority of Muslims around the globe speaks to their belief in the idea of the ummah. Yet in the context of a multicultural system, if one's primary loyalty is not to the state but to a transnational entity, what happens when there is a conflict between the position of the state and that to which one has given his or her loyalty? In fact, one of the reasons why the debate on incorporating Shari'ah law in Canada is fueled with so much emotion is due to the fact that on the global level, Western democratic countries, including Canada, find themselves increasingly at odds with the Muslim world. Another problem that confounds the matter is the modern notion of 'identity'. As the world is coming to adopt more secular and humanistic values, so too are many Muslims, and yet their identity as 'Muslims' remains intact. In other words, it is becoming quite common for one to be a Muslim by identity, and yet not practice, or even believe in the basic tenets of the faith. Traditionally, the concept of a secular Muslim, a homosexual Muslim or a non-believing Muslim was unfathomable. This does not mean that all Muslims were observant or heterosexual throughout the history of Islam. What it means is that if there were such individuals who were non-practicing, or tended towards homosexuality, they would not publicize it or identify themselves as such within society. Yet today, to deem someone a Muslim, is simply to identify them with the Islamic heritage and speaks nothing of their loyalty to Islam or to the ummah. As Michael King states: Muslim identity no longer exists as a unified concept. This leaves Muslims to pick and choose between different versions of Islam, which reflect, not different schools of quranic exegesis, but rather different degrees of permissible individuality. Yet this freedom to choose more or less individualist versions of a Muslims identity simply does not exist within traditional Islam. Michael King, "The Muslim Identity in a Secular World," *God's Law versus State Law* (London: Grey Seal, 1995), p. 113. The ramifications of this have made it possible for many to identify themselves as Muslims and yet deny fundamental aspects of Islam. This may shed some light on the issue of the Shari'ah law debate, where those on either side have identified themselves as 'Muslim'. Let us return, then, to the question that was posed at the beginning of this section: can one consider the Muslims in Canada as a distinct ethno-religious group in the matrix of the cultural mosaic of Canada? Although traditionally Muslims have considered themselves as a distinct entity belonging to a unified ummah, in an age of nation-states and secularism, one wonders how sensible it is to group all Muslims together as a homogenous entity. To be Muslim, it seems, is becoming yet another vague term, and it is no wonder, then, that a host of adjectives—from 'modern' to 'fundamentalist', from 'liberal' to 'traditional'—is now needed to qualify the term 'Muslim'. Nevertheless, the fact remains that the Canadian government has

often interacted with “the Muslim community” as a collective, and it is this interaction, as it applies to the Shari’ah law, that we can now examine.

The Definition, Perception and Practice of Shari’ah in Canada

As a collective entity, or a ‘minority group’, Muslims have already had legal concessions granted to them by the government. A common example is that Muslims are permitted to slaughter animals in a manner that adheres to the tenets of their faith. Jews, of course, have also been granted a similar concession. Interestingly, recent ‘discoveries’ in modern science suggests that cows and poultry take up to two minutes to lose consciousness after their throats are cut. Hence, efforts are underway by animal-rights activists to end the concessions granted to Jewish and Muslim communities since they do not allow for pre-slaughter stunning. One wonders at the philosophical assumptions behind such efforts. In Islam, these same tenets which dictate what a Muslim may or may not eat also govern other aspects of a Muslim’s life, and it is not surprising, then, that the Arabic word for this ethical and legal code in Islam is Shari’ah, which means ‘the way’. Ultimately, Islam is a way of life, for there is no division of church and state in Islam, between the public and the private, and between the social, economic or political life of a Muslim. From the devotional acts such as prayers and fasting to the most mundane aspects of an individual’s life, the Shari’ah guides the believer in all his activities. Michael King, in *God’s Laws versus State Laws* describes the all-encompassing notion of the Shari’ah: What differentiates God’s law from state law is its universality. It transcends all temporal and national boundaries. It is for all places at all times. It travels as part of the spiritual luggage of its adherents across borders and continents. It also traverses time. The divinity of its inspiration frees God’s law from the need to change in response to changes in social conditions. Of course, this does not mean that it does not change, but that, unlike state law, its legitimacy does not depend upon its adjusting to developments in the external world. Michael King, *God’s Law versus State Law* (London: Grey Seal, 1995), p. 1. Furthermore, the devout Muslim knows that he must comply with the Shari’ah for to do otherwise is to commit an offense. It is not sufficient to believe in God and His revelation; one must also believe in the validity of the law as exemplified by the Shari’ah. As Seyyed Hossein Nasr explains: The Sharḥ’ah is the Divine Law by virtue of accepting which a person becomes a Muslim. Only he who accepts the injunctions of the Sharḥ’ah as binding upon him is a Muslim although he may not be able to realize all of its teachings or follow all of its commands in life. The Sharḥ’ah is the ideal pattern for the individual’s life and the Law which binds the Muslim people into a single community ... Law is therefore an integral aspect of the revelation and not an alien element. Seyyed Hossein Nasr, “The Shari’ah—Divine Law, Social and Human Norm”, *Ideals and Realities of Islam* (Boston: Beacon Press, 1975), pp. 93–95. There are many misconceptions about the Shari’ah law which has fueled the debate over it. The Shari’ah is not a static law that was developed a millennium ago; rather, it is a sophisticated and dynamic law, which, under the science of fiqh (i.e., jurisprudence) and through the process of ijtihad (i.e., legal interpretation), has adapted itself to various conditions in order to fulfill the following: to reorient temporal conditions to eternal principles. In this way, the principles which guide and direct the Shari’ah have always remained constant. This is important to

emphasize because the very permanence of these principles is what legitimizes any cumulative changes that occur in its interpretation and application. Where the observant Muslim has difficulty is when the Islamic laws are either not recognized or are in direct violation of secular state law. For example, under the Shari'ah law, the right to initiate divorce lies with the husband, whereas under the secular legal system each partner has an equal right. Yet just as a religious divorce is not recognized by the state, so too a civil divorce is not recognized in Islam. Until now, disputes such as these would generally be handled by the imam (i.e., religious leader) of a local community. The problem, however, is that in a country such as Canada, any arbitration issued by the imam cannot be legally binding since it is not recognized by the state, and if one of the parties is non-practicing, the moral obligation to abide by the arbitration has no effect. With this in mind, one may understand the motivation on the part of many Muslims in their efforts to establish an Islamic tribunal system under the guidelines of the ADR, through which the arbitral award (i.e., the decision of the arbitrator) would not only be formalized, but also, be legally binding and enforceable by the public courts. As mentioned earlier, the ADR framework was already in use by various Jewish and First Nations groups. It was only recently that the Islamic Institute of Civil Justice (IICJ), spearheaded by a Canadian lawyer, Mr. Syed Mumtaz Ali, applied for registration under the ADR provisions to provide 'Islamically sensitive arbitrations' to those wishing to use the service. The plan envisioned by the IICJ was to centralize the mediation service under one organization, with representatives from all the traditional schools of thought. But it was this very undertaking that caused an uproar from many quarters of Canadian society, and it is to this debate, then, that we must now turn.

The Debate

Those who supported the idea of providing arbitration based on the Shari'ah were generally observant Muslims whose primary loyalty was to Islam. For the majority of them, this undertaking was simply a move to preserve their religion in an increasingly secular world. They argued that they were only utilizing an already legal framework, which has been used by others before them to provide similar arbitration; in this regard, they were actually quite surprised at the outcry by the Canadian public. Furthermore, they were quick to point out that since this was an alternative to the secular courts, seeking mediation through it was entirely voluntary. Despite these arguments, there was strong opposition to the idea by vocal 'Muslim' and non-Muslim organizations in Canada. Many of them were principally against all or part of the Shari'ah, considering it to be outdated and inapplicable in today's society, and in fact, some of their members had fled from countries in which the Shari'ah law was applied. Furthermore, such organizations as the Canadian Council of Muslim women regarded the Shari'ah as having a male bias since it has largely been interpreted by male scholars. They pointed to various inheritance and divorce laws which, according to them, 'favoured' men over women. Many critics who objected to the use of the Shari'ah were generally those who had embraced the values of secularism. Homa Arjomand, a former Muslim and coordinator of 'the International Campaign against the Shari'ah Courts', in a letter to Marion Boyd, unequivocally states: "We need a secular state and secular society that respects human rights

and that is founded on the principle that power belongs to the people and not a God. It is crucial to oppose the Islamic Sharia law and to subordinate Islam to secularism and secular states.” Homa Arjomand, “Letters to Mrs. Boyd,” International Campaign against Sharia Court in Canada, [<http://www.nosharia.com/let2boyd.htm#1>] [9]. There is no doubt that secularism is becoming the dominant phenomenon in the modern world and most Canadians consider this a positive trend. It is in this light that we can understand the reaction of the media as well as secular organizations—both ‘Muslim’ and non-Muslim—against the establishment of the Shari’ah tribunals; for the attempt to revive religion and give it legal status seems to go against the so-called ‘evolutionary’ movement that is taking the world away from religion. According to the 2001 Census, 4.8 million Canadians claim no religious affiliation. This is the largest single group in the “religious” mosaic of Canada after the Roman Catholics, and is a 44 percent increase from a decade earlier. It is unfortunate, however, especially in the eyes of devout Muslims, that the reaction was specifically against the Shari’ah courts and not against the other religious or culturally based tribunals. This brings us back to the question posed by Carroll Off at the beginning of this paper: Is this the triumph of multiculturalism or is it a threat to the separation of church and state in Canada?

The “Triumph” of Multiculturalism

If this is perceived as a “triumph” of multiculturalism for one segment of Muslims and Canadians, then it is certainly not one in the eyes of many others. This begs the question: How can Canadians consider the notion of multiculturalism as a hallmark of their society and yet not agree with its implications? It is a paradox because the very policy of multiculturalism allows various ethno-religious groups, on the basis of cultural protection, to propose ideas which are anathema to the modern Canadian mentality. It is not surprising, then, that it has come under attack by Canadians themselves. Neil Bassoondath and others have asked a very basic question about the boundaries of tolerance: to what extent should the state accommodate the ‘rights’ of minority groups who do not subscribe to modern secular values? Neil Bassoondath, “I am Canadian,” Saturday Night, October, 1994. As society is seen to be ‘evolving’ towards secularism, there is an inherent conflict when ethnic and religious loyalties pull together against the demands of secular assimilation. Ultimately, it seems that religious freedoms can be granted only when its beliefs do not strike at the fundamental mores of society. A. Bradney, *Religions, Rights and Laws* (Leicester: Leicester University Press, 1993), p. 157. What, then, are the fundamental mores of Canadian society in relation to religion? First, that the separation of church and state must be maintained, and second, that secular liberal and humanistic values must not be compromised.

Separation of Church and State

Most Canadians may be surprised to find that on paper, “Canada is founded upon principles that recognize the supremacy of God.” “Canadian Charter of Rights and Freedom” in The Constitution Act, 1982. [<http://laws.justice.gc.ca> [10] /en/const/annex_e.html] In practice, however, this is far from the

case. Ever since Western European countries revolted against the Church during what became known as the “Enlightenment,” a separation between church and state has ensued. Since then, the idea of modern, fair and just government has been elaborated on by many Western intellectuals. The predominant view put forth is that society consists of a voluntary association of self-determining individuals, who agree to unite under a political entity in order to ensure the protection of each member. Paul Morris, “Judaism and Pluralism: The Price of Religious Freedom,” in Ian Hamnett, ed., *Religious Pluralism and Unbelief* (London: Routledge, 1990), p. 181. With the rise of the nation-states in Europe, citizenship has become a vital part of one’s social and political identity. Whereas the Church once held exclusive loyalty from the members of its faith, today, loyalty is first and foremost to one’s nation state. The interaction between the state, religion and law through the course of history is an interesting topic. In an article entitled “Religious Pluralism and the Law”, Antony Allott lists six ways in which law and religion have related to each other. Antony Allott, “Religious Pluralism and the law in England and Africa: A case study,” in Ian Hamnett, ed., *Religious Pluralism and Unbelief: Studies Critical and Comparative*, (London: Routledge, 1990), p. 208. The range includes: fusion, infusion, co-ordination, subordination, toleration and, finally, suppression—where fusion represents the synthesis between law and religion and the commitment by the ruler to protect and promote a particular religious view, and where suppression represents a situation where the law purports to outlaw any and all religious views. An example of the former, according to Allott, is the Islamic state, under which most Muslims have lived for most of Islamic history. It was only after the fall of the Ottoman Empire that the newly emerging ‘Muslim’ nation-states began subordinating religion to the state or even suppressing it outrightly. As for Canada, Allott would consider it an example of toleration. In Canada, the state no longer serves as an enforcement agency on behalf of the dominant religious institution; instead, it takes the position of “impartial guardian of order between the competing religions.” Peter Berger, “Social Sources of Secularization,” in Jeffrey C. Alexander and Steven Seidman, eds., *Culture and Society: Contemporary Debates* (Cambridge: Cambridge University Press, 1990), p. 240. The separation of church and state has also led to a reshuffling of what is considered private and public. In Western democratic countries, governance has become the domain of the public life and religion has been relegated to the private sphere of individuals. In fact, postmodern thought has contributed significantly to this outlook. From the postmodern paradigm, there can be no universal or foundational claims since objective truth is unintelligible. Religion, therefore, also becomes unintelligible—a social construction. With the absence of objective truth, each person simply chooses whatever suits his or her own individual tastes—all facets of religion, therefore, become reduced to private spirituality. This is quite foreign to Islam, which, as mentioned earlier, influences all aspects of a Muslim’s life. As Nasr explains, “Islam never gave unto Caesar what was Caesar’s. Rather, it tried to integrate the domain of Caesar itself, namely, political, social and economic life, into an encompassing religious world view.” Nasr, *Ideals and Realities of Islam*, p. 95. In Islam, the notion of governance is fundamentally different from the modern Western conception. It is religion, in fact, which legitimizes governments, for the state is the church and the church is the state. Therefore, in the classical political theory of Islam, God’s saint is His true representative on earth. It is for this reason that the Prophet Muhammad (s) was not only the spiritual guide of his ummah, but also the political ruler of

the Islamic state. The Prophet of Islam (S) is both ‘abd Allah’ (God’s servant) and ‘rasÙl Allah’ (God’s messenger). The former is a necessary prerequisite for the latter, not only for the Prophet (S) but for man in general. As Nasr states in his article “Who is Man?": “With the function of khalifah was combined the quality of ‘abd, that is, the quality of being in perfect submission to God. Man has the right to dominate over the earth as khalifah only on the condition that he remains in perfect submission to Him who is the real master of nature,” in Jacob Needleman, ed., *The Sword of Gnosis* (Baltimore: Penguin Books Inc, 1974), p. 207. The separation of the church from state affairs is not simply a divorce of religion and religious values—for a state cannot exist without an overarching paradigm to provide the basis from which laws are enacted, affairs are governed, and civil servants, with the rest of society as a whole, carry out such responsibilities as will ensure justice and encourage order. In Western democratic countries, including Canada, what replaced the Church was a paradigm based on liberal secular humanism and it is this paradigm, which ultimately puts it at odds with religion.

Liberal Secular Humanism and the Conflict with Religion

In their analysis of Canada’s multicultural policy, Janet McLellan and Anthony Richmond state, “A new vision must be one that celebrates our common humanity and seeks to reconcile differences.” Janet McLellan and Anthony H. Richmond, “Multiculturalism in Crisis: a Postmodern Perspective on Canada,” *Ethnic and Racial Studies*, 17, 4, (1994), p. 680. The idea of celebrating a common humanity stems from the philosophy of Humanism—a movement that gained widespread support by the literary elite during the Renaissance, and which came to espouse the view that individualism and human self-interest should be the basis for all philosophies; in effect, it made human beings the measure of all things. Humanism in the West has also given rise to individualism. On this point, many have noticed the contradictions between a multicultural policy which focuses on group interests and a humanistic value which stresses the individual. As McLellan states, “Catering to group interest may be seen as contrary to liberal democratic values that emphasize the individual rather than collective rights, and universalism rather than particularism.” *Ibid.*, p. 673. In fact, the greatest hallmark in our century, from a humanistic point of view, is the formulation of the Universal Declaration of Human Rights which grants each and every individual equal and inalienable rights. The Canadian version of this is the Charter of Rights and Freedoms, which gives courts considerable authority to strike down any federal or provincial statutes and regulations that contravene the rights enumerated within it. It is precisely because of the Charter that Canada’s abortion law was struck down and in the case of Alberta, homosexuals were included within those protected against discrimination. And it was perhaps the Charter more than any other document which was used as a basis to prevent the setting up of a formal Islamic tribunal structure, with the claim that the Shari’ah or its interpretation has often discriminated against certain segments of society. Although Muslims may agree with many of the rights listed in the Charter, they do not, in principle, agree with the idea that all individuals possess these rights simply because they are human. Islam has its own view of anthropology. What defines man’s position is not his humanity, but his relationship to God; ultimately, it is only God Who grants humans their rights. In fact, in order to counter the globalizing

discourse of the Universal Declaration of Human Rights, an attempt was made by Muslims in France to offer an Islamic parallel to the document. A line from the forward reads as follows: Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered. "Foreward," in Universal Islamic Declaration of Human Rights, 19th September, 1981. Moreover, along with rights come responsibilities and, in Islam, the hadith literature seems to emphasize the latter more than the former. Interestingly, in the Risalat al-Huqûq (Treatise of Rights) of Imam 'Ali ibn Husayn ('a), the great-grandson of the Holy Prophet (S), all the rights that the Imam ('a) lists in the short treatise are rights that others have upon the individual and not the other way around. The same is the case with many of the prophetic traditions. Moreover, the first right listed in the Imam's treatise is God's right over man, and hence man's responsibility towards God. From this, follows man's responsibility towards himself and by extension towards others. From a secular point of view, however, the concept of rights has a more recent and yet particular importance in legal parlance. In a multicultural state such as Canada, when the government interacts with various religious or cultural communities, the specific needs of that community can only be dealt with when they have been reformulated to correspond to the dominant legal framework. As King explains: How then does modern law reconstruct Islam? In the first place, as one might expect, Islam is split and classified according to the conceptual meaning categories that exist in the modern world ... obligations which were at one time a matter of 'individual conscience' ... are transformed into impersonal rules enforceable by state authority. Thus law tends to reconstruct religion as rights of worship and performance of ritual. Once reconstructed in this way, each religion may be seen as constituting for law a set of rights, such as ... the right to kill and prepare animals for food according to ritual rules ... Once constituted as rights, religions may take their place in a legal world where their particular demands and obligations may be related to, compared with and placed in rank order with all other rights, obligations and demands. King, p. 108. In other words, the only way that multiculturalism as a state policy can effectively An interesting point is raised in the relationship between citizen and state, for the rights-focused society is only a recent tendency in Western democratic societies, and in some ways, within an increasingly neoliberal context, can be seen as contributing to factors that threaten to strip the role of the state. The narrow perspective of secular norms may be in contradiction with a more long term view of citizenship that might, through religion refocus the responsibilities of individuals on their citizenry to the state. Such a move, while politically unpopular and at the mercy of the market, should be considered in the subtext of such arguments where religion is treated as a threat, rather than as an informal partner to nation building. and harmoniously cater to different ethnicities and religions is to reduce them to their outward form or expression. Yet in so doing, it essentially destroys these entities and the underlying principles that hold them together for religion cannot continue to exist when it is reduced to personal spirituality and its observances are deemed as 'rites' and 'rituals'. In this sense, multiculturalism, in a secular humanistic context, is the burial of religion rather than its acceptance. This can be compared to a zoo, where when one encages an animal and denies them their place in the ecology of nature, one ultimately destroys their 'way of life'. Of course, many have realized this dilemma of living as Muslims in

a secular state—even one with a state policy of multiculturalism—and the degree to which their faith can actually be consciously lived. Among this group were ones who did not support the Shari’ah-based tribunals, not because they did not agree with the Shari’ah, but because they felt the idea of having a secular country enforce divine laws was contrary to the spirit of their faith. If God’s laws were to be followed, according to them, it was because they were divine, and not because they had been reconstructed as legally binding alternative laws in order to adapt themselves to the Western legal system. For them, the whole undertaking was seen as yet another step in the reconstruction of religion and religious values in order to accommodate them into an increasingly secular world. Two other values of utmost importance in liberal democracies are the oft-repeated slogans of ‘freedom’ and ‘equality’, and the Shari’ah in particular is often criticized by secularists on the grounds that it denies individuals both freedom and equality. These same secularists argue that Western democratic societies have leveled out class, race, and gender-based social hierarchies, and have offered individuals many freedoms including those of conscience, religion, belief, speech, expression, and association. Of course, these freedoms have their limits as is seen with the decision to prevent faith-based arbitration, but the modern secularist will insist that it is much better than what religion has offered. There is no denying this claim, of course, for the freedoms that liberal democracies have conceded to are quite extensive. In the field of science and technology, the free-reign granted to industry has produced many an efficient gadget but many an unnecessary one too—all at the expense of the social and physical environment which is inhabited by the citizenry. In the field of social relations, the argument for legalizing same-sex unions was that it was an extension of unions between a male and female. If freedom is the underlying principle, one wonders why this union is limited to only two. According to Andrew Bainham, “It is a great paradox of a society in which sexual liberation outside marriage is a norm, and yet sexual exclusivity within marriage is an ideal.” Andrew Bainham, “Family Law in a Pluralistic Society,” *Journal of Law and Society*, 22, 2, (1995). For the devout Muslim, however, the ‘freedom’ that the modern secularists parade is a purely horizontal freedom and it is this that he objects to. In Islam, he would argue, true freedom is vertical—it is that gift which allows human beings to move up towards God or down towards multiplicity, fragmentation and disintegration. Since there is a hierarchy of being in Islam, the choice is a matter of not what an individual ‘can’ do, but what an individual ‘should’ do. One is reminded of Ian Malcolm’s words in *Jurassic Park* to the ‘visionary’ industrialist: “your scientists were so preoccupied with whether or not they could that they didn’t think if they should.” Law in Islam is meant to guide a Muslim in his path towards God. Although he has the freedom to disobey the law, he also has the freedom to abide by it. But the freedom is not as important as the choice he makes. It is for this reason that the supporters of the Shari’ah law, may not necessarily wish to impose their laws on others, but to simply offer the opportunity to those Muslims who feel that by abiding by the Shari’ah in their disputes, they are making a better choice in their lives. In the context of the adversarial court system and the increasing costs that this places on individuals, Muslims may actually find the more accommodating and flexible mores inherent to their cultures and ethnicities of origin within the framework of Shari’ah law. However, the perceptions of opponents seems to have outweighed examination of such benefits.. This is becoming increasingly important for them, because there is an unspoken feeling that the choices which the Western world is

making (and the adversarial approach that many features of the legal framework in society is creating) is in the wrong direction, and through the process of globalization, is leading other cultures and communities to the same antagonistic and adversarial end. Secularists today, of course, feel that Western nations are going in the right direction, it is not surprising then that the idea of 'progress' has become one of the most fashionable and penetrating notions that has gained authority today. The idea of progress places a positive quality to the historical changes that the West has experienced. The ancients and all things "ancient"—including religion—may be tolerated, even admired, but not respected as authorities. Furthermore, evolutionary historicism has reduced all history to simply stages of liberalism, thereby forming a built-in protection of any criticism against itself. It is this last phenomenon—i.e., the prevalence of the idea of 'progress'—that has ultimately put religion at odds with the Modern West, and has contributed in fueling the debate regarding the incorporation of Shari'ah in the modern legal system. Since the Shari'ah has not "evolved" in the same ways that the modern legal code has "evolved", it is seen as being outdated and hence, not applicable in our times. As mentioned previously, the laws in the Shari'ah do change, yet the principles upon which they are based are deemed immutable. Moreover, even when new laws are added to the Shari'ah, they are not added so as to accommodate the fashionable ideas of the dominant group of the period. What bothers the "traditional" Muslim so much is the intellectual arrogance found in Western thought, which presumes that the path it is taking is one which leads to 'progress', and yet the path that other civilizations have taken or continue to take is somehow harkening back to the "olden days".

Conclusion

The purpose of this paper is to highlight the innate conflict between the values of modern liberal secularism and the principles of religion. It is precisely because of this conflict that many Muslims are finding it difficult to be both Muslims and Canadians. It could be argued, as it has been, that if Muslims do not agree with these values then they should either find a nation that does, or simple return to their original homelands. This is a popular argument found in the opinion sections of newspapers and discussion sites on the Internet against those immigrants resisting secularization; Of course, one imagines that the same argument could have been put forth by the First Nations' Peoples to their colonizers if given a chance. Yet the matter is complicated not only because many Muslims have lived on Canadian soil for over two generations, but also because through the process of globalization, even the traditional lands from which they may have come are undergoing great change. As some have commented, while we are celebrating our differences in Canada, traditional cultural societies are being destroyed by neoliberal globalization. The governments of many 'Muslim' countries have become secularized and religion has succumbed to sectarianism and politicization to the point where, ironically, it is more difficult for a Muslim to practice his religion there than in North America. In this case, a Muslim may be grateful even, that Canada has not followed the same path. Nevertheless, for many Muslims, acts such as implementing the Shari'ah law in Canada is a way for them to maintain their religious heritage in a time when the world is abandoning religion. Their mission in 'diaspora' seems more

important to them than in their home countries. So where does this leave us? Is it possible to find a common ground between modern liberal democracy and religion in an era where there is some recognition that neoliberalism is flawed and alternatives are required? Must one system override the other or can a compromise be made? The notion of Canada returning to its religious roots is almost unthinkable for the vast majority of Canadians, and flies in the very face of 'progress' that has embraced secularism. There is the option for Canada to abandon her multicultural policy and treat all religions and ethnicities equally unfavorably. This, of course, seems to be in step with the direction Premier McGuinty was heading with his announcement of one family rule for all in Ontario. Incidentally, this option would remove the one major difference between Canada and her southern neighbour. A third option is for the government to continue its multicultural policy, yet realizing that this is at the expense of reducing religious cultures to their outward expressions. There is, however, another possibility and in his article on "Judaism and Pluralism", Paul Morris discusses the idea of establishing a sub-legal framework, which would allow religious traditions autonomy in the areas of self-definition, education and family law. Morris, p. 191. In fact, the conversant Muslim is not alien to this suggestion for within the Islamic world, a similar system existed where non-Muslim minorities had autonomy in governing various aspects of their communal lives. In one sense, it was a state within a state; in another, it was a state beyond the state in so far as they owed loyalty to the heads of their respective denominations. This is not a completely foreign idea to Canadian history since the First Nations' Peoples of Canada have received a certain degree of autonomy within the nation. Of course, many would argue that the situation of the First Nations' Peoples should not be compared to that of other ethnic or religious communities; after all they were the original inhabitants of the land. Yet when one studies the interaction between the Canadian government and the First Nations Peoples, one wonders to what extent this argument was considered. If Canada does accept this possibility, it must be prepared for two changes: First, it must accept religious and ethnic stratification; and second, if each group is given room to 'flourish' in a true mosaic, the cost of this may be an increase in inter-ethnic or inter-religious conflict, which, of course, the state would somehow have to deal with. As mentioned earlier—the search for alternatives in an increasingly competitive environment does not undermine the role of the state and the identity of Canada in a neoliberal world. Policy makers and strategists within and across levels of government might consider incorporating value frameworks of religious groups and communities to raise the standards of governance and citizen participation that builds society, even at a grassroots level, by recognizing common principles inherent to statehood. . In the end, whatever option Canada chooses, it can only make an intelligent decision if it realizes the principles under which it and other systems operate. Returning to Carol Off's question, it seems that this is neither the triumph of multiculturalism nor a threat to the separation of church and state in Canada. Inherent in this question, of course, is the presumption that the separation of church and state has been a positive choice on the part of the West. The separation between church and state is far too pronounced for it to be threatened, and it seems that Canadians have ultimately chosen secularism over religion. But nor is this a triumph of multiculturalism even for the Muslim (and perhaps especially for him) because this form of multiculturalism only relegates and restricts his faith to its outward form in order to be molded into a secular legal system, a process

which destroys the very spirit that is required for his faith to be meaningful.

Bibliography

Arbitration Act, 1991. Bill 27, Family Statute Law Amendment Act, 2006. Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982. Ali, Syed Mumtaz & Enab Whitehouse, "The Reconstruction of the Constitution and the Case for Muslim Personal Law in Canada" *Journal of Muslim Minority Affairs*, 165. Alott, Antony, "Religious Pluralism and the law in England and Africa: A case study," in Ian Hamnett (ed.), *Religious Pluralism and Unbelief: Studies Critical and Comparative* (London: Routledge, 1990). Arjomand, Homa, "Letters to Mrs. Boyd," *International Campaign against Sharia Court in Canada*. [<http://www.nosharia.com/let2boyd.htm#1>] [9] Ataman, Muhittin, "Islamic Perspective on Ethnicity and Nationalism: Diversity or Uniformity?" *Journal of Muslim Minority Affairs*, 23:1, 2003. Bainham, Andrew, "Family Law in a Pluralistic Society," *Journal of Law and Society*, 22:2, 1995. Bassoondath, Neil, "I Am a Canadian," *Saturday Night October*, 1994. Berger, Peter, "Social Sources of Secularization," in Jeffrey C. Alexander & Steven Seidman (eds.), *Culture and Society: Contemporary Debates* (Cambridge: Cambridge University Press, 1990). Boyd, Marion, "Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion," *Ministry of the Attorney General Website*, 2004 [<http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd/>] [11] Bradney, A., *Religions, Rights and Laws* (Leicester: Leicester University Press, 1993). Husaini, Zohra, *Muslims in the Canadian Mosaic: Socio-Cultural and Economic Links with Their Countries of Origin* (Edmonton: Muslim Research Foundation, 1990). King, Michael (ed.), *God's Law versus State Law: The Construction of an Islamic Identity in Western Europe* (London: Grey Seal, 1995). McLellan, Janet & Anthony H. Richmond, "Multiculturalism in Crisis: a Postmodern Perspective on Canada", *Ethnic and Racial Studies*, 17: 4, 1994. Morris, Paul "Judaism and Pluralism: The Price of Religious Freedom," in Ian Hamnett (ed.), *Religious Pluralism and Unbelief: Studies Critical and Comparative* (London: Routledge, 1990). Nasr, Seyyed Hossein, *Ideals and Realities of Islam* (Boston: Beacon Press, 1975). Nasr, Seyyed Hossein, "Who is Man?" in Needleman, Jacob (ed.), *The Sword of Gnosis* (Baltimore: Penguin Books Inc, 1974). Pearl, David & Werner Menski, *Muslim Family Law* (London: Sweet & Maxwell, 1998). Troper, Harold and Morton Weinfeld, "Canadian Jews and Canadian Multiculturalism," in Howard Adelman & John H. Simpson (eds.), *Multiculturalism, Jews, and Identities in Canada* (Jerusalem: The Magnes Press, 1996). Zayn al-'Abidin, 'Ali ibn Husayn, "Risalat al-Huquq," *The Psalms of Islam: Al-Sahifat al-Kamilat al-Sajjadiyya* (Qom: Ansariyan, 2007).

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